

**53 Internal audit / investigation function**

Section 7112(b)(7) excludes from all bargaining units:

any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

Employees engaged in investigation or audit functions are excluded from bargaining units under section 7112(b)(7) on the basis that inclusion of individuals performing these functions would create a conflict with bargaining unit status. The nature of the investigation/audit and what the investigation/audit might uncover as it pertains to unit employees is controlling as to this exclusion.

***For guidance on this topic, see RCL 17.***

***Relevant matters to cover at a hearing include:***

- 1) The mission of the agency component in which the disputed position(s) are located.
- 2) Typically, agency regulations or directives that exist which describe the work performed by and the authorities possessed by these investigators or auditors. Obtain copies of these regulations or directives for the record.
- 3) Obtain copies of position descriptions and performance standards for the position(s).
- 4) Testimony from the incumbent(s) of the disputed position(s) includes a:
  - a) description of the specific job functions of the employees;
  - b) if applicable, description of the type(s) of investigatory functions they perform;
  - c) if applicable, description of the type(s) of audit functions they perform;

- d) discussion on whose behalf in the agency these investigations or audits are being performed;
  - e) discussion of whether and how the employees under investigation directly affect the internal security of the agency.
- 5) Obtain testimony about what matters are investigated or audited.
- a) Provide examples of the examples of the investigations of unit employees that the disputed employee(s) has performed.
  - b) Describe the claims, such as travel vouchers which were filed by employees, that the disputed employee(s) has audited.
  - c) Describe the agency programs that the disputed employee(s) has audited.
  - d) To what extent is the disputed employee(s) “primarily engaged” in investigation and audit functions (include percentage of time they spend on these investigations or audits; type of work performed - reviewing reports prepared by others versus actually conducting the investigation or audit).
  - e) Explain whether and how the investigation functions are undertaken to ensure that the employees’ duties are discharged with honesty and integrity.
- For example, in *U.S. Department of Justice, Federal Bureau of Prisons, U.S. Penitentiary, Marion, Illinois (DOJ)*, 55 FLRA 1243 (2000), in its remand, the Authority instructed the Regional Director to “consider whether the Legal Assistant’s (the disputed employee) investigations of allegations that employees have used excessive force or have violated the civil rights of inmates constitute investigation of whether such employees have performed their duties honestly and with integrity.”
- 6) Who directs the subject investigations or audits; to whom do the subject employees report?
- a) The investigative or audit process is described in detail.

- b) The review process of the investigation or audit is described in detail.
- c) How do these investigations or audits affect bargaining unit employees?
- d) Have any employees been disciplined or removed as a result of the investigations or audits performed by these individuals? If so, discuss.
- e) Have procedures or programs been changed to enhance or promote internal security as a result of an investigation or audit by one of these employees? If so, discuss.
- f) Describe the overall effectiveness of the work accomplished by the disputed employee(s).

