

21 **General attorneys**

Congress intended that attorneys, like other professional employees, have the same right to be represented in bargaining units that Congress conveyed to other federal employees. Membership in a labor organization is in itself not incompatible with the obligations of fidelity owed to an employer by its employees. See *Dun & Bradstreet-II*, 240 NLRB 162, at 163 (1979) The American Bar Association's (ABA) Model Canons of Professional Responsibility is not controlling when making bargaining unit determinations under the Statute.

Nonetheless, the right of an employee to be represented in the collective bargaining process must be balanced with the right of the employer to formulate and effectuate its labor policies with the assistance of employees not represented by the union with which it deals. See *U.S. Department of Labor, Office of the Solicitor, Arlington Field Office*, 37 FLRA 1371, 1381 (1990).

Some attorneys perform duties which otherwise cause them to be excluded from bargaining units. For example, an attorney may function in a confidential capacity to an individual who formulates labor-management relations policies. Similarly, an attorney may be privy to labor-management relations policies as they are developed. These employees are confidential employees within the meaning of section 7103(a)(13) of the Statute. Other attorneys may be engaged in federal personnel work in other than a clerical capacity and, thus, excluded from bargaining units, pursuant to section 7112(b)(3). Still others may be engaged in security work within the definition of section 7112(b)(6) of the Statute. See *United States Attorney's Office for the District of Columbia*, 37 FLRA 1077 (1990).

When considering the bargaining unit status of an attorney, a complete examination is made of all the relevant duties and responsibilities of the individual in the position to determine whether the position is eligible for inclusion in the unit or whether it is ineligible based upon a statutory requirement. For items related to specific confidential or federal personnelist exclusions, consult those employee categories in *RCL 19* and *RCL 20* of this manual. For security work, see *RCL 25*. Where an attorney is being assigned duties or functions as a representative of management, the question may arise as to whether inclusion of this attorney would create a conflict of interest. *RCL 22*.

See HOG 57 for specific guidance on developing a record about this

topic at hearing.

Other references:

U.S. Department of Labor, 33 FLRA 265 (1988).

NLRB v. Lorimar Productions, Inc., 771 F.2d 1294 (9th Cir. 1985).

Hoover Co., 55 NLRB 1321 (1944).