

NLRB CHARGED WITH ULP IN REFUSAL TO BARGAIN CASE

The National Labor Relations Board (NLRB) committed an unfair labor practice under federal law by refusing to bargain with a union that was certified as the representative of agency employees in a nationwide consolidated unit, the Federal Labor Relations Authority (FLRA) rules. FLRA chair Thomas M. Beck and member Carol Waller Pope find that the FLRA had already affirmed that the National Labor Relations Board Union (NLRBU) petition to consolidate four separate units of NLRB employees was properly granted by an FLRA regional director, and the NLRB failed to show any new information or special circumstances to justify refusing to bargain with the consolidated unit.

The decision arises out of the NLRBU's request to consolidate four bargaining units in which the union represented field office and headquarters employees of the agency. The union filed a petition with the FLRA in 2005 seeking consolidation into a single unit of the (1) Washington, D.C., headquarters nonprofessional employees of the general counsel, (2) headquarters nonprofessionals, (3) regional office nonprofessionals, and (4) professional employees in regional offices. The NLRBU says it represents approximately 1,000 agency employees nationwide.

The Federal Service Labor-Management Relations Statute (FSLMRS), 5 U.S.C. §7112(d), permits unions to request consolidation of separate employee groupings into a larger unit if the FLRA determines that the larger unit is appropriate. An FLRA regional director found that the unit requested by the NLRBU would be appropriate, and the FLRA agreed. After the issuance of the decision, the FLRA conducted an election to determine if professional employees wanted to be included in a single bargaining unit with nonprofessionals. The professionals voted for inclusion, and the union was certified as representative in the consolidated unit.

Responding to the FLRA certification, General Counsel Ronald Meisburg said the bargaining unit ruling was inconsistent with Section 3(d) of the National Labor Relations Act, and that the NLRB refused to bargain with the consolidated unit, in order to obtain judicial review of the ruling. The NLRBU filed an unfair labor practice charge with the FLRA complaining about the refusal to bargain. In 2007, an FLRA administrative law judge (ALJ) found that the NLRB's refusal to bargain with the union was an unfair labor practice, and the NLRB filed exceptions to the ALJ decision with the FLRA.

The FSLMRS gives the NLRB 60 days from the date of the FLRA decision to seek court review of the unfair labor practice finding, and Meisburg says that he expects to move forward "expeditiously, securing a final resolution of this important issue."

The decision is available at <http://op.bna.com/dlrcases.nsf/r?Open=ldue-7pkmru>.

(Source: BNA, *Daily Labor Report*, No. 35, February 25, 2009, pp. A12-A13.)