



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

April 12, 2022

Memorandum for Heads of Executive Departments and Agencies

From: Kiran A. Ahuja, Director

Subject: Guidance on Implementation of EO 14025: Highlighting Requirements During Union Organizing

On April 26, 2021, President Biden issued Executive Order (EO) 14025, Worker Organizing and Empowerment. EO 14025 builds on President Biden's earlier EO 14003 on Protecting the Federal Workforce. OPM is proud to work on behalf of the Biden-Harris Administration to identify the policies, practices, and programs that can bolster worker power, worker organizing, and collective bargaining.

OPM is issuing periodic guidance on actions Federal agencies can take to implement the policies of EO 14025, consistent with the requirements of the Federal Service Labor-Management Relations Statute (FSLMR).

This memorandum provides guidance to agencies of statutory requirements regarding management actions during any union organizing. 5 U.S.C. § 7102 provides that "[e]ach employee shall have the right to form, join, or assist any labor organization, or to refrain from such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right." Agencies are required by 5 U.S.C. §§ 7116(a)(1) and 7116(e) to refrain from interfering with these rights and are expected to maintain neutrality during union organizing campaigns.

The FSLMR does allow agencies to (1) publicize the fact of a representational election and encourage employees to exercise their right to vote in such election; (2) correct the record with respect to any false or misleading statement made by any person; or (3) inform employees of the Government's policy relating to labor-management relations and representation if these activities do not contain any threats of reprisal or promise of a benefit and was not made under coercive conditions. These conditions can be confusing for some managers and supervisors who may inadvertently take actions with respect to union elections that violate these principles and result in unfair labor practice charges being filed against an agency.

In support of the policies of EO 14025, agencies are strongly encouraged to implement the following actions at the earliest opportunity:

1. Include in regular labor relations training of agency managers and supervisors information on maintaining neutrality during union organizing campaigns such as the attached recommended training materials; and

2. Advise managers and supervisors to seek advice from the agency's labor relations office or legal office prior to getting involved in or commenting on union elections and membership activities.

The attached questions and answers provide additional guidance for Federal agencies and employees to further support the above actions which support the policies of EO 14025.

Additional Information

Agency headquarters-level human resources offices may contact OPM at awr@opm.gov with additional questions. Agency field offices should contact their appropriate headquarters-level agency human resources offices.

cc: Chief Human Capital Officers
Human Resources Directors

Attachments – FAQs on Maintaining Agency Neutrality During Union Organizing Campaigns
Training Module on Building Blocks of Neutrality During Union Organizing Drives

Frequently Asked Questions on Maintaining Neutrality During Union Organizing Campaigns

The following FAQs were developed in support of the policies under Executive Order 14025. The purpose of the FAQs is to provide managers, employees, and labor organizations with information regarding neutrality during organizing campaigns

1) Why is OPM issuing this guidance?

As the nation's largest employer, the Federal government has the unique opportunity to lead by example and serve as a model employer. By supporting the President's policy in Executive Order (EO) 14025 to encourage worker organizing and collective bargaining, the Federal government is highlighting the positive impact that unions have in all workplaces.

[Read EO 14025 on Worker Organizing and Empowerment.](#)

2) What rights exist for federal employees covered the Federal Service Labor-Management Relations Statute - 5 U.S.C. Chapter 71 ("the Labor Statute")?

Federal employees have rights under the Statute whether or not they are already represented by a union. [5 U.S.C. § 7102](#) provides that "[e]ach employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear or penalty or reprisal, and each employee shall be protected in the exercise of such right." This right encompasses (1) the right to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and (2) the right to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.

3) What is a union organizing campaign?

A union that is seeking to represent agency employees must file a petition for an election with the Federal Labor Relations Authority (FLRA) that is supported by at least 30% of the employees in the proposed bargaining unit. If the FLRA decides the petition is in order and there is a question of representation to be resolved, an election may be scheduled. A union organizing campaign to gain employee support is generally ongoing from the time the union is assembling the petition through the date of the election.

4) Are employee rights to assist a labor union during a union organizing campaign protected by 5 U.S.C. § 7102?

Yes. The right to assist labor unions in organizational campaigns derives from the employee right under 5 U.S.C. § 7102 "to form, join, or assist any labor organization." Employees may hold leadership positions within a union or act in a representational capacity and, in this capacity, they have the right to file and process grievances, *they may assist in organizational campaigns*, and they may engage in various solicitation activities on behalf of a labor organization. See *U.S. Department of Justice, INS, U.S. Border Patrol San Diego Sector v. AFGE Local 1613, National Border Patrol Council*, [38 FLRA 701 \(1990\)](#).

Frequently Asked Questions on Maintaining Neutrality During Union Organizing Campaigns

5) Does the law outline any requirements or protections regarding appropriate behavior by agency officials during a union organizing campaign?

Yes. [5 U.S.C. § 7116\(e\)](#) contains a standard for statements by agency representatives that is intended to assure agency neutrality in union representation elections. Under this standard, the expression of any personal view, argument, opinion or the making of any statement by an agency representative during a union organizing campaign is permissible *only* if it: 1) publicizes a representational election and encourages employees 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 *and* contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions. See *Oklahoma City Air Logistics Center*, [6 FLRA 159 \(1981\)](#). Federal labor law recognizes that statements to employees by supervisors, managers and other officials of the agency that employs them may carry disproportionate weight and have the potential for interfering with the free choice of employee voters. Whether or not a particular statement falls within the protection of this law depends heavily on the specific circumstances. Therefore, in order to maintain the agency's neutrality, OPM recommends that agency officials refrain from volunteering any comments regarding a union organizing campaign. Sometimes, employees will ask supervisors and managers direct questions about unionization or their rights, but this does not relieve the supervisor or manager from the obligation to comply with 5 U.S.C. § 7116(e). Therefore, OPM strongly encourages agency supervisors and managers to consult with the agency labor relations staff or legal counsel before responding to questions from employees related to a representational election.

6) What are the consequences of making statements that are not permissible under 5 U.S.C. 7116(e)?

Making statements that are not permissible under [5 U.S.C. § 7116\(e\)](#) may be a reason to set aside an election the union has lost and direct a new election. "The acts and conduct of agency management during an election campaign, even where they are not violative of the unfair labor practice provisions of [5 U.S.C. § 7116\(a\)](#) of the statute, may nonetheless constitute objectionable conduct requiring the election to be set aside if such conduct interfered with the employees' freedom of choice... While ... it is often difficult to assess how pervasive the impact of an agency's actions might be on voters, the standard for determining whether conduct is of an objectionable nature is its potential for interfering with the free choice of the voters." See *Department of Justice, INS and AFGE, National Border Patrol Council v. AFGE Local 2455 and IBPO*, [9 FLRA 253](#) (1982).

7) Is it an unfair labor practice (ULP) for an Agency to interfere with employee rights during union organizing campaigns?

Yes. [5 U.S.C. § 7116\(a\)\(1\)](#) provides generally that "it is an unfair labor practice for an Agency to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under [the Labor Statute]. This includes the right to choose a bargaining representative. See 5 USC § 7102(1). If the agency's conduct rises to the level of an unfair labor practice, the agency will be required to post a notice in the workplace acknowledging the violation, and, depending on what the agency did, provide further relief.

Frequently Asked Questions on Maintaining Neutrality During Union Organizing Campaigns

8) Can a statement by an agency manager or supervisor regarding a union election constitute an unfair labor practice (ULP)?

Yes. For example, in one case, a newsletter signed by the agency's chief management official was posted on agency bulletin boards, and circulated directly to employees, that said, "Your decision will be binding over the years to come should you vote for a union to represent you", and which advised employees to question both labor organizations on the ballot regarding what union representation could do for them that their congressman could not do, was considered both objectionable conduct and an unfair labor practice in violation of 5 USC § 7116(a)(1). The statement was not permissible under 5 USC § 7116(e) because it went beyond merely announcing the election under 7116(e)(1), and it implied that union representation was unnecessary and undesirable, which is not a correct statement of Government policy on labor-management relations under 7116(e)(3). Further, the announcement interfered with the employees' rights to form, join, or assist any labor organization under 5 USC § 7116(a)(1) because it was a message from the head of the Activity strongly implying that unions are unnecessary, undesirable and difficult to remove that was put on all bulletin boards and distributed to all unit employees shortly before the election, See *Department of the Air Force, Air Force Plant Representative Office, Detachment 27, Fort Worth, Texas v. NFFE Local 1958 and AFGE Local 1361*, [5 FLRA 492 \(1981\)](#). Supervisors should avoid making any statement that could be seen as putting a thumb on the scale in either direction.



Training Module

Building Blocks of Neutrality During Union Organizing Drives



#1 - Employee Rights Under the Law in an Organizing Campaign

- Under 5 U.S.C. 7102, employees have the right:
 - To form, join, or assist any labor organization
 - Or to refrain from any such activity
 - Freely, and without fear of penalty or reprisal



#2 - Management Can Commit ULPs During Union Organizing Drives

If you interfere with, restrain, or coerce employees in exercising their rights to form or organize a labor union, you may be committing an unfair labor practice (ULP) under 5 U.S.C. 7116(a) and the Federal Labor Relations Authority may impose various penalties on your agency



3 - Statements That Are Not Unfair Labor Practices May Still Have Negative Consequences

The Statute also gives the Federal Labor Relations Authority (FLRA) the responsibility to “supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees” 5 USC 7105(a)(2)(A). To carry out this responsibility, the FLRA will re-run an election that the union has lost if the agency has engaged in “objectionable conduct”. See 5 CFR 2422.26. Conduct is objectionable if it has the potential for interfering with employee free choice in the election.



#4 – Certain Statements Are Protected

5 U.S.C. 7116(e) provides: “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 or 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.”



#5 - What should supervisors and managers do during a union organizing campaign?

Best Practice: Reserve your opinions about the union and seek advice from the agency's labor relations staff or the agency's legal office prior to getting involved in discussions about, or commenting on, labor relations matters during an organizing campaign.