|  |
| --- |
| **CHAPTER 8**  **UNFAIR LABOR PRACTICES**  **I. THE STATUTE**  In ULP cases, individuals, unions, or agencies file charges with the FLRA regional offices alleging that government agencies or labor organizations committed unfair labor practices in violation of the Federal Service Labor-Management Relations Statute. Unless the complainant withdraws the charge, the General Counsel investigates the case at the regional level. If the investigation determines that there is no reasonable cause to believe that a violation has occurred, the regional director dismisses the charge, and the charging party may appeal the dismissal to the Authority's General Counsel at the Washington Headquarters office. After the charge is filed and before a merits determination is made on the issuance of a complaint, the regional office may attempt to assist the parties in settling the case, and on invitation of the parties, the region may become involved in resolution of labor issues before they ripen into a ULP charge.  If a complaint is issued, and if the facts in the case are in dispute (summary judgment could be appropriate if there were no factual dispute), the case is heard by an Administrative Law Judge (ALJ), who issues a decision that may be reviewed through exceptions to the Authority. If no exceptions are filed, the ALJ Decision becomes final. The regional director may determine that no material issue of fact exists in a case and the judge may decide the case based on the stipulation or under conditions established by FLRA regulations, transfer the case along with the stipulation of facts directly to the FLRA for a decision without a hearing. A complaint may be settled after a complaint is issued. A complaint may be settled at any time. The Authority provides alternative dispute resolution services to assist in settlement. <http://www.flra.gov/flra_training>. Disagreements with the decisions of FLRA ALJs on ULP cases are lodged with the Authority through the exceptions process, and judicial review of ULP findings lies in the federal circuit courts of appeal.  To aid the parties in understanding the complexities of the law, the Authority provides through its Office of General Counsel a 2010 Unfair Labor Practice Case Law Outline (<http://www.flra.gov/webfm_send/323>). Also published by the Authority are "Unfair Labor Practice FAQs" (<http://www.flra.gov/ULP_FAQ>), guidance memoranda and policies published in years past on selected ULP topics (<http://www.flra.gov/OGC_guide_list>), a 2010 ULP Casehandling Manual (<http://www.flra.gov/OGC_ULP_Manual_2010>), and a 2000 Litigation Manual (<http://www.flra.gov/webfm_send/28>). General Counsel forms include unfair labor practice charge forms (<http://www.flra.gov/ogc_forms>).  Management unfair labor practices are defined at 5 USC 7116:  (a) For the purpose of this chapter, it shall be an unfair labor practice for an agency--  (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;  (2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;  (3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;  (4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;  (5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;  (6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;  (7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) [concerning prohibited personnel practices] which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or  (8) to otherwise fail or refuse to comply with any provision of this chapter.  ?. . .  (e) The expression of any personal view, argument, opinion or the making of any statement which--  (1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,  (2) corrects the record with respect to any false or misleading statement made by any person, or  (3) informs employees of the Government's policy relating to labor-management relations and representation,  shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter.  Union unfair labor practices are defined at 5 USC 7116:  (b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization--  (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;  (2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;  (3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;  (4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;  (5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;  (6) to fail or refuse to cooperate in impasse procedures and impasse decision as required by this chapter;  (7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or  (B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or  (8) to otherwise fail or refuse to comply with any provision of this chapter.  Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.  (c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure--  (1) to meet reasonable occupational standards uniformly required for admission, or  (2) to tender dues uniformly required as a condition of acquiring and retaining membership.  This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.  ?. . .  (e) The expression of any personal view, argument, opinion or the making of any statement which--  (1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,  (2) corrects the record with respect to any false or misleading statement made by any person, or  (3) informs employees of the Government's policy relating to labor-management relations and representation,  shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provisions of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter.  The Authority's current practice is to address all allegations in a ULP, even if cumulative violations of differing sections of the Statute would not impact the remedy. See Dept. of Energy and AFGE Local 1995, 51 FLRA 124, 130 (1995) (concluding "that it will best effectuate the purposes and policies of the Statute to address all the allegations of the complaint in this case, thereby providing fuller guidance to the labor-management community").  5 USC 7116(a)(1) is a catchall provision in the Statute, as the Authority explained in VA Washington Regional Office and AFGE Local 25, 58 FLRA 261, 261 (2002):  A violation of § 7116(a)(1) is commonly found as a "derivative violation," that is, an interference with employee rights that flows from another violation under the Statute. See, e.g., United States Dep't of Defense, Dep't of the Air Force, Headquarters 47th Flying Training Wing (ATC), Laughlin Air Force Base, Tex., and 18 FLRA 142, 167 (1985). It is well established that an agency commits a derivative violation of § 7116(a)(1) by violating § 7116(a)(5). See Dep't of the Air Force, Scott Air Force Base, Ill., 5 FLRA 9, 23 (1981). Thus, the Judge's finding that the Respondent violated § 7116(a)(1) of the Statute properly follows from his finding a violation of § 7116(a)(5).  The Authority provides excellent guidance on the law and its practices in ULP cases. Reference should be made to the FLRA Office of General Counsel 2010 Unfair Labor Practice Case Law Outline, <http://www.flra.gov/webfm_send/323>; to the various past OGC guidance memoranda on significant areas of ULP law (e.g., meetings, information requests, and the scope of bargaining, among others), <http://www.flra.gov/OGC_guide_list>, and to the 2010 Unfair labor Practice Casehandling Manual, <http://www.flra.gov/OGC_ULP_Manual_2010>. |

**Copyright 2012 © LRP Publications**