

may, in the discretion of the aggrieved party, be raised either under such section or subchapter or else raised as an unfair labor practice under this section, but may not be raised both under this section and under section 4114 of this title or subchapter XI of this chapter.

(Pub. L. 96-465, title I, § 1015, Oct. 17, 1980, 94 Stat. 2137; Pub. L. 102-138, title I, § 153(d)(2), Oct. 28, 1991, 105 Stat. 674.)

AMENDMENTS

1991—Subsec. (d). Pub. L. 102-138 substituted “section 4139(a)(2)” for “section 4139(b)”.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 153(f) of Pub. L. 102-138 provided that: “The amendments made by this section [amending this section and sections 4131, 4134, 4137, 4139, and 4140 of this title] shall not apply with respect to any grievance (within the meaning of section 1101 of the Act [22 U.S.C. 4131], as amended by this section) arising before the date of enactment of this Act [Oct. 28, 1991].”

§ 4116. Prevention of unfair labor practices

(a) Investigation by General Counsel; issuance of complaint; statement of reasons

If the Department or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the Department or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(b) Notice in complaint

Any complaint under subsection (a) of this section shall contain a notice—

- (1) of the charge;
- (2) that a hearing will be held before the Board (or any member thereof or before an individual employed by the Board and designated for such purpose); and
- (3) of the time and place fixed for the hearing.

(c) Answer; personal appearance

The labor organization or Department involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(d) Time of filing of charges

(1) Except as provided in paragraph (2), no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Board.

(2) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in paragraph (1) by reason of—

- (A) any failure of the Department or labor organization against which the charge is made to perform a duty owed to the person, or
- (B) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(e) Regulations providing for resolution through informal methods

The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(f) Hearing

The Board (or any member thereof or any individual employed by the Board and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of title 5, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Board, in its discretion, may upon notice receive further evidence or hear argument.

(g) Findings of fact relative to issuance of orders; backpay

If the Board (or any member thereof or any individual employed by the Board and designated for such purpose) determines after any hearing on a complaint under subsection (f) of this section that the preponderance of the evidence received demonstrates that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the Department or labor organization an order—

- (1) to cease and desist from any such unfair labor practice in which the Department or labor organization is engaged;
- (2) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Board and requiring that the agreement, as amended, be given retroactive effect;
- (3) requiring reinstatement of an employee with backpay in accordance with section 5596 of title 5; or
- (4) including any combination of the actions described in paragraphs (1) through (3) or such other action as will carry out the purpose of this subchapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the Department (as provided in section 5596 of title 5) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(h) Findings of fact requiring dismissal of complaint

If the individual or individuals conducting the hearing determine that the preponderance of the

evidence received fails to demonstrate that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

(Pub. L. 96-465, title I, §1016, Oct. 17, 1980, 94 Stat. 2139.)

§ 4117. Standards of conduct for labor organizations

(a) Freedom from corrupt influences and influences opposed to basic democratic principles

The Department shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to a governing requirement adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices, including—

(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

(B) provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Furnishing of information

A labor organization may be required to furnish evidence of its freedom from corrupt influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanction by, a parent labor organization, or federation of organizations with which it has been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this subchapter.

(c) Reports; bonding of officials and other employees; compliance with trusteeship and election standards

A labor organization which has or seeks recognition as a representative of employees under this subchapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and others employed by the organization, and comply with trusteeship and election standards.

(d) Regulations; filing of complaints; cease and desist orders

The Assistant Secretary of Labor shall prescribe such regulations as are necessary to carry out this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as the Assistant Secretary considers appropriate to carry out the policies of this section.

(e) Participation in labor organizations restricted

(1) Notwithstanding any other provision of this subchapter—

(A) participation in the management of a labor organization for purposes of collective bargaining or acting as a representative of a labor organization for such purposes is prohibited under this subchapter—

(i) on the part of any management official or confidential employee;

(ii) on the part of any individual who has served as a management official or confidential employee during the preceding two years; or

(iii) on the part of any other employee if the participation or activity would result in a conflict of interest or apparent conflict of interest or would otherwise be incompatible with law or with the official functions of such employee; and

(B) service as a management official or confidential employee is prohibited on the part of any individual having participated in the management of a labor organization for purposes of collective bargaining or having acted as a representative of a labor organization during the preceding two years.

(2) For the purposes of paragraph (1)(A)(ii) and paragraph (1)(B), the term “management official” does not include—

(A) any chief of mission;

(B) any principal officer or deputy principal officer;

(C) any administrative or personnel officer abroad; or

(D) any individual described in section 4102(12)(B), (C), or (D) of this title who is not involved in the administration of this subchapter or in the formulation of the personnel policies and programs of the Department.

(f) Willful and intentional violations

If the Board finds that any labor organization has willfully and intentionally violated section