

Schism is defined as “[a] basic intraunion conflict over policy at the highest level of an international union or within a federation which results in a disruption of existing intraunion relationships; and the employees seek to change their representative for reasons related to such conflict resulting in such confusion in the bargaining relationship that stability can only be restored by an election.” *Syscon International, Inc.*, 322 NLRB 539, 543 (1996) *citing Yates Industries*, 264 NLRB 1237, 1249 (1982), *citing Hershey Chocolate Corp. (Hershey Chocolate)*, 121 NLRB 901 (1958) [enforcement denied in the unfair labor practice case in *NLRB v. Hershey Chocolate Corp.*, 297 F.2d 286 (3rd Cir. 1981) but schism doctrine not impaired]. In a schism case, the petitioner generally asserts that the intra-union conflict constitutes the type of unusual circumstances which justifies the filing of an election petition during a contract bar period or which justifies severance of a group of employees from a larger appropriate unit.

Standard: *Department of the Navy, Pearl Harbor Naval Shipyard Restaurant System, Pearl Harbor, Hawaii (Pearl Harbor)* 28 FLRA 172 (1987) is the first and only case considered by the Authority on the merits of schism. In that case, the Authority upheld the Regional Director’s decision and found that the Regional Director properly used private sector case law as a guide in rendering his decision. *Citing Hershey Chocolate*, 121 NLRB 901, (1958), the Authority adopted NLRB precedent in determining whether an asserted schism existed.

In *Hershey Chocolate*, 121NLRB at 906, the NLRB stated:

The initial consideration is a determination of the factors necessary to a finding that a schism exists warranting an election. Relevant to that determination is the fact that the schism issue arises in the context of an existing contract which would otherwise achieve the statutory objective of promoting industrial stability and therefore under normal Board practice would remain a bar for the balance of its reasonable term. The direction of an election on the basis of a schism therefore constitutes an exception to the general principle that in the interest of promoting industrial stability, the existence of a contract meeting the required standards

warrants postponement of the employees' statutory right freely to select their representative. Accordingly, before directing an election on the basis of an alleged schism, the Board must be satisfied that the existing contract can no longer serve to promote industrial stability, and that the direction of an election would be in the interests of achieving industrial stability as well as in the interests of the employees' rights in the selection of their representative.

A schism occurs when:

1. there is basic intra-union conflict over fundamental policy questions within the highest level of an international union or federation; **and**
2. the conflict causes employees in the local unit to take action, based on the conflict itself, which creates such confusion in the bargaining relationship that stability can only be restored through an election.

Pearl Harbor, 28 FLRA at 173. *Hershey Chocolate*, 121 NLRB at 908.

Factors: To make a schism finding, *Hershey Chocolate* established three conditions:

1. There must be a basic intra-union conflict affecting the certified representative. A basic intra-union conflict is any conflict over policy at the highest level of an international union, whether or not it is affiliated with a federation, or within a federation, which results in the disruption of existing intra-union relationships. *Hershey Chocolate* 121NLRB at 907.
2. Employees in the unit seek to change their bargaining representative for reasons related to the basic intra-union conflict and have an opportunity to exercise their judgment on the merits of the controversy at an open meeting, called with due notice to the members in the unit for the purpose of taking disaffiliation action for reasons related to the basic intra-union conflict. *Hershey Chocolate* 121NLRB at 908.

3. The action of the employees in the unit seeking to change their representative took place within a reasonable time after the occurrence of the basic intra-union conflict. *Hershey Chocolate* 121NLRB at 908.

Pearl Harbor findings: In applying the schism test in *Pearl Harbor*, the Authority concluded that:

- ▶ Alleged intra-union conflicts which merely involve a dispute over the local union's internal procedures do not support an assertion of schism. To find a schism, the alleged intra-union conflicts must involve a dispute over fundamental policy issue(s). In addition, the conflict must exist at the highest level of an international union or federation of unions.
- ▶ In the absence of evidence that realignment, disaffiliation or expulsion of members had occurred as a result of the internal disputes, no schism was present.

Based on the facts in *Pearl Harbor*, the Regional Director did not have to consider whether conditions two or three were met.

See HOG 44 for specific guidance on developing a record about this topic at hearing.

References:

The Louisville Railway Co., 90 NLRB 678 (1950).

Swift and Co., 145 NLRB 756 (1963). (Discusses schism criteria. A mere disaffiliation movement within a local, born out of a policy conflict between the local and the international, does not alone satisfy the Board's requirement for schism.)

Southwestern Portland Cement Co., 126 NLRB 931, 934 (1960).

DOD, National Guard Bureau, New York National Guard, Division of Military and Naval Affairs, Latham, New York, 46 FLRA 1468. (Discusses appropriate petition if schism not found.)

Georgia Kaolin Co., 287 NLRB 485 (1987). (Conflict must be at highest level or Board cannot reach question of whether other conditions exist for a schism.)

