

(3) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the collective bargaining agreement unless the parties agree otherwise.

(Pub. L. 96-465, title I, §1010, Oct. 17, 1980, 94 Stat. 2133.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 7119(b)(4) of title 5, referred to in subsec. (b), probably means section 7119(c)(4) of Title 5, Government Organization and Employees.

#### Statutory Notes and Related Subsidiaries

##### REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

### § 4111. Exclusive recognition

#### (a) Secret ballot election; majority vote

The Department shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in a unit who cast valid ballots in the election.

#### (b) Investigation of petition; hearing; supervision of election; certification of results; length of time between elections

If a petition is filed with the Board—

(1) by any person alleging—

(A) in the case of a unit for which there is no exclusive representative, that 30 percent of the employees in the unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of a unit for which there is an exclusive representative, that 30 percent of the employees in the unit alleged that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Board finds on the record of the hearing that a question of representation exists, the Board shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any unit within which a valid election under this subsection has been held during the preceding 12 calendar months or with respect to which a labor organization has been certified as the exclusive rep-

resentative during the preceding 24 calendar months.

#### (c) Intervention of labor organizations; placement on ballot

A labor organization which—

(1) has been designated by at least 10 percent of the employees in the unit; or

(2) is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) and shall be placed on the ballot of any election under subsection (b) with respect to the petition.

#### (d) Eligibility to vote; regulations; choices on ballot; preferential voting; certification as exclusive representative

(1) The Board shall determine who is eligible to vote in any election under this section and shall establish regulations governing any such election, which shall include regulations allowing employees eligible to vote the opportunity to choose—

(A) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

(B) not to be represented by a labor organization.

(2) In any election in which more than two choices are on the ballot, the regulations of the Board shall provide for preferential voting. If no choice receives a majority of first preferences, the Board shall distribute to the two choices having the most first preferences the preferences as between those two of the other valid ballots cast. The choice receiving a majority of preferences shall be declared the winner. A labor organization which is declared the winner of the election shall be certified by the Board as the exclusive representative.

#### (e) Submission of required material

A labor organization seeking exclusive recognition shall submit to the Board and to the Department a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of its objectives.

#### (f) Grounds for denial of exclusive recognition status

Exclusive recognition shall not be accorded to a labor organization—

(1) if the Board determines that the labor organization is subject to corrupt influence or influences opposed to democratic principles; or

(2) in the case of a petition filed under subsection (b)(1)(A), if there is not credible evidence that at least 30 percent of the employees wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition.

#### (g) Waiver of hearings; consent elections

Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Board.

(Pub. L. 96-465, title I, §1011, Oct. 17, 1980, 94 Stat. 2134.)

**§ 4112. Employees represented**

The employees of the Department shall constitute a single and separate worldwide bargaining unit, from which there shall be excluded—

- (1) employees engaged in personnel work in other than a purely clerical capacity; and
- (2) employees engaged in criminal or national security investigations or who audit the work of individuals to insure that their functions are discharged honestly and with integrity.

(Pub. L. 96-465, title I, § 1012, Oct. 17, 1980, 94 Stat. 2135.)

**§ 4113. Representation rights and duties****(a) Negotiation of collective bargaining agreements; nondiscriminatory representation**

A labor organization which has been accorded exclusive recognition is the exclusive representative of, and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit described in section 4112 of this title. An exclusive representative is responsible for representing the interests of all employees in that unit without discrimination and without regard to labor organization membership.

**(b) Places of representation**

(1) An exclusive representative shall be given the opportunity to be represented at—

- (A) any formal discussion between one or more representatives of the Department and one or more employees in the unit (or their representatives), concerning any grievance (as defined in section 4131 of this title) or any personnel policy or practice or other general condition of employment; and
- (B) any examination of an employee by a Department representative in connection with an investigation if—
  - (i) the employee reasonably believes that the examination may result in disciplinary action against the employee, and
  - (ii) the employee requests such representation.

(2) The Department shall annually inform employees of their rights under paragraph (1)(B).

(3) The Department shall annually inform employees of their rights under paragraph (1)(B).

**(c) Duty to bargain in good faith; determination of techniques assisting negotiation**

The Department and the exclusive representative, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the Department and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 4110 of this title, to assist in any negotiation.

**(d) Applicability to other employee rights or remedies**

The rights of an exclusive representative under this section shall not preclude an employee from—

- (1) being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative,

in any grievance proceeding under subchapter XI; or

- (2) exercising grievance or appeal rights established by law, rule, or regulation.

**(e) Obligations included in good faith bargaining**

The duty of the Department and the exclusive representative to negotiate in good faith shall include the obligation—

- (1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;
- (2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;
- (3) to meet at reasonable times and convenient places as frequently as may be necessary and to avoid unnecessary delays;

(4) for the Department to furnish to the exclusive representative, or its authorized representative, upon request and to the extent not prohibited by law, data—

- (A) which is normally maintained by the Department in the regular course of business;
- (B) which is reasonably available and necessary for full and proper discussion, understanding, 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 ex-