

## §9701.507

and may cancel such continued provisions at any time; such determinations are not precedential.

(b) Upon request by an exclusive representative, the parties will have 60 days after the effective date of coverage under the applicable subpart and/or implementing directive to bring into conformance those remaining negotiable terms directly affected by the terms rendered unenforceable by the applicable subpart and/or implementing directive. If the parties fail to reach agreement by that date, they may utilize the negotiation impasse provisions of §9701.519 to resolve the matter. Agreements reached under this section are subject to approval under §9701.515(d). Nothing in this paragraph will delay the effective date of an implementing directive.

### §9701.507 Employee rights.

Each employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee must be protected in the exercise of such right. Except as otherwise provided under this subpart, such right includes the right—

(a) To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and

(b) To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this subpart.

### §9701.508 Homeland Security Labor Relations Board.

(a) *Composition.* (1) The Homeland Security Labor Relations Board is composed of at least three members who will be appointed by the Secretary for terms of 3 years, except that the appointments of the initial HSLRB members will be for terms of 2, 3, and 4 years, respectively. The Secretary may extend the term of any member beyond 3 years when necessary to provide for an orderly transition and/or appoint

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the member for an additional term. The Secretary, in his or her sole and exclusive discretion, may appoint additional members to the HSLRB; in so doing, he or she will make such appointments to ensure that the HSLRB consists of an odd number of members.

(2) Members of the HSLRB must be independent, distinguished citizens of the United States who are well known for their integrity and impartiality. Members must have expertise in labor relations, law enforcement, or national/homeland or other related security matters. At least one member of the Board must have experience in labor relations. Members must be able to acquire and maintain an appropriate security clearance. Members may be removed by the Secretary on the same grounds as an FLRA member.

(3) An individual chosen to fill a vacancy on the HSLRB will be appointed for the unexpired term of the member who is replaced.

(b) *Appointment of the Chair.* The Secretary, at his or her sole and exclusive discretion, will appoint one member to serve as Chair of the HSLRB.

(c) *Appointment procedures for non-Chair HSLRB members.* (1) The appointments of the two non-Chair HSLRB members will be made by the Secretary after he or she considers any lists of nominees submitted by labor organizations that represent employees in the Department of Homeland Security.

(2) The submission of lists of recommended nominees by labor organizations must be in accordance with timelines and requirements set forth by the Secretary, who may provide for additional consultation in order to obtain further information about a recommended nominee. The ability of the Secretary to appoint HSLRB members may not be delayed or otherwise affected by the failure of any labor organization to provide a list of nominees that meets the timeframe and requirements established by the Secretary.

(d) *Appointment of additional non-Chair HSLRB members.* If the Secretary determines that additional members are needed, he or she may, subject to the criteria set forth in paragraph

(a)(2) of this section, appoint the additional members according to the procedures established by paragraph (c) of this section.

(e) *Filling a HSLRB vacancy.* A HSLRB vacancy will be filled according to the procedure in effect at the time of the appointment.

(f) *Procedures of the HSLRB.* (1) The HSLRB will establish procedures for the fair, impartial, and expeditious assignment and disposition of cases. To the extent practicable, the HSLRB will use a single, integrated process to address all matters associated with a negotiations dispute, including unfair labor practices, negotiability disputes, and bargaining impasses. The HSLRB may, pursuant to its regulations, use a combination of mediation, factfinding, and any other appropriate dispute resolution method to resolve all such disputes at the earliest practicable time and with a minimum of process. Such proceedings will be conducted by the HSLRB, a HSLRB member, or employee of the HSLRB. Individual HSLRB members may decide a particular dispute. However, at the motion of a party upon its initial request for HSLRB assistance or upon the HSLRB's own motion at any time, the full HSLRB (or, where the Secretary appoints more than three members, a three-person panel of the HSLRB) may decide a particular dispute involving a matter of first impression or a major policy.

(2) In cases where the full HSLRB acts, a vote of the majority of the HSLRB (or a three-person panel of the HSLRB) will be dispositive. A vacancy on the HSLRB does not impair the right of the remaining members to exercise all of the powers of the HSLRB. The vote of the Chair will be dispositive in the event of a tie.

(g) *Finality of HSLRB decisions.* Decisions of the HSLRB are final and binding. However, in cases involving unfair labor practices and/or negotiability disputes decided by a single member, a party may seek review of that decision with the full HSLRB, according to rules prescribed by the HSLRB. In such cases the initial decision is stayed pending the final decision by the full HSLRB.

(h) *Review of a HSLRB decision.* (1) In order to obtain judicial review of a HSLRB decision, a party must request a review of the record of a HSLRB decision by the Authority by filing such a request in writing within 15 days after the issuance of the decision. Within 15 days after the Authority's receipt of the request for a review of the record, any response must be filed. A party may each submit, and the Authority may grant for good cause shown, a request for a single extension of time not to exceed a maximum of 15 additional days. The Authority will establish, in conjunction with the HSLRB, standards for the sufficiency of the record and other procedures, including notice to the parties. The Authority must defer to findings of fact and interpretations of this part made by the HSLRB and sustain the HSLRB's decision unless the requesting party shows that the HSLRB's decision was—

(i) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(ii) Based on error in applying the HSLRB's procedures that resulted in substantial prejudice to a party affecting the outcome; or

(iii) Unsupported by substantial evidence.

(2) The Authority must complete its review of the record and issue a final decision within 30 days after receiving the party's timely response to such request for review. This 30-day time limit is mandatory, except that the Authority may extend its time for review by a maximum of 15 additional days if it determines that—

(i) The case is unusually complex; or

(ii) An extension is necessary to prevent any prejudice to the parties that would otherwise result.

(3) No extension beyond that provided by paragraph (h)(2) of this section is permitted.

(4) If the Authority does not issue a final decision within the mandatory time limit established by paragraph (h) of this section, the Authority will be considered to have denied the request for review of the HSLRB's decision, which will constitute a final decision of the Authority and is subject to judicial review in accordance with 5 U.S.C. 7123.