

**48**      ***Timeliness of election petitions***

Timeliness requirements for petitions are imposed by section 7111 of the Statute and implemented in section 2422.12 of the regulations. The Statute's timeliness requirements apply **only** to petitions seeking an election, whether filed by labor organizations, by individuals seeking decertification of an exclusive representative or by agencies.

***For detailed guidance on timeliness issues, see RCL 12.***

***Relevant Information***

**A. Election and Certification Bars**

- 1) Obtain the election agreement or certification of representative upon which the party is basing the claim of election or certification bar. Given the nature of these bars, this should be the only information necessary for the record. In a case raising a certification bar, a collective bargaining agreement executed by the parties during the certification year is also entered into the record.
- 2) If the parties dispute whether the petitioned-for unit is the same or a subdivision of the unit for which a bar exists, obtain evidence which establishes whether the petitioned-for unit is the same unit, a broader unit or a subdivision of the unit involved in an earlier election. The Hearing Officer strictly limits the evidence on these points.

**B. Contract Bars**

- 1) In general, the record in all cases involving alleged contract bars includes at a minimum:
  - a) the positions of all parties on whether the agreement constitutes a bar to the petition
  - b) the agreement signed and dated by the parties and the reproduced version of the agreement that was prepared for distribution
  - c) the predecessor agreement to the agreement that is asserted to be a bar
  - d) documentation showing the date and nature of any determination by an agency head pursuant to the section

7114(c) process

- e) the document containing the request to renegotiate an agreement containing automatic renewal provisions and any response(s) to the request.
- 2) When a party claims that the collective bargaining agreement is not “lawful” and thus, cannot serve as a bar:
- a) Obtain for the record a copy of the agreement and any related documents such as evidence of a ratification requirement and compliance with such a requirement.
  - b) Testimony as to the parties’ interpretation and application of the challenged provision(s) is necessary.
- 3) Where the issue is the effective date of the contract:
- a) Obtain a copy of the agreement at issue.
  - b) Obtain copies of any related documents concerning the agency head approval process (e.g., letter containing the section 7114(c) higher agency approval; memorandum of understanding) which shed light as to the effective date of the contract, approval date or the intent and application of the duration provisions of the contract.
  - c) Obtain testimony concerning the parties’ interpretation and application of the challenged provision(s).
- 4) Where a party asserts that the contract was automatically renewed and thus, bars the petition and/or where a request to renegotiate a contract which contains an automatic renewal clause is at issue:
- a) Obtain a copy of the agreement at issue.
  - b) Obtain copies of any related documents (e.g., letter of section 7114(c) higher agency approval; memorandum of understanding, etc.) which shed light as to the effective date of the contract.
  - c) Obtain copies of any documents (e.g., a demand to renegotiate the agreement, etc.) that, in accordance with the contract’s terms, may have prevented the contract from automatically renewing.

- 5) Where the ratification of a contract by the union's membership is an issue:
  - a) Obtain a copy of the document containing the agreement that the contract would be submitted to the membership for ratification and obtain related testimony as to the agreement.
  - b) If no written agreement exists, obtain testimony concerning the nature and extent of the parties' understanding as to the submission of the contract for ratification. If applicable, the union's constitution and by-laws is entered on the record. Testimony and documents regarding the parties' practice as to ratification votes for prior contracts may be necessary in this situation.
  - c) Obtain testimony and documents that establish that the ratification vote occurred and the results of that voting.
- 6) Where premature extension of a contract is at issue:
  - a) Obtain a copy of the collective bargaining agreement, which was extended. This includes any documents which shed light on the effective date of the collective bargaining agreement, which was extended.
  - b) Obtain a copy of any documents on which a party relies in its assertion that the contract was extended.
  - c) Obtain testimony concerning the execution of the extension.

**C. Unusual Circumstances**

- 1) If it is asserted that unusual circumstances exist which warrant the filing of an election petition at any time:
  - a) Obtain a full and complete record as to the changed or unusual circumstances. In general, this requires all evidence which would normally be obtained, particularly in cases such as those involving reorganizations, schism, defunctness or severance. See Appropriate Unit: *HOG 37*, Scope of Unit: *HOG 38*, Reorganizations - *HOG 39*, Schism: *HOG 44*, etc.

**D. Dismissal, Withdrawal or Disclaimer Bars**

- 1) Where a bar is asserted, based upon the dismissal or withdrawal of a petition or a disclaimer of interest:
  - a) Obtain the earlier petition, the notice of hearing or election agreement.
  - b) Obtain the request to withdraw the petition and any documentation of the approval of the withdrawal.
  - c) Obtain a copy of the disclaimer of representation.
  - d) Relevant testimony concerning a withdrawal, dismissal or disclaimer bar would include the same scope of unit inquiry addressed in the election and certification bar section concerning the "same unit or a subdivision thereof."
  - e) In cases involving withdrawal, dismissal or disclaimer bars, if a party attempts to submit evidence or testimony in addition to the introduction of the withdrawal, dismissal or disclaimer, the Hearing Officer asks for an offer of proof, as the withdrawal, dismissal or disclaimer speak for themselves.