

standing, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or confidential employees, relating to collective bargaining;

(5) to negotiate jointly with respect to conditions of employment applicable to employees in more than one of the agencies authorized to utilize the Foreign Service personnel system, as determined by the heads of such agencies; and

(6) if agreement is reached, to execute, upon the request of any party to the negotiation, a written document embodying the agreed terms, and to take the steps necessary to implement the agreement.

(f) Approval of agreement by Secretary; effective date; binding effect

(1) An agreement between the Department and the exclusive representative shall be subject to approval by the Secretary.

(2) The Secretary shall approve the agreement within 30 days after the date of the agreement unless the Secretary finds in writing that the agreement is contrary to applicable law, rule, or regulation.

(3) Unless the Secretary disapproves the agreement by making a finding under paragraph (2), the agreement shall take effect after 30 days from its execution and shall be binding on the Department and the exclusive representative subject to all applicable laws, orders, and regulations.

(g) Consultation by Department with exclusive representative

The Department shall consult with the exclusive representative with respect to Government-wide or multiagency matters affecting the rights, benefits, or obligations of individuals employed in agencies not authorized to utilize the Foreign Service personnel system. The exclusive representative shall be informed of any change proposed by the Department with respect to such matters, and shall be permitted reasonable time to present its views and recommendations regarding such change. The Department shall consider the views and recommendations of the exclusive representative before taking final action on any such change, and shall provide the exclusive representative a written statement of the reasons for taking the final action.

(Pub. L. 96-465, title I, §1013, Oct. 17, 1980, 94 Stat. 2135.)

§ 4114. Resolution of implementation disputes

(a) Grievance procedure

Any dispute between the Department and the exclusive representative concerning the effect, interpretation, or a claim of breach of a collective bargaining agreement shall be resolved through procedures negotiated by the Department and the exclusive representative. Any procedures negotiated under this section shall—

(1) be fair and simple,

(2) provide for expeditious processing, and

(3) include provision for appeal to the Foreign Service Grievance Board by either party of any dispute not satisfactorily settled.

(b) Review by Foreign Service Labor Relations Board

Either party to an appeal under subsection (a)(3) of this section may file with the Board an exception to the action of the Foreign Service Grievance Board in resolving the implementation dispute. If, upon review, the Board finds that the action is deficient—

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Board may take such action and make such recommendations concerning the Foreign Service Grievance Board action as it considers necessary, consistent with applicable laws, rules, and regulations.

(c) Time of filing exceptions; finality and binding nature of action

If no exception to a Foreign Service Grievance Board action is filed under subsection (b) of this section within 30 days after such action is communicated to the parties, such action shall become final and binding and shall be implemented by the parties.

(d) Judicial review

Resolutions of disputes under this section shall not be subject to judicial review.

(Pub. L. 96-465, title I, §1014, Oct. 17, 1980, 94 Stat. 2137.)

§ 4115. Unfair labor practices

(a) Department of State

It shall be an unfair labor practice for the Department—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this subchapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish upon request customary and routine services and facilities on an impartial basis to labor organizations having equivalent status;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information, affidavit, or testimony under this subchapter;

(5) to refuse to consult or negotiate in good faith with a labor organization, as required under this subchapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this subchapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of title 5) which is in conflict with an applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to fail or refuse otherwise to comply with any provision of this subchapter.

(b) Labor organizations

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 subchapter;

(2) to cause or attempt to cause the Department to discriminate against any employee in the exercise by the employee of any right under this subchapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment or 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 functions as an employee;

(4) to discriminate against an employee with regard to the terms and 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;

(5) to refuse to consult or negotiate in good faith with the Department, as required under this subchapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this subchapter;

(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or to picket the Department in a labor-management dispute (except that any such picketing in the United States which does not interfere with the Department's operations shall not be an unfair labor practice); or

(B) to condone any unfair labor practice described in subparagraph (A) by failing to take action to prevent or stop such activity;

(8) to deny membership to any employee in the unit represented by the labor organization except—

(A) for failure to tender dues uniformly required as a condition of acquiring and retaining membership, or

(B) in the exercise of disciplinary procedures consistent with the organization's constitution or bylaws and this subchapter; or

(9) to fail or refuse otherwise to comply with any provision of this subchapter.

(c) Personal views, arguments, opinions, or statements

The expression of any personal view, argument, or opinion, or the making of any statement, which—

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such an election;

(2) corrects the record with respect to any false or misleading statement made by any person; or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

if the expression contains no threat of reprisal or force or promise of benefit and was not made under coercive conditions shall not—

(A) constitute an unfair labor practice under this subchapter, or

(B) constitute grounds for the setting aside of any election conducted under this subchapter.

(d) Election of remedies

Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 4139(a)(2) of this title, an employee has an option of using the grievance procedure under subchapter XI of this chapter or an appeals procedure, issues which can be raised under section 4114 of this title or subchapter XI of this chapter 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

Pub. L. 102-138, title I, §153(f), Oct. 28, 1991, 105 Stat. 674, 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