

**Before the
FEDERAL LABOR RELATIONS AUTHORITY**

Petition for Amendment of Regulation of:)	
)	
NATIONAL TREASURY)	File No. _____
EMPLOYEES UNION,)	
)	
Petitioner.)	
)	

PETITION FOR AMENDMENT OF 5 C.F.R. § 2427.2

Pursuant to 5 U.S.C. § 553(e) and 5 C.F.R. § 2429.28, the National Treasury Employees Union (NTEU) submits this petition for an amendment of Section 2427.2 of the Federal Labor Relations Authority's (Authority) regulations.

Current Rule

5 C.F.R. § 2427.2(a) addresses who may submit requests to the Authority for general statements of policy or guidance. It provides:

§ 2427.2 Requests for general statements of policy or guidance. (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 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.

Proposed Amendment

NTEU proposes to amend Section 2427.2(a) to clarify that “any lawful association not qualified as a labor organization,” refers only to associations made up of and serving the interests of federal employees:

§ 2427.2 Requests for general statements of policy or guidance. (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.

STATEMENT OF GROUNDS IN SUPPORT OF AMENDMENT

I. NTEU’s Proposed Regulatory Amendment is Consistent with the Statute.

The phrase “any lawful association not qualified as a labor organization” is neither defined in the Federal Service Labor-Management Relations Statute (the Statute), nor in the Authority’s regulations. *See generally*, 5 U.S.C. §§ 7101 et seq.; 5 C.F.R. Ch. XIV. But it is clear from the structure and purpose of the statute that the phrase was not intended to extend to any and every “lawful

association,” including those that have nothing to do with federal employment labor relations.

The Statute’s purpose is to “prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government.” 5 U.S.C. § 7101(b). The Statute confers to the Authority jurisdiction over labor-management relations involving federal agencies, federal employee unions, and federal employees.

The Authority’s power to address requests for general statements of policy or guidance comes from Section 7105 of the Statute. That section provides that the Authority “shall provide leadership in establishing policies and guidance relating to matters under [the Statute], and . . . shall be responsible for carrying out the purpose of [the Statute].” 5 U.S.C. § 7105(a)(1); 5 C.F.R. § 2427.1.

Matters under the Statute relate exclusively to parties over which the Authority can exercise its jurisdiction: federal agencies, federal employees, and federal employee unions. Therefore, consistent with the Statute’s design, the Authority should only accept requests for general

statements of policy and guidance from federal agencies, federal employee unions, and lawful associations of federal employees.

This proposed limitation aligns more closely with the Authority's statutory jurisdiction than the existing regulation. The Authority exists to provide guidance to and to resolve disputes that arise among these groups, which are directly affected by the Authority's exercise of its power. The Authority should therefore amend 5 C.F.R. § 2427.2 (a) to clarify that "any lawful association" refers only to lawful associations of federal employees.

II. NTEU's Proposed Regulatory Amendment Will Promote Effective and Efficient Government.

Clarifying the scope of "any lawful association" in 5 C.F.R. § 2427.2(a) will also promote government efficiency by allowing the Authority to dismiss improper requests for general statements of policy and guidance out of hand. It would also likely deter requests from those who fall outside of the scope of NTEU's proposed regulation, which would further conserve the Authority's resources. *See* 5 U.S.C. § 7101(b) ("The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.").

When a party submits a request for a general statement of policy or guidance, the Authority must expend time and resources to evaluate whether to grant the request and then to draft a decision granting or denying that request. In considering whether to grant such a request, the Authority generally undertakes an intensive analysis. The Authority's regulations supply the criteria governing the process:

In deciding whether to issue a general statement of policy or guidance, the Authority shall consider:

- (a) Whether the question presented can more appropriately be resolved by other means;
- (b) Where other means are available, whether an Authority statement would prevent the proliferation of cases involving the same or similar question;
- (c) Whether the resolution of the question presented would have general applicability under the Federal Service Labor-Management Relations Statute;
- (d) Whether the question currently confronts parties in the context of a labor-management relationship;
- (e) Whether the question is presented jointly by the parties involved; and
- (f) Whether the issuance by the Authority of a general statement of policy or guidance on the question would promote constructive and cooperative labor-management relationships in the Federal service and would otherwise promote the purposes of the Federal Service Labor-Management Relations Statute.

5 C.F.R. § 2427.5.

In the past, the Authority has expended time and resources in applying the factors in Section 2427.5 to justify the denial of requests from associations that do not represent federal employees. *See e.g., Nat'l Right to Work Legal Def. Found., Inc.*, 71 F.L.R.A. 531 (Jan. 24, 2020) (denying request for general statement of policy or guidance based on assessment of Section 2427.5's factors); *Nat'l Right to Work Legal Def. Found., Inc.*, 71 F.L.R.A. 502 (Dec. 23, 2019) (same).

Adopting NTEU's proposed regulatory change would allow the Authority to bypass an analysis of the factors in Section 2427.5 and to deny improper requests outright. NTEU's proposal would also likely dissuade associations unconnected to those who are governed by the Statute from requesting the Authority's guidance at all. NTEU's proposal would thus conserve the Authority's resources for issues raised by those who fall under its jurisdiction.

Additionally, adopting NTEU's proposed regulatory change would allow the Authority the opportunity to correct an error. The Authority has granted a request for a general statement of policy or guidance to an association that would fall outside of NTEU's proposed regulation on

only one occasion. Then-Member and now-Chairman DuBester appropriately disagreed with that decision. In that case, the Authority interpreted the term “lawful association” to apply to any and every “lawful association.” *See, Nat’l Right to Work Legal Def. Found., Inc.*, 71 F.L.R.A. 923, 926 n.42 (2020). Now-Chairman DuBester appropriately criticized the majority for “accommodating a request from an organization that is neither a union nor an agency subject to our jurisdiction.” *Id.* at 927. NTEU’s proposed regulatory revision will allow the FLRA to clarify that the majority’s decision to entertain that request was incorrect.

CONCLUSION

For the foregoing reasons, the Authority should amend Section 2427.2 (a) of its regulations to clarify that “lawful association not qualified as a labor organization” refers only to associations made up of and serving the interests of federal employees.

Respectfully submitted,

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