

Union makes headway in case against labor relations official

By Anika Gupta agupta@govexec.com August 21, 2007

A regional director for the independent agency handling federal labor-management disputes last week issued a complaint against the National Labor Relations Board for refusing to recognize the consolidation of four groups of unionized employees into a single bargaining unit.

The [Aug. 15 complaint](#) from the head of FLRA's San Francisco region comes just six weeks after the National Labor Relations Board Union first filed an unfair labor practice charge with the FLRA. The union claims that Ronald Meisburg, the board's general counsel, is violating federal labor laws by declining to bargain with representatives of the consolidated unit.

The complaint, signed by FLRA regional director Gerald Cole, stated that Meisburg has "committed unfair labor practices in violation of [federal statutes]," and announced that an FLRA administrative law judge will hold a hearing on the case Oct. 9.

Should the administrative judge find in favor of the consolidated union too, Meisburg could be ordered to bargain with the new unit. Should the general counsel still refuse, the FLRA could ask a circuit court to enforce the bargaining order.

The NLRB, which is similar to the FLRA but handles private sector union-management disputes, could counter by arguing that the original decision to merge the employee groups was flawed. Meisburg has stated that he hopes to take the case before a federal appeals court, and has argued that since his office has statutory independence, he should not have to negotiate with a bargaining unit that includes employees outside his office.

"They are looking for a third bite at the apple," said Eric Brooks, a New York-based NLRB attorney and president of the board's union. "They made their argument to the regional director, they made it to the authority in Washington, and so now they're trying to make that argument all over again."

The FLRA certified the consolidated bargaining unit in June. Brooks said employees sought the formal merger only after years of bargaining together. "It made no sense for us to spend time and money negotiating four nearly identical contracts," he said.

Brooks also said that field office attorneys were in the habit of representing support staff and members from other bargaining units in negotiations, until the board instituted a rule

that employees could not represent bargaining units other than their own while they were on the clock.

"Obviously that made it very difficult for us, since you can't usually schedule a negotiation at night," he said. "This way, we can still represent each other."

Brooks said he was confident the administrative judge would side with FLRA's previous decisions. "I think that based on the facts that we've presented to the regional director and the authority, and based upon extensive . . . precedent . . . there is substantial basis for the authority to conclude that a single bargaining unit was appropriate," Brooks said. "A circuit court is going to immediately see that is the case."

The conflict eventually could be appealed to the Supreme Court, although Brooks said it was unlikely the high court would hear it. "They hear less than 1 percent of the cases that come to them," he said.

The same day the regional FRLA director issued the complaint, NLRB union members held a [protest](#) outside the board's Washington, D.C., headquarters during which they called for Meisburg to resign if he was unwilling to bargain.