Labor-Management Relations in the Legislative Branch Frequently Asked Questions

The Office of Congressional Workplace Rights (OCWR) administers the Congressional Accountability Act (CAA) and works to guarantee the rights provided by the CAA to employees and employing offices of the legislative branch. Pursuant to Section 220 of the CAA, 2 U.S.C. § 1351, for employees who are eligible to join a union, the OCWR investigates and processes petitions for union representation and union elections, and the OCWR Office of the General Counsel investigates and prosecutes charges alleging unfair labor practices. Below are frequently asked questions (FAQs) about the representation process, negotiability and impasse procedures, and unfair labor practice charges and complaints.

The framework for the labor-management program in the legislative branch is set forth in the CAA and described in more detail in the OCWR's substantive regulations on collective bargaining and unionization. These regulations are cited in these FAQs as "OCWR Substantive Regulations."

Disclaimer: These FAQs contain general information and are not legal authority or legal advice. Particular answers may have unstated exceptions, qualifications, and/or limitations, or may become outdated due to changes in the law. For these reasons, please consult with an attorney prior to initiating any proceeding described in these FAQs.

If you have additional questions about labor-management issues in the legislative branch, please e-mail LMR@ocwr.gov.

General Labor-Management FAQs

Do I have the right to unionize?

- **Covered legislative branch employees under CAA Section 220(d) and other laws**

The CAA currently provides union rights to many legislative branch employees, including employees of the United States Capitol Police, the Office of the Architect of the Capitol, the Office of Congressional Accessibility Services, the Office of Attending Physician, the Stennis Center for Public Service, and offices in the Senate and House of Representatives that are not listed in Section 220(e)(2) of the CAA.

Some legislative branch offices have union rights under laws other than the CAA. The Federal Service Labor-Management Relations Statute (FSLMRS) provides union rights to employees of

the Library of Congress and Government Publishing Office. 5 U.S.C. § 7103. Similarly, while the FSLMRS itself does not grant union rights to employees of the Government Accountability Office (GAO), the GAO Personnel Act guarantees the rights of GAO employees to form, join, or assist, or not to form, join, or assist, an employee organization freely and without fear of penalty or reprisal. 31 U.S.C. § 732(e). These rights are enforced by the GAO Personnel Appeals Board.

- **Covered legislative branch employees under CAA Section 220(e)**

The general definition of "covered employee" in the CAA includes employees of the House of Representatives and the Senate. However, Section 220(e) requires that additional regulations be adopted and approved before the employees of the offices listed in Section 220(e)(2) have the right to organize for the purpose of collective bargaining. These regulations were adopted by the OCWR Board under Section 220(e)(1) in 1996, and were approved by the House of Representatives in May 2022, but have not yet been approved by the Senate.

In addition, employees of the Congressional Budget Office (CBO) and the OCWR do not currently have the right to unionize, because these offices are also identified in Section 220(e)(2) of the CAA. Employees of the CBO and OCWR would not have union rights unless both the House and Senate were to adopt a concurrent resolution approving the regulations.

House Employees

On May 10, 2022, the House of Representatives adopted House Resolution 1096, thereby approving the regulations for House employees. The regulations applicable to the House (H Series) will become effective 60 days after the OCWR Board's Notice of Issuance is published in the *Congressional Record*. Once the H Series regulations become effective, the same regulations that already apply to the other legislative branch offices, employees, and union representatives will apply to the House employing offices listed in the regulations, their employees, and union representatives.

The House employing offices listed in the H Series regulations are:

(1) the personal office of any Member of the House of Representatives;

(2) a standing, select, special, permanent, temporary, or other committee of the House of Representatives;

(3) the Office of the Speaker of the House of Representatives, the Office of the Majority Leader of the House of Representatives, the Office of the Minority Leader of the House of Representatives, the Offices of the Chief Deputy Majority Whips, the Offices of the Chief Deputy Minority Whips, and the following offices within the Office of the Clerk of the House of Representatives: Offices of Legislative Operations, Official Reporters of Debate, Official Reporters to Committees, Printing Services, and Legislative Information;

(4) the Office of the Legislative Counsel of the House of Representatives, the Office of the General Counsel of the House of Representatives, the Office of the Parliamentarian of the House of Representatives, and the Office of the Law Revision Counsel;

(5) the offices of any caucus or party organization within the House of Representatives; and

(6) the Office of the Majority Whip of the House of Representatives, the Office of the Minority Whip of the House of Representatives, the Office of House Employment Counsel, the Immediate Office of the Clerk of the House of Representatives, the Immediate Office of the Chief Administrative Officer of the House of Representatives, the Office of Legislative Computer Systems of the House of Representatives, the Office of Finance of the House of Representatives, and the Immediate Office of the Sergeant at Arms of the House of Representatives.

Senate Employees

A resolution similar to that adopted by the House may be introduced in the Senate. If such a resolution is adopted, the OCWR Board would issue its regulations applicable to the Senate (S Series), which would apply the same regulations that already apply to the other legislative branch offices, employees, and union representatives to the Senate offices listed in Section 220(e), their employees, and union representatives.

The Senate employing offices listed in Section 220(e)(2) are:

(1) the personal office of any Senator;

(2) a standing, select, special, permanent, temporary, or other committee of the Senate;

(3) the Office of the Vice President (as President of the Senate), the Office of the President pro tempore of the Senate, the Office of the Majority Leader of the Senate, the Office of the Minority Leader of the Senate, the Office of the Majority Whip of the Senate, the Office of the Minority Whip of the Senate, the Conference of the Majority of the Senate, the Conference of the Minority of the Senate, the Office of the Secretary of the Conference of the Majority of the Senate, the Office of the Secretary of the Conference of the Minority of the Senate, the Office of the Secretary for the Majority of the Senate, the Office of the Secretary for the Minority of the Senate, the Majority Policy Committee of the Senate, the Minority Policy Committee of the Senate, and the following offices within the Office of the Secretary of the Senate: Offices of the Parliamentarian, Bill Clerk, Legislative Clerk, Journal Clerk, Executive Clerk, Enrolling Clerk, Official Reporters of Debate, Daily Digest, Printing Services, Captioning Services, and Senate Chief Counsel for Employment;

(4) the Office of the Legislative Counsel of the Senate, and the Office of the Senate Legal Counsel; and

(5) the offices of any caucus or party organization within the Senate.

- **Are confidential employees and management officials eligible?**

No. Confidential and management employees – including but not limited to supervisors, human resources, and management officials – do *not* have the right to unionize for the purpose of collective bargaining even if they work for a covered employing office. These terms are defined

in the OCWR Substantive Regulations at Sections 2421.3(j) (management official) and 2421.3(l) (confidential employee).

- **Are unpaid interns eligible employees?**

No. Although the CAA provides unpaid interns with protections against certain types of unlawful discrimination, it does not provide unpaid interns with a statutory right to unionize.

Who can help me with my labor-management related problem?

The OCWR handles labor-management issues for legislative branch employees. Such matters include identifying appropriate units and supervising union elections, handling negotiability appeals, conducting impasse proceedings, and investigating unfair labor practices.

However, the Federal Labor Relations Authority (FLRA) handles labor-management issues for employees of the Library of Congress and Government Publishing Office, and the GAO Personnel Appeals Board handles labor-management issues for employees of the GAO.

What labor-management rights are protected by the CAA?

The CAA incorporates by reference 5 U.S.C. §§ 7102, 7106, 7111 through 7117, 7119 through 7122, and 7131 for application to the legislative branch. These sections provide:

7102 - Employees' rights.
7106 - Management rights.
7111 - Exclusive recognition of labor organizations.
7112 - Determination of appropriate units for labor organization representation.
7113 - National consultation rights.
7114 - Representation rights and duties.
7115 - Allotments to representatives.
7116 - Unfair labor practices.
7117 - Duty to bargain in good faith; compelling need; duty to consult.
7119 - Negotiation impasses; Federal Service Impasses Panel.
7120 - Standards of conduct for labor organizations.
7121 - Grievance procedures.
7122 - Exceptions to arbitral awards.
7131 - Official time.

In addition, the CAA provides the OCWR with the authorities provided to the FLRA in Sections 7105, 7111, 7112, 7113, 7115, 7117, 7118, and 7122 of Title 5 and to the President in Section 7103(b) of Title 5.

Representation FAQs

What are "representation proceedings"?

The term "representation proceedings" in labor-management relations usually refers to elections, clarifications of bargaining units, consolidations of bargaining units, and/or decertifications of bargaining units. OCWR Representation Petition Form 1351D is used to request an election; determine eligibility for dues allotment in an appropriate unit without an exclusive representative; and clarify, amend, consolidate, or decertify a bargaining unit.

Election for a Union FAQs

How do eligible employees become represented (or not) by a union?

Eligible employees who are not represented by a union may petition for an election to decide whether a union will represent a proposed bargaining unit of eligible employees. This petition and election process involves the following steps:

(1) The employees provide the union with a "showing of interest," i.e., signatures of at least 30% of the employees of an appropriate bargaining unit showing their wish to be represented by this union.
(2) The union petitions the OCWR using the OCWR Representation Petition Form 1351D.
(3) The OCWR investigates and resolves all pre-election issues raised by the parties.
(4) Any other union can gain a place on the ballot by filing a petition showing that they are supported by at least 10% of the employees.
(5) The OCWR holds an election.
(6) Employees have the opportunity to vote to choose which labor organization, if any, they would like to represent them.
(7) If a majority of the voting employees vote to be represented by a particular union, the OCWR Board of Directors certifies the union as the employees' exclusive representative.

What is a "showing of interest"?

A "showing of interest" demonstrates that an employee wants to be represented by a union.

- **How many employees must show interest for an election petition?**

At least 30% of employees in the proposed bargaining unit must show interest in voting for a union representative.

- **What documentation is needed to show interest for an election petition?**

An "authorization" or "signature" card which is signed and dated by the employee is most often used to show interest. However, other documentation may be used to show interest, such as a document which is signed and dated by multiple employees authorizing the union to represent

them, a signed and dated allotment of dues form, and/or evidence of employees' membership in a union.

- **Is an employee's signature on an authorization card a vote for a union?**

No. An employee who signs a "showing of interest" card is not voting for a union by signing the card; rather, the employee is merely indicating that the employee would like an election to occur. In addition, an employee's signature on an authorization card or document does *not* commit the employee to vote for the union.

- **Will the OCWR recognize an employee's electronic signature on an authorization card as valid?**

OCWR Procedural Rule 1.05 allows for electronic signatures on any "filing" that is filed electronically. The OCWR Board has never specifically determined whether this rule applies to authorization cards and petitions filed electronically. If signatures on authorization cards are obtained electronically, it would be a good practice to maintain a record of the e-mail interaction or other similar documentation in case an investigation into the authentication of the signatures is conducted.

What is a union election?

A union election is the decision to have a labor organization represent employees with management and is made in a secret ballot election among the unit employees. The OCWR supervises the union election and certifies the results of the election. A majority of the employees in the bargaining unit who vote must be in favor of unionization for a labor organization to become their exclusive representative.

What is an election petition?

The OCWR Representation Petition Form 1351D is the petition form used to request an election to determine whether a group of employees will or will not be represented by a union.

- **Who may file an election petition?**

A labor organization that is interested in representing a group of employees may file a petition form.

- **What to file.**

A labor organization must file documentation to establish the proper showing of interest and an alphabetical list of the people showing interest, together with OCWR Representation Petition Form 1351D.

The questions and instructions in the petition form further describe the information required, including but not limited to contact information for all stakeholders, a description and estimated size of the bargaining unit(s) at issue, a statement of the results sought by the petitioner, a verification that the showing of interest requirement has been met for the election petition, and a

signature of the person filing the petition. For more information, see Sections 2422.2 – 2422.5 of the OCWR Substantive Regulations.

- **Where to file.**

The election petition form and supporting documentation must be filed with the OCWR Executive Director. The form may be e-mailed to ocwrefile@ocwr.gov, faxed to (202) 426-1913 (limit 75 pages), or hand delivered to the Office of Congressional Workplace Rights, John Adams Building, 110 Second Street, SE, Room LA-200, Washington, DC 20540-1999. Please call the OCWR office at (202) 724-9250 prior to making a hand delivery to ensure that someone is present to receive the document.

What happens after a union files an election petition?

After the election petition is filed, the OCWR Executive Director, acting on behalf of the OCWR Board of Directors, will investigate any issue raised by the parties, including the adequacy of the showing of interest, the appropriateness of the proposed bargaining unit, and any other issue that must be resolved for the election to go forward. The OCWR Executive Director may hold a pre-election investigative hearing.

Can the election petition be challenged?

Yes. Many aspects of the election petition may be challenged, including the validity of the showing of interest, the composition of the bargaining unit, the status of the labor union, and the timeliness of the petition if there is a time bar because of a previous election, collective bargaining agreement, or other bars.

For more information, please see the OCWR Substantive Regulations at Sections 2422.10 (validity of showing of interest), 2422.11 (challenging status of the labor union), or 2422.12 (timeliness).

Can more than one union seek to be the exclusive representative?

Yes, by filing a request to "intervene." Any other union can gain a place on the ballot by filing a request to intervene before the pre-election investigatory hearing opens, showing they are supported by at least 10% of the employees.

Can the union and employing office agree to the details of the election?

Yes. Parties may enter into a voluntary election agreement, and are encouraged to do so.

What happens if the parties cannot agree on the election details?

If the parties are unable to agree on procedural matters – e.g., how long an employee must be working for the employing office to be eligible to vote; method of election; dates, hours, location of the election, etc. – the OCWR Executive Director decides the election procedures and issues a Direction of Election.

How does the election process work?

A notice of election will be posted by the employing office and/or distributed to employees in the proposed bargaining unit. The notice must contain all the information that employees need in order to vote, including but not limited to the date, time, and location of the election.

The election will follow the parties' Election Agreement or the Direction of Election. The votes will be cast by secret ballot. A person's right to vote may be challenged prior to the person voting. After the election is concluded, the OCWR Executive Director or their designee will tally the ballots and certify the election results.

What happens if the labor organization wins the election?

The labor organization is certified by the OCWR Executive Director on behalf of the OCWR Board of Directors and becomes the exclusive representative of the bargaining unit for collective bargaining.

If the labor organization wins the election, do I have to join the union?

No. Under the statute, no employee can be forced to join a union. All employees are free to join, or not join, a union without fear of penalty or reprisal.

What if I am subject to reprisal for engaging in organizing activity or because I joined, or did not join, a union?

This type of reprisal constitutes an unfair labor practice and you can file a unfair labor practice charge with the OCWR General Counsel. See the Unfair Labor Practices FAQs below.

Will dues be taken out of my paycheck if the union wins the election?

Many collective bargaining agreements provide that member dues will be deducted from paychecks. This provision is commonly referred to as a "dues check off" provision. Only those employees who join the union pay dues. No dues are deducted until after a collective bargaining agreement with a dues check off provision is reached and becomes effective.

Unit FAQs

What is an "appropriate unit"?

For a bargaining unit to be an "appropriate unit," the employees must share a "clear and identifiable community of interest" and the unit must promote "effective dealings" with, and efficiency of the operations of, the employing office involved. A pre-election hearing may be necessary to resolve disputes about the appropriateness of a unit proposed in a petition.

What is a "clarification of unit"?

If there is a dispute about whether an employee, or group of employees, should be part of an established bargaining unit, an employing office or union can petition the OCWR to resolve the dispute using the procedures set forth in Section 2422 of the OCWR Substantive Regulations.

What is a "consolidations of units"?

Unions or employing offices may petition to consolidate two or more bargaining units within the same employing office.

Decertification Election FAQs

What is a decertification election?

Employees already represented by a union may petition the OCWR to conduct an election for representation by another union or to be unrepresented.

How do bargaining unit employees decertify (or choose not to decertify) a union?

Bargaining unit employees who are already represented by a union may petition for an election to end the union from being their exclusive representative. A decertification petition involves the following steps:

(1) The employees gather a "showing of interest," i.e., signatures of at least 30% of the employees in the bargaining unit, showing their wish to no longer be represented by their existing union.
(2) The employees petition the OCWR using OCWR Representation Petition Form 1351D.
(3) The OCWR certifies the validity of the signatures on the petition.
(4) The OCWR holds an election.
(5) Employees have the opportunity to vote to choose which labor organization, if any, they would like to represent them.
(6) If a majority of the voting employees vote that they no longer wish to be represented by their existing union, the OCWR Board of Directors decertifies the union as the employees' exclusive representative.

Negotiability and Impasse FAQs

What is "collective bargaining"?

"Collective bargaining" is the performance of the mutual obligation of the employing office and the exclusive representative of employees to meet at reasonable times and consult and bargain in

a good faith effort to reach agreement on personnel policies, practices, and matters affecting working conditions.

Are there topics that cannot be bargained?

Yes. There are management rights that are not subject to bargaining. A list of these management rights is provided in 5 U.S.C. § 7106(a) and includes such topics as determining the mission, budget, organization, number of employees, and internal security practices of the employing office. However, even if a topic is designated as a management right, this does not preclude bargaining over procedures that the employing office will observe when exercising that right or appropriate arrangements for employees adversely affected by the exercise of that right. This is commonly referred to as "impact and implementation" bargaining. See 5 U.S.C. § 7106(b).

What happens if an employing office believes that a proposal is not negotiable?

Negotiability disputes can be resolved by filing a petition with the OCWR Board of Directors using the procedures set forth in Section 2424 of the OCWR Substantive Regulations. Alternatively, refusal to bargain over a proposal that is clearly negotiable may constitute an unfair labor practice and a dispute of this nature can be resolved by filing an unfair labor practice charge with the OCWR General Counsel. See the OCWR Substantive Regulations at Section 2423, and the unfair labor practice FAQs below. A labor organization must choose between the unfair labor practice procedures or the negotiability petition procedures; both set of procedures cannot be used. The regulations and Section 8.06 of the OCWR Procedural Rules provide for expedited review of negotiability disputes.

What happens if the employing office and the union cannot reach a collective bargaining agreement?

Impasse is the point in the negotiation over conditions of employment at which the parties are unable to reach agreement, notwithstanding their efforts to do so by direct negotiations and by the use of mediation or other voluntary arrangements for settlement. The OCWR Board of Directors serves the same function as the FLRA impasse panel and can resolve issues which have caused an impasse. Impasse procedures are initiated by filing an Impasse Services Request for Assistance Form with the OCWR. The complete impasse procedures are set forth in Section 2471 of the OCWR Substantive Regulations.

Unfair Labor Practices FAQs

What are unfair labor practices?

The term "unfair labor practices" refers to provisions of the FSLMRS, as applied by the CAA, that prohibit both employing offices and labor organizations from engaging in conduct that is contrary to the labor-management rights established by law. Both labor organizations and employing offices are prohibited from, among other things:

- interfering with, restraining, coercing, or taking reprisal against employees in the exercise of their labor organizing rights; and
- refusing to negotiate in good faith over terms and conditions of employment.

For a more comprehensive list of unfair labor practices, please see Section 2421.4(d) of the OCWR Substantive Regulations.

What can I do about unfair labor practices?

If you believe that an employing office or a labor organization has committed an unfair labor practice, you may file an unfair labor practice charge with the General Counsel of the OCWR. The official forms for an Unfair Labor Practice — Charge Against an Employing Office or an Unfair Labor Practice — Charge Against a Labor Organization contain information about what information to include and how to file. It is best to include as much supporting documentation as you can along with the charge. If you file a charge with the General Counsel, you must also provide a copy of the signed charge to the charged party or the charged party's representative. See Section 2423.6(b) of the OCWR Substantive Regulations for more information.

How long do I have to file a charge?

You have **180 days** from when the alleged violation occurred to file a timely charge. A charge will be deemed "filed" when it is received by the Office of the General Counsel.

What happens after I file a charge?

Once a charge is filed, attorneys in the OCWR Office of General Counsel determine whether the charge is sufficient to warrant an investigation. They then request position papers from the parties and conduct an investigation to assess the merits of the charge. After a thorough and impartial investigation, if the charge is determined to have merit and the parties are unable to reach a settlement, the General Counsel may file a complaint with the Executive Director of the OCWR. Complaints are adjudicated before a Hearing Officer, whose decision may be appealed to the OCWR Board of Directors and the U.S. Court of Appeals for the Federal Circuit. If the charged party is ultimately found to have committed an unfair labor practice, they will typically be required to post a notice informing bargaining unit employees of the unfair labor practice, and other remedies may also be ordered.