

Issues related to the majority status of the currently recognized or certified labor organization and/or defunctness

Section 7111(b)(2) of the Statute permits the filing of a petition seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation. Based on current Authority case law, three types of petitions may be filed under this section that raise issues related to the majority status of the currently recognized or certified labor organization:

1. petitions questioning the continued majority status of the recognized or certified labor organization which are generally filed by agencies;
2. petitions filed by an exclusive representative to amend its certification in which the investigation raises a reasonable cause to believe a question of representation (QCR) or defunctness exists; and
3. questions of defunctness of the exclusive representative which is an interrelated, but not identical, concept.

In the three scenarios, section 7111(b)(2) provides, in relevant part, that if a petition is filed with the Authority:

by any person seeking . . . an amendment to, a certification then in effect or a matter relating to representation; the Authority 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 a reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. . . .

The Authority stated in *U.S. Department of the Interior, Bureau of Land Management, Phoenix, Arizona (BLM)*, 56 FLRA 202, 206 (2000) that “[c]onsistent with the plain wording of this section, if in investigating a petition to amend a certification there is reasonable cause to believe that a QCR exists, then an opportunity for a hearing on the matter ‘shall’ be provided. This statutory requirement is not discretionary and does not depend on the type of petition filed. Rather, it depends on whether there is reasonable cause to believe that a QCR exists. The Authority noted, in this respect, that § 2422.1 of the regulations provides for only one type of petition.

For more detailed guidance on this topic see RCL 4.

Relevant information includes:

- 1) The current collective bargaining agreement, if any.
- 2) The exclusive representative's contacts with the Activity in representational matters, including:
 - a) grievances or evidence of any informal attempts to enforce the collective bargaining agreement;
 - b) evidence of demands to bargain in response to management initiated changes;
 - c) evidence of participation in negotiations, e.g., memorandum of understanding, term negotiations (incomplete or otherwise);
 - d) unfair labor practice charges filed or processed by the union; and
 - e) evidence of representation by the union of bargaining unit employees in other matters, e.g., EEOC, MSPB, Office of Special Counsel, Inspector General inquiries.
- 3) Evidence and documentation that the union has designated stewards/officers.
- 4) Testimony or documentation regarding recruiting or membership drives conducted by the exclusive representative.
- 5) Records or documentation regarding bargaining unit employees on dues withholding.
- 6) Records/documentation regarding bargaining unit employees on dues withholding over periods of time, in order to gauge if there has been a rapid or large decline in membership.
- 7) With respect to petitions filed to amend the certification filed by an incumbent due to a reaffiliation or a merger, in addition to the information discussed above, the number of employees in the bargaining unit, the number of union members in the unit, and the number of employees who voted for and against reaffiliation.