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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2420, 2421, 2422, 2423, and 2470

Regulations Implementing Coverage of Federal Sector Labor Relations Laws to the Executive Office of the President

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Chair and Members of the Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority, and the Federal Service Impasses Panel (FLRA) amend portions of their regulations in order to carry out their responsibilities under the Presidential and Executive Office Accountability Act. The FLRA was directed to issue regulations implementing coverage of the Federal Service Labor-Management Relations Statute to the Executive Office of the President no later than October 1, 1998.

EFFECTIVE DATE: October 1, 1998.

ADDRESSES: Written comments received are available for public inspection during normal business hours at the Office of Case Control, Federal Labor Relations Authority, 607 14th Street, N.W., Washington, D.C. 20424-0001.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Director, Office of Case Control, at the address listed above or by telephone # (202) 482-6500.

SUPPLEMENTARY INFORMATION:

Background

The Federal Labor Relations Authority proposed revisions to Parts 2420 through 2423, 2470, and 2472 of its regulations in order to comply with its obligations under the Presidential and Executive Office Accountability Act (Pub. L. 104-331) (the EOAA). The proposed rule was published in the **Federal Register** and public comment

was solicited on the proposed changes (63 FR 35882) (July 1, 1998). One commenter requested a one-day extension of the July 31, 1998 deadline for filing comments, which was granted.

Prior to proposing the rule, the FLRA published a **Federal Register** notice (63 FR 16141, Apr. 2, 1998) inviting parties to submit written recommendations on what, if any, modifications to the FLRA's current regulations were necessary to satisfy the requirements of the EOAA. No comments were received specifically in response to the notice. Additionally, the FLRA informally invited comment directly from interested persons. In response, one comment noted that during the FLRA's investigation, prosecution, and adjudication of cases involving the Executive Office of the President (EOP), the FLRA may receive documents that otherwise would not be subject to public disclosure through the Freedom of Information Act (FOIA). In the Notice of Proposed Rulemaking, the FLRA specifically requested comments on this issue of information disclosure and the interests of the EOP. No comments on this issue were received, and the FLRA is not promulgating any rule on this issue at this time.

As explained in the Notice of Proposed Rulemaking, the EOAA, among other things, applies Chapter 71 of Title 5, the Federal Service Labor-Management Relations Statute (the Statute), to the EOP, which is comprised of thirteen separate offices. In explaining the distinction between the Title 3 and Title 5 employees in these thirteen separate offices, the FLRA listed the Official Residence of the Vice President as an office employing Title 3 employees. One commenter noted, however, that currently there are no Title 3 employees working at the Official Residence of the Vice President.

Sectional Analyses

Sectional analyses of the amendments and revisions to parts 2420, 2421, 2422, 2423, and 2470 are as follows:

Part 2420—Purpose and Scope

Section 2420.1

Final rule as promulgated is the same as proposed rule.

Part 2421—Meaning of Terms as Used in This Subchapter

Section 2421.2

Final rule as promulgated is the same as proposed rule.

Section 2421.14

One commenter suggested that the reference to the Regional Director was unnecessary in this definitional regulation. This change was adopted. Accordingly, except for the deletion of the reference to the Regional Director and stylistic editing necessitated by the deletion, the final rule as promulgated is the same as proposed rule.

Part 2422—Representation Proceedings

Section 2422.34(b)

Final rule as promulgated is the same as proposed rule.

Part 2423—Unfair Labor Practice Proceedings

Section 2423.41

Recognizing that the proposed regulation implements the EOAA's requirement that covered employees shall not have a right to reinstatement, one commenter stated that other forms of equitable relief, such as promotion, would be unconstitutional with respect to certain covered employees and should also be addressed in this regulation. In considering this comment, the FLRA has determined that questions concerning the constitutionality of a particular remedy, like questions regarding the relationship between the Statute and other laws generally, are better raised to the FLRA on a case-by-case basis. Therefore, the final rule as promulgated is the same as proposed rule.

Part 2470—General

Section 2470.1

Final rule as promulgated is the same as proposed rule.

Section 2470.2

Final rule as promulgated is the same as proposed rule.

Part 2472—Impasses Arising Pursuant to Agency Determinations Not To Establish or To Terminate Flexible or Compressed Work Schedules

The FLRA proposed to amend this section in order to clarify that the regulations contained in this part do not

apply to employing offices, employees, and representatives of those employees, who are subject to the provisions of the EOAA. However, because EOP workers are excluded from coverage under the Federal Employees Flexible and Compressed Work Schedules Act—the law addressed by Part 2472—it is not necessary to further clarify their exclusion from coverage in the regulations. Thus, the regulation is not amended as proposed.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The amendments are required so that the FLRA can carry out its responsibilities under the EOAA.

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The final rule contains no additional information collection or record keeping requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Parts 2420, 2421, 2422, 2423, and 2470

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons stated in the preamble, the Federal Labor Relations Authority amends parts 2420, 2421,

2422, 2423, and 2470 of chapter XIV, title 5 of the Code of Federal Regulations as follows:

PART 2420—PURPOSE AND SCOPE

1. The authority citation for part 2420 is revised to read as follows:

Authority: 3 U.S.C. 431; 5 U.S.C. 7134.

2. The introductory paragraph of § 2420.1 is revised to read as follows:

§ 2420.1 Purpose and scope.

The regulations contained in this subchapter are designed to implement the provisions of chapter 71 of title 5 and, where applicable, section 431 of title 3 of the United States Code. They prescribe the procedures, basic principles or criteria under which the Federal Labor Relations Authority or the General Counsel of the Federal Labor Relations Authority, as applicable, will:

* * * * *

PART 2421—MEANING OF TERMS AS USED IN THIS SUBCHAPTER

1. The authority citation for part 2421 is revised to read as follows:

Authority: 3 U.S.C. 431; 5 U.S.C. 7134.

2. In § 2421.2, paragraph (a) is revised to read as follows:

§ 2421.2 Terms defined in 5 U.S.C. 7103(a); General Counsel; Assistant Secretary.

(a) The terms *person*, *employee*, *agency*, *labor organization*, *dues*, *Authority*, *Panel*, *collective bargaining agreement*, *grievance*, *supervisor*, *management official*, *collective bargaining*, *confidential employee*, *conditions of employment*, *professional employee*, *exclusive representative*, *firefighter*, and *United States*, as used in this subchapter shall have the meanings set forth in 5 U.S.C. 7103(a). The terms *covered employee*, *employee*, *employing office*, and *agency*, when used in connection with the Presidential and Executive Office Accountability Act, 3 U.S.C. 401 *et seq.*, shall have the meaning set out in 3 U.S.C. 401(b), and 431(b) and (d)(2). Employees who are employed in the eight offices listed in 3 U.S.C. 431(d)(2) shall be excluded from coverage if the Authority determines that such exclusion is required because of a conflict of interest, an appearance of a conflict of interest, or the President's or Vice President's constitutional responsibilities, in addition to the exemptions currently set forth in 5 U.S.C. 7103(a).

* * * * *

3. Section 2421.14 is revised to read as follows:

§ 2421.14 Appropriate unit.

Appropriate unit means that grouping of employees found to be appropriate for purposes of exclusive recognition under 5 U.S.C. 7111, and for purposes of allotments to representatives under 5 U.S.C. 7115(c), and consistent with the provisions of 5 U.S.C. 7112. In determining an appropriate unit in a proceeding under part 2422 of this Chapter, for the eight offices listed in 3 U.S.C. 431(d)(2), employees shall be excluded from the unit if it is determined that such exclusion is required because of a conflict of interest or appearance of a conflict of interest or because of the President's or Vice President's constitutional responsibilities, in addition to the standards set out in 5 U.S.C. 7112.

PART 2422—REPRESENTATION PROCEEDINGS

1. The authority citation for part 2422 is revised to read as follows:

Authority: 3 U.S.C. 431; 5 U.S.C. 7134.

2. In § 2422.34, paragraph (b) is revised to read as follows:

§ 2422.34 Rights and obligations during the pendency of representation proceedings.

* * * * *

(b) *Unit status of individual employees.* Notwithstanding paragraph (a) of this section and except as otherwise prohibited by law, a party may take action based on its position regarding the bargaining unit status of individual employees, pursuant to 3 U.S.C. 431(d)(2), 5 U.S.C. 7103(a)(2), and 7112(b) and (c): *Provided, however*, that its actions may be challenged, reviewed, and remedied where appropriate.

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

1. The authority citation for part 2423 is revised to read as follows:

Authority: 3 U.S.C. 431; 5 U.S.C. 7134.

2. In § 2423.41, paragraph (c) is revised to read as follows:

§ 2423.41 Action by the Authority; compliance with Authority decisions and orders.

* * * * *

(c) *Authority's order.* Upon finding a violation, the Authority shall, in accordance with 5 U.S.C. 7118(a)(7), issue an order directing the violator, as appropriate, to cease and desist from any unfair labor practice, or to take any other action to effectuate the purposes of the Federal Service Labor-Management Relations Statute. With

regard to employees covered by 3 U.S.C. 431, upon finding a violation, the Authority's order may not include an order of reinstatement, in accordance with 3 U.S.C. 431(a).

* * * * *

PART 2470—GENERAL

1. The authority citation for part 2470 is revised to read as follows:

Authority: 3 U.S.C. 431; 5 U.S.C. 7119, 7134.

2. Section 2470.1 is revised to read as follows:

§ 2470.1 Purpose.

The regulations contained in this subchapter are intended to implement the provisions of section 7119 of title 5 and, where applicable, section 431 of title 3 of the United States Code. They prescribe procedures and methods which the Federal Service Impasses Panel may utilize in the resolution of negotiation impasses when voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve the disputes. It is the policy of the Panel to encourage labor and management to resolve disputes on terms that are mutually agreeable at any stage of the Panel's procedures.

3. In § 2470.2, paragraph (a) is revised to read as follows:

§ 2470.2 Definitions.

(a) The terms *agency*, *labor organization*, and *conditions of employment* as used in this subchapter shall have the meaning set forth in 5 U.S.C. 7103(a). When used in connection with 3 U.S.C. 431, the term *agency* as used in the Panel's regulations in this subchapter means an employing office as defined in 3 U.S.C. 401(a)(4).

* * * * *

Dated: August 26, 1998.

Solly Thomas,

Executive Director.

[FR Doc. 98-23336 Filed 8-28-98; 8:45 am]

BILLING CODE 6727-01-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 544

[No. 98-89]

RIN 1550-AB17

Charter and Bylaws; One Member, One Vote

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations on federal mutual savings association charters. The amendment expands the range of votes a federal mutual savings association may allow a member to cast on issues requiring action by the members of the association from the current 50 to 1000 votes to one to 1000 votes per member. This amendment adds flexibility to the federal mutual charter, and allows a federal mutual savings association to adopt a charter providing for "one member, one vote."

EFFECTIVE DATE: August 31, 1998.

FOR FURTHER INFORMATION CONTACT:

Diana L. Garmus, Director, Corporate Activities Division (202/906-5683); David A. Permut, Counsel (Banking and Finance) (202/906-7505) or Kevin A. Corcoran, Assistant Chief Counsel for Business Transactions (202/906-6962), Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Various depository institutions have expressed interest in converting to a federal mutual savings association charter,¹ but requested the right to retain existing voting procedures following the conversion. Several credit unions with membership voting rights of one vote per member, for example, have asked to retain their current voting provisions upon their conversions to federal charter. On April 14, 1998, the OTS issued a Notice of Proposed Rulemaking ("NPR") that would provide such flexibility for mutual financial institutions, including credit unions, that wish to convert to the federal mutual charter.²

The OTS has long taken the position that depository institutions should be free to operate under whatever charter best suits their business needs, consistent with safety and soundness. Federal savings associations may operate under a stock charter or mutual charter. Within each charter, the OTS permits variations. For example, Federal mutual savings associations have varying voting provisions (e.g., 50 votes per member, 400 votes per member or 1000 votes per member), often based upon the rules in effect when they obtained their charters. The NPR proposed to permit federal mutual associations to expand the permissible range of votes allowed per member from one to 1000, rather than the current range of 50 to 1000.

II. Summary of Comments and Description of Final Rule

The public comment period on the NPR closed on June 15, 1998. Three commenters, all trade associations, responded to the proposal. Two were in favor of the proposal and one opposed it. The favorable comments agreed that the proposal would add flexibility to the federal mutual charter and would put credit unions on an equal footing with state chartered mutuals that convert to a federal charter. One commenter pointed out that adoption of the amendment would remove one of the perceived barriers to the conversion of a credit union to a federal mutual association.

The trade association opposing the amendment argued that the one member, one vote provisions are unique characteristics of credit unions, which should be maintained. In addition, the commenter noted that the proposed rule would jeopardize the one member, one vote principle because a converted institution could easily amend its charter, without OTS approval following the conversion. This trade association questioned the timing of the proposal and argued that the rule should be delayed until Congress had an opportunity to respond to the February 25, 1998 Supreme Court ruling overturning the National Credit Union Administration's ("NCUA") actions permitting multiple common bonds for credit unions.³ The trade association also asserted the board of directors and management of credit unions may seek to convert to federal association charter solely for their own personal enrichment. As a result, the trade association urged the OTS to require a converting credit union to wait a

¹ Section 2(5) of the Home Owners' Loan Act defines *federal savings associations* to include federal savings associations and federal savings banks. Accordingly, references to federal savings associations include federal savings banks.

² 63 FR 18149 (April 14, 1998).

³ *National Credit Union Administration v. First National Bank & Trust Co.*, 118 S.Ct. 927 (1998).