

73 FLRA No. 83

NATIONAL TREASURY
EMPLOYEES UNION
(Petitioner)

MC-0034

DECISION ON PETITION FOR
AMENDMENT OF RULES

February 9, 2023

Before the Authority: Susan Tsui Grundmann,
Chairman, and Colleen Duffy Kiko, Member
(Chairman Grundmann concurring)

I. Background

Under 5 U.S.C. § 553(e) and § 2429.28 of the Authority's Regulations,¹ the Petitioner proposes that the Authority amend § 2427.2(a) of the Authority's Regulations. Section 2427.2(a) concerns the types of entities that may request a "general statement of policy or guidance" (policy statement) from the Authority.² The Petitioner seeks to clarify that the phrase "any lawful association not qualified as a labor organization" in § 2427.2(a) "refers only to associations made up of and serving the interests of federal employees."³ Specifically, the Petitioner proposes adding the following italicized wording to § 2427.2(a):

The head of an agency (or designee), the national president of a labor organization (or designee), or the president of a labor organization not affiliated with a national organization (or designee) may separately or jointly ask the Authority for a general statement of policy or guidance. The head of any lawful association *of federal employees*

not qualified as a labor organization may also ask the Authority for such a statement provided the request is not in conflict with the provisions of chapter 71 of title 5 of the United States Code or other law.⁴

II. Discussion: We deny the petition.

The Petitioner raises two primary arguments to support its petition: (1) the proposed amendment would align § 2427.2(a) of the Regulations with the Authority's jurisdiction under the Federal Service Labor-Management Relations Statute (the Statute),⁵ and (2) the amendment would promote effective and efficient government.⁶

The premise of the Petitioner's first argument is that § 2427.2(a) is intended to exclude certain lawful associations from requesting policy statements.⁷ However, nothing in the wording of the Authority's Regulation supports this restricted reading of "lawful association."⁸ Further, § 2427.2(a)'s regulatory history actually supports a contrary conclusion. In this regard, the entity that preceded the Authority – the Federal Labor Relations Council (the Council) – promulgated regulations allowing "any lawful association" to "ask the Council for an interpretation of [Executive Order 11,491 (the Order)] or a statement on a major policy issue," "consistent with the principles set forth in [§] 7(d)(2) and (3) of the Order."⁹ The referenced section of the Order allowed agencies to consult with "veterans organization[s]," or "religious, social, fraternal, or *other lawful association[s]*, not qualified as a labor organization."¹⁰ By using the phrase "any lawful association" in § 2427.2(a), as derived from Council regulations and defined in the Order, the Authority envisioned broad access to the policy-statement process. Thus, there is no basis in the Regulation's wording or history for amending § 2427.2(a) in the manner the Petitioner proposes.¹¹

To support its first argument, the Petitioner also contends the Authority should allow only federal agencies, unions, and lawful associations *of federal employees* to request policy statements because §§ 7101(b)¹² and

¹ 5 C.F.R. § 2429.28.

² *Id.* § 2427.2(a).

³ Pet. at 2 (quoting 5 C.F.R. § 2427.2(a)).

⁴ *Id.*

⁵ *Id.* at 2, 4.

⁶ *Id.* at 4.

⁷ *Id.* at 2-3.

⁸ See 5 C.F.R. § 2427.2(a); see also Pet. at 2 (conceding that Regulations do not define the phrase "any lawful association not qualified as a labor organization").

⁹ 38 Fed. Reg. 22,765 (Aug. 24, 1973) (promulgating text of regulations including Council's § 2410.4(a) (citing Exec. Order

No. 11,491, Labor-Management Relations in the Federal Service, 34 Fed. Reg. 17,605 (Oct. 29, 1969))).

¹⁰ Exec. Order No. 11,491, 34 Fed. Reg. at 17,608 (emphasis added).

¹¹ See Pet. at 2-3 (grounding argument in assertion that § 2427.2(a) is "not intended to extend to any and every 'lawful association'").

¹² See 5 U.S.C. § 7101(b) (stating that Statute's "purpose . . . [is] to prescribe certain rights and obligations of the employees of the [f]ederal [g]overnment and to establish procedures which are designed to meet the special requirements and needs of the [g]overnment").

7105(a)(1)¹³ of the Statute confine the Authority’s jurisdiction to federal labor-management relations. However, nothing in these sections of the Statute precludes the Authority from considering policy-statement requests made by entities outside of its jurisdiction.¹⁴ Moreover, the Authority’s interpretation and application of the Statute affects individuals and groups outside of the Authority’s jurisdiction, including the general public.¹⁵ We believe the Authority improves its ability to “establish[] policies and guidance” under the Statute when it takes diverse interests and viewpoints into account.¹⁶ Therefore, we disagree that the proposed amendment would better align § 2427.2(a) with the purposes of the Statute.¹⁷

As for its second argument, the Petitioner asserts the proposed amendment would conserve Authority resources by both reducing the number of policy-statement requests and allowing the Authority to more easily dismiss improper requests.¹⁸ However, only one “lawful association not qualified as a labor organization” has ever requested policy statements, and the Authority denied two of that association’s three requests.¹⁹ Further, responding to policy-statement requests is not a significant portion of the Authority’s workload. Since its establishment in 1979, the Authority has received only forty-eight policy-statement requests – the majority of which came in its first five years.²⁰ The current Regulations clearly specify the standards governing issuance of policy statements,²¹ and the Authority has applied these standards to summarily deny over half of all policy-statement requests.²² All of this experience undercuts the notion that

it would increase “efficiency” to adopt the proposed amendment.²³

For the above reasons, we reject the proposed amendment to § 2427.2(a) and deny the petition.²⁴

III. Decision

We deny the petition.

¹³ See *id.* § 7105(a)(1) (directing Authority to “provide leadership in establishing policies and guidance relating to matters under [the Statute]”).

¹⁴ See *id.* §§ 7101(b), 7105(a)(1).

¹⁵ Other entities apply Authority precedent to adjudicate labor disputes, including the Public Employee Relations Board of the District of Columbia (PERB) and the Office of Congressional Workplace Rights (OCWR). See, e.g., *D.C. Dep’t of Consumer & Regul. Affs., and AFGE, Loc. 2725*, 59 D.C. Reg. 5502, 5505 (May 18, 2012) (“Where [PERB] has no set precedent on an issue, it looks to precedent set by other [l]abor [r]elations [a]uthorities such as the [Authority].”); *U.S. Capitol Police v. Fraternal Ord. of Police, D.C. Lodge No. 1, U.S. Capitol Police Lab. Comm.*, Case No. 15-LMR-02 (CA), 2019 WL 4085113, at *5 (2019) (OCWR applying Authority precedent).

¹⁶ See 5 U.S.C. § 7105(a)(1).

¹⁷ See *Pet. for Amend. of Rules*, 23 FLRA 405, 405-406 (1986) (*Rules Pet.*) (rejecting proposal that would negatively impact the Authority’s ability to “carry out . . . responsibilities under the Statute”).

¹⁸ *Pet.* at 4-6 (citing 5 U.S.C. § 7101(b) (stating that the Statute should be “interpreted in a manner consistent with the requirement of an effective and efficient [g]overnment”).

¹⁹ See *Nat’l Right to Work Legal Def. Found., Inc.*, 71 FLRA 502, 502 (2019) (Member DuBester concurring) (denying request that did “not satisfy the standards governing the issuance of

[policy statements] set forth in § 2427.5” of the Authority Regulations); *Nat’l Right to Work Legal Def. Found., Inc.*, 71 FLRA 531, 531 (2020) (Member DuBester concurring) (denying request after “consider[ing] the standards in § 2427.5”); *Nat’l Right to Work Legal Def. Found., Inc.*, 71 FLRA 923, 924 & n.12 (2020) (Member DuBester dissenting) (granting request after finding that it met criterion of § 2427.5(c)).

²⁰ See FLRA, *Policy Statements*, <https://www.flra.gov/resources-training/resources/policy-statements> (providing summary of policy-statement requests and responses).

²¹ 5 C.F.R. § 2427.5 (listing factors that the Authority considers); *id.* § 2427.2 (allowing lawful associations to submit only policy-statement requests that are “not in conflict with the provisions of [the Statute] or other law”).

²² See, e.g., *U.S. Dep’t of VA*, 71 FLRA 1183, 1183 (2020) (Member DuBester concurring) (finding that an issue was “not appropriate for resolution through the issuance of a general ruling” and would be better “addressed in the context of . . . an actual dispute”).

²³ See *Pet.* at 4 (arguing that amendment would “promote government efficiency”); see also *Rules Pet.*, 23 FLRA at 405-06 (rejecting proposed case-processing amendment upon determining that the requested changes could negatively impact the Authority’s effectiveness).

²⁴ See *Rules Pet.*, 23 FLRA at 408 (denying petition after rejecting proposed amendments).

Chairman Grundmann, concurring:

In its very first section, the Federal Service Labor-Management Relations Statute (the Statute) states that “labor organizations and collective bargaining in the civil service are in the public interest.”¹ This statement underscores Congress’ express determination that “the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them” benefits the public interest in myriad, significant ways.² In addition, the Authority’s very first enumerated duty in the Statute is to “provide leadership in establishing policies and guidance relating to matters under” the Statute.³

Put simply, the Statute is intended to promote workplace democracy – giving people a voice. The Authority’s primary role is to provide leadership related to that end. A crucial part of both collective bargaining and providing leadership is *listening*. In that spirit – and in the interest of a transparent, engaging process with stakeholders in our community – I was inclined to publish a Federal Register notice to solicit comments on the Petitioner’s proposed regulatory revision in this case.

At the same time, those same concerns cut against actually *adopting* the proposed amendment, which would restrict who can ask us to issue “general statement[s] of policy or guidance.”⁴ For that reason, and the reasons stated in the decision, I agree with Member Kiko that it is appropriate to deny the petition.

Nevertheless, I emphasize that the spirit of transparency and engagement does not require us to actually *issue* any particular policy statements. On this point, I note that the Authority’s Regulation governing our disposition of policy-statement requests *already* requires us to consider whether issuing a policy statement on the question presented “would promote constructive and cooperative labor-management relationships in the [f]ederal service and would otherwise promote the purposes of the [Statute].”⁵ Therefore, in resolving such requests, our lodestar must always be the Statute’s preeminent goal of protecting employees’ right to engage in collective bargaining through their chosen, exclusive representative.

For these reasons, I concur.

¹ 5 U.S.C. § 7101(a)(1).

² *Id.*

³ *Id.* § 7105(a)(1).

⁴ 5 C.F.R. § 2427.2(a).

⁵ *Id.* § 2427.5(f).