Union Unfair Labor Practices: Beyond the Duty of Fair Representation



Office of Congressional Workplace Rights

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Welcome

Introduction

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Topics

- Union interfering with protected activity
- Union causing an employing office to discriminate against an employee
- Union impeding performance or productivity
- Union discriminating in membership status based on protected trait
- Union committing bargaining violations
- Union failing or refusing to participate in impasse proceedings
- Union calling for or condoning a strike, work stoppage, slowdown, or picketing

Union Interference with Protected Activity

Union Interference

5 U.S.C. § 7102 – Each employee shall have 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 shall be protected in the exercise of such right.

5 U.S.C. § 7116(b) – it shall be an unfair labor practice for a labor organization…

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter[.]

Union Interference

Examples of violations:

- *NATCA,* 55 F.L.R.A. 601 (1999) – Union's regional president sent letter to non-member stating that if he became a member of the union his voice would have been heard regarding a change in seniority policy.
- *AFGE Local 1857*, 44 F.L.R.A. 959 (1992) – Removing a shop steward because the shop steward advised a bargaining unit member to file a ULP against the union.

Union-Caused Discrimination

Union-Caused Discrimination

5 U.S.C. § 7116(b) – it shall be an unfair labor practice for a labor organization…

(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter[.]

Union-Caused Discrimination

Examples of violations:

- *AFGE, Local 2258*, 69 F.L.R.A. 494 (2016) – Union VP emailed management, exaggerated non-member's conduct, and requested that agency "take action" against non-member employee several hours after the employee openly criticized the VP's performance of her union duties.
- *Dep't of the Army, Watervliet Arsenal, Watervliet, NY*, 39 F.L.R.A. 318 (1991) – Union and agency committed violations by entering into an agreement regarding an asbestos health screening program, in which dues-paying union members could be screened during excused leave time while non-dues-paying members could participate in the program only on off-duty hours.

Impeding Performance or Productivity

Union Impeding Performance or Productivity

5 U.S.C. § 7116(b) – it shall be an unfair labor practice for a labor organization …

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee[.]

Based on earlier Executive Order, which the Assistant Secretary of Labor described as "protecting union members from any act by a labor organization which in any way interferes with the performance of their duties as employees."

Union Impeding Performance or Productivity

- The union had received complaints about a shop steward, a housekeeper at a VA psychiatric ward, including that he was ineffective and romantically pursuing a supervisor. The Union decided to wait and see before acting.
- Later, the shop steward saw a bargaining unit member abusing a patient and reported it per VA regulations.
- After the incident, the union removed him from his position as shop steward.
- The FLRA found that the union did not violate 7116(b)(3) – the shop steward's reporting of abuse was a factor in the decision, but the union had enough evidence before that incident to find that he could not effectively represent the membership.

AFGE Local 1738, 29 F.L.R.A. 178 (1987)

Discrimination Based on a Protected Trait

Discrimination by the Union

5 U.S.C. § 7116(b) – it shall be an unfair labor practice for a labor organization…

(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition[.]

Discrimination by the Union

Only discussed in one FLRA decision – *AFGE Local 495*, 22 F.L.R.A. 966 (1986):

- Married couple were both elected officers of the union and then became dissatisfied. Husband met with a rival union to learn about how to oust the incumbent. They circulated a petition gathering signatures.
- Both resigned from the union and copies of their resignation letters were posted on the union bulletin board.
- The union initiated a disciplinary hearing against the couple, which they did not attend. They were expelled from the union and ineligible for four years.
- The wife filed a ULP, alleging marital status discrimination.
- The GC issued a complaint. The ALJ dismissed. The GC appealed to the FLRA. FLRA upheld dismissal and ordered fees for the union.

Union Bargaining Violations

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5 U.S.C. § 7116(b) – it shall be an unfair labor practice for a labor organization…

(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

Union Bargaining Violations

Examples of violations:

- *AFGE Local 1815*, 69 F.L.R.A. 309 (2016) – Final issue was submitted to impasse panel, the panel imposed the final language, and then the union attempted to submit the entire contract to a ratification vote. The union violated the ground rules agreement and the FSLMRS by not signing the final imposed agreement.
- *AFGE Local 3937*, 64 F.L.R.A. 17 (2009) – During relocation negotiations, the union insisted to impasse on various terms that were determined by the parties' collective bargaining agreement.
- *AFGE*, 21 F.L.R.A. 986 (1986) – Union and agency agreed to an MOU that I&I bargaining would occur at the local level. The union then repudiated that agreement during the negotiations of the next CBA because that term was "on the table."

Refusing to Cooperate in Impasse Procedure

Impasse Procedure Violations

5 U.S.C. § 7116(b) – it shall be an unfair labor practice for a labor organization…

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter[.]

Impasse Procedure Violations

- There is no procedure to appeal a decision of the impasse panel.
- This section requires unions to follow the decision of an impasse panel.
- Unions have occasionally refused to follow the panel decisions and then argued during the ensuing ULP case that the panel's decision was improper or arbitrary. The FLRA has never reversed an impasse panel decision in that context but it has implied that it could. *See AFGE Local 3732*, 16 F.L.R.A. 318 (1984).

Striking or Condoning Striking

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5 U.S.C. § 7116(b) – it shall be an unfair labor practice for a labor organization…

(7) (A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity[.]

Striking or Condoning Striking

- 5 U.S.C. § 7103(a)(4)(D) states that the definition of a "labor organization" "does not include . . . an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike."
- In *PATCO*, 7 F.L.R.A. 34 (1981), after finding that the Air Traffic Controllers' union called a strike, the FLRA relied on the above language in the definition section as the justification for decertifying the union.

Striking or Condoning Striking

In *AFGE Local 3369*, 4 F.L.R.A. 126 (1980), after a morning union meeting, sixty employees returned to their workstations and then together got up, with the local union representatives, to present a grievance to management.

- The FLRA rejected the union's argument that this was simply "presenting a grievance" and found that the union committed an unlawful work stoppage in violation of 7116(b)(7).
- The CBA dictated that the union would present grievances to management in writing in a specific procedure, which did not include dozens of employees leaving their stations together.
- The FLRA ordered a notice posting and ordered that the union cease and desist.

Final Thoughts

Resources

- FLRA Materials
  - ULP Case Law Outline
    - flra.gov → Resources & Training → Guides & Manuals → "ULP Case Law Outline"
- Peter Broida, *A Guide to Federal Labor Relations Authority Law and Practice* (2022)

Questions?