



# FLRA NEWS

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## **UNFAIR LABOR PRACTICE CASE PROCESSING IN THE ABSENCE OF A GENERAL COUNSEL**

In light of recent media reports, Federal Labor Relations Authority (FLRA) Chairman Colleen Duffy Kiko and Deputy General Counsel Charlotte A. Dye wish to clarify the FLRA's process for making determinations on the merits in unfair labor practice charges (ULPs).

During the period in which there has been no confirmed General Counsel or Acting General Counsel (since November 17, 2017), some media outlets have stated or implied that the FLRA, or a component thereof, had determined that various unfair labor practices had occurred, when in fact no complaint has issued.

When the FLRA lacks a General Counsel, Regional Directors and other employees within the Office of the General Counsel continue the Office of the General Counsel's regular practice of conducting investigations of unfair labor practice charges to make a recommendation as to whether an unfair labor practice occurred (a determination on the merits of the charge). While Regional Directors make internal, non-binding recommendations on issuing complaints to the Office of the General Counsel, it is for the General Counsel alone to determine whether a complaint should issue based on those recommendations.

No Regional Director, in the absence of a General Counsel or Acting General Counsel, may issue unfair labor practice complaints. The General Counsel, or someone acting in the place of the General Counsel, is the only person given the authority under the Federal Service Labor-Management Relations Statute to authorize the issuance of unfair labor practice complaints. 5 U.S.C. §§ 7104(f)(2)(B), 7118(a)(1); *see also Clark v. FLRA*, 782 F.2d 701, 704 (D.C. Cir. 2015); *Turgeon v. FLRA*, 677 F.2d 937, 940 (D.C. Cir. 1982).

Even once the General Counsel has issued a complaint, it remains for an Administrative Law Judge to determine, after the Regional Office and the parties present their evidence at a trial, whether an unfair labor practice has actually occurred. The Administrative Law Judge's decision may then be appealed to the FLRA's three-member adjudicative body and then to the appropriate Federal court of appeals.

Communications from a Regional Office, including a Regional Director, do not constitute a determination that an unfair labor practice has occurred. Any media reports to the contrary are not accurate.

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*The FLRA administers the labor-management-relations program for 2.1 million non-Postal federal employees worldwide, approximately 1.2 million of whom are represented in 2,200 bargaining units. It is charged with providing leadership in establishing policies and guidance related to federal-sector labor-management relations and with resolving disputes under, and ensuring compliance with, the Federal Service Labor-Management Relations Statute.*