

## Government Accountability Office

## § 28.122

(i) *Runoff election.* The Board may order a runoff election where one or more of the labor organizations on the ballot has received the vote of at least 30 percent of the employees eligible to vote, but none has gained a majority of the votes cast. The runoff election will be between the two choices receiving the largest and the second largest number of votes in the original election.

(ii) *Additional election.* The Board may order an additional election where there is a tie vote between all of the choices on the ballot or where a runoff election is not feasible because there is a tie between the choices receiving the second most votes in the original election. The additional election will include all the choices that appeared on the original ballot.

### Subpart F—Special Procedures; Unfair Labor Practices

#### § 28.120 Authority of the Board.

(a) The procedures in this subpart relate in part to the Board's function, under 31 U.S.C. 753(a)(6), to "consider and order corrective or disciplinary action in a case arising from \* \* \* a matter appealable to the Board under the labor-management relations program under (31 U.S.C. 732(e)(2)) including a labor practice prohibited under (31 U.S.C. 732(e)(1))."

(b) The system so established by the Comptroller General is required to provide that each employee of the GAO has the right to form, join or assist, or not form, join or assist an employee organization, freely and without penalty or reprisal, and for a labor-management relations program consistent with Chapter 71 of Title 5, U.S.C. (31 U.S.C. 732(e)).

#### § 28.121 Unfair labor practices; Board procedures.

(a) Unfair labor practices are defined at GAO Order 2711.1. An allegation that a provision of GAO Order 2711.1 is inconsistent with Chapter 71 of Title 5, United States Code, and thereby denies to an employee or labor organization rights comparable to those granted by Chapter 71 of Title 5, United States Code, may also be raised under the unfair labor practice procedure.

(b) An allegation that unfair labor practices have been committed shall be subject to the procedures appearing in subpart B of this part for the filing of charges, investigation by the General Counsel, and the Board's disposition, except as set forth in paragraphs (c) and (d) of this section.

(c) Except as provided in paragraph (d) of this section, no petition may be filed based on any alleged unfair labor practice which occurred more than 6 months before the filing of an unfair labor practice charge with the charged party, as provided in paragraph 15e of GAO Order 2711.1, or more than 9 months before the filing of a charge with the Office of General Counsel.

(d) If the Board determines that the charging party was prevented from filing the charge during the 6-month period referred to in paragraph (c) of this section by reason of:

(1) Any failure of the charged party to perform a duty owed to the charging party; or

(2) Any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period; the charge will be considered timely filed, provided it was filed with the charged party during the 6-month period beginning on the day of the discovery of the alleged unfair labor practice by the charging party.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69303, Dec. 12, 2003]

#### § 28.122 Negotiability issues.

Where the GAO and an exclusive bargaining representative disagree on whether a matter is subject to negotiation as part of the requirement to bargain in good faith, the matter shall be appealable to the Board under the following procedures:

(a) When, in connection with negotiations, a proposal is declared nonnegotiable, the party submitting the proposal shall, prior to the close of negotiations, submit to the other party a Request for Formal Negotiability Determination reciting the proposal in question. The party declaring the proposal nonnegotiable shall, within ten (10) days, deliver to the other party a Formal Negotiability Determination stating the basis for the Determination.

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(b) A Formal Negotiability Determination may be appealed to the Board within 20 days of its service by filing a Petition for Review with the Board. A complete statement of argument from the petitioner should accompany the Petition for Review.

(c) The Board shall serve the Respondent with a copy of the Petition for Review and accompanying argument. Respondent shall reply to the Petition for Review within 20 days of its service upon respondent.

(d) One or more members of the Board shall review the arguments, hold a hearing if the administrative judge deems it necessary, and issue a decision.

(e) The decision shall become final in accordance with § 28.87.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69303, Dec. 12, 2003]

### § 28.123 Standards of conduct for labor organizations.

(a) The GAO shall only accord recognition to labor organizations that are free from corrupt influences and from influences opposed to basic democratic principles. An organization is not required to prove it is free from such influence if it is subject to governing requirements calling for the maintenance of:

- (1) Democratic procedures;
- (2) Freedom from totalitarian influence;
- (3) Independence on the part of its agents and officers from any business or financial interests which represent conflicts of interest or potential conflicts of interest; and
- (4) Fiscal integrity.

(b) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Board and comply with trusteeship and election standards.

(c) A labor organization which has or seeks recognition under these Rules shall adhere to principles enunciated in the Regulations issued by the Assistant Secretary of Labor for Employment Standards regarding standards of conduct for labor organizations in the public sector. Complaints of violations of this section shall be filed with the Board. In any matter arising under this

section, the Board may require a labor organization to cease and desist from violations of this section and require it to take such actions as it considers appropriate to carry out the policies of this section.

(d) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, or by any employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

(e) In the case of any labor organization which by omission or commission has willfully and intentionally called or participated in a strike, work stoppage or slowdown, or picketed in a manner which interfered with the operations of a government agency, or has condoned such activity, the Board shall, upon an appropriate finding it has made of such a violation—

- (1) Revoke the recognition status of the labor organization; or
- (2) Take any other appropriate disciplinary action.

(f) The General Counsel may charge a labor organization with violations of this section. The Board shall conduct proceedings with regard to such charge and may require a labor organization to take such actions as it deems necessary to carry out the policies of this section.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69303, Dec. 12, 2003]

### § 28.124 Review of arbitration awards.

(a) *Filing an exception.* (1) Either party to arbitration, conducted pursuant to a grievance procedure under a collective bargaining agreement, may file with the Board an exception to the arbitrator's award rendered pursuant to the arbitration.

(2) The time limit for filing an exception to an arbitration award is 30 days from the service of the award on the filing party.

(3) An opposition to the exception may be filed by a party within 30 days after the service of the exception.