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August 1, 2006

**VIA FACSIMILE AND ELECTRONIC MAIL**

Julia Akins Clark  
General Counsel  
IFPTE, AFL-CIO & CLC  
8630 Fenton Street, Suite 400  
Silver Spring, MD 20910

**Re: Confidentiality of Union Authorization Cards**

Dear Julie:

You have requested a legal opinion as to whether Union authorization cards signed by employees of the Government Accountability Office (“GAO” or “Agency”) must be kept confidential from the Agency management. It is our legal opinion that, pursuant to federal regulations, the GAO Personnel Appeals Board – the entity to which the cards are submitted for purposes of initiating the election process – must keep the authorization cards confidential and should not, for any purpose whatsoever, provide authorization cards, or the information contained on the authorization cards, to the Agency during a representation proceeding. If information was somehow released to the Agency, the Union would have a good argument that the “laboratory conditions of a free and fair election” have been destroyed and that the conditions that existed prior to such unlawful activity must be reestablished. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 612 (1969). Finally, if, by chance, the Agency somehow improperly obtains the authorization cards or information contained on them, it may not, under any circumstances, retaliate against an employee for exercising his or her federal right to be represented by a labor organization for purposes of collective bargaining.

Federal regulations provide procedures to determine appropriate units of GAO employees for collective bargaining, to conduct union elections, and to certify a labor organization that has been selected by bargaining unit employees to represent them. 28 C.F.R. §§ 28.110 – 28.116. The GAO Personnel Appeals Board has the authority to make decisions on unit determination and collective bargaining matters. The GAO Personnel Appeals Board is required to make decisions consistent with the Federal Service Labor Management Relations Statute (“Federal Labor Statute”). 4 C.F.R. § 28.111.

Under the Federal Labor Statute and its implementing regulations, before a union can be designated as an exclusive representative of employees, a new union seeking to represent employees must set forth an adequate showing of interest, establishing that 30% of the employees in a potential bargaining unit wish to be represented by the union. 5 U.S.C. § 7117(b)(1)(a). A union can establish adequate interest by submitting union authorization cards from 30% of the employees in the potential bargaining unit.

In general, under the Federal Labor Statute, the authorization cards are submitted to a Regional Director of the Federal Labor Relations Authority (“FLRA”) as part of a petition for an election. 5 C.F.R. §§ 2422.3-2422.5. The petition itself must be sent to the agency, but the authorization cards are not sent to the employer; instead, *to maintain confidentiality, the authorization cards are only sent to the Regional Director.* 5 C.F.R. § 2422.4.

The FLRA Regional Director determines whether an adequate and valid showing of interest has been established. The Regional Director’s decisions on adequacy and validity are binding and are **not** subject to challenge or collateral attack by the parties. Thus, since the authorization cards are sent only to the Regional Director and he/she makes the determination regarding their adequacy and validity, there is no need for the employer to view the authorization cards.

As discussed above, GAO is not governed by the FLRA, but federal regulations require the GAO Personnel Board to follow the Federal Labor Statute. Accordingly, when sufficient authorization cards are collected from GAO employees, IFPTE will submit the cards, along with its representation petition, to the GAO Personnel Appeals Board. 4 C.F.R. §§ 28.18, 28.113. In keeping with 5 C.F.R. §2422.4, the petition and authorization cards are not submitted to GAO Management. *See also* 4 C.F.R. § 28.13.

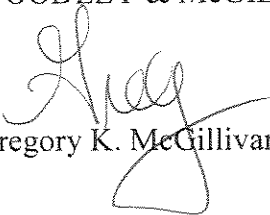
The General Counsel to the GAO Personnel Appeals Board oversees the petition process, reviews the authorization cards, and ultimately submits a report to the Board regarding the adequacy of the representation petition. 4 C.F.R. § 28.115. GAO Management does not determine whether the authorization cards are an adequate showing of interest. Like the Regional Directors of the FLRA, the General Counsel and the GAO Personnel Appeals Board are charged with this responsibility and should not divulge the cards to the GAO Management.

Julia Clark  
August 1, 2006  
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To reiterate, in order for the GAO Personnel Appeals Board to comply with the Federal Labor Statute, the Board and its General Counsel may **not** give the GAO employees' authorization cards to the GAO itself. The federal regulations do not provide that the GAO is entitled to his information and if, by chance, the GAO did obtain this information, any retaliation against an employee for exercising his or her rights would be unlawful. Thus, an employee who signs a Union authorization card should be informed that GAO management should not have access to the card and that even if management somehow improperly obtains access, it is prevented from retaliating against employees for exercising union rights.

Sincerely,

WOODLEY & MCGILLIVARY



Gregory K. McGillivary