

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

CHERYL MORRISON,
Petitioner,

v.

DEPARTMENT OF THE INTERIOR,
Respondent.

2012-3046

Petition for review of the Federal Labor Relations Authority in case no. SF-CA-11-0064.

ON MOTION

Before LOURIE, SCHALL and DYK, *Circuit Judges.*

PER CURIAM.

ORDER

Cheryl Morrison responds to this court's February 10, 2012 order directing her to show cause why her petition should not be dismissed for lack of jurisdiction and moves to transfer the case to either the United States Court of Appeals for the D.C. Circuit or the United States Court of Appeals for the Ninth Circuit.

Morrison filed an unfair labor practice charge with the San Francisco Regional Office (RO), which is under the direction and supervision of the Federal Labor Relations Authority (FLRA)'s Office of General Counsel. Morrison alleged that her termination from employment with the Department of the Interior, Bureau of Indian Affairs was based on protected union activities. After investigating the matter, the RO decided not to issue an unfair labor complaint. Morrison appealed that decision to the Office of General Counsel. That appeal was denied. Morrison then filed a petition seeking this court's review of the General Counsel's refusal to issue an unfair labor charge.

Because this petition does not arise out of a decision of the Merit Systems Protection Board or an arbitrators' award, Morrison concedes that the petition is outside of this court's limited jurisdiction. See 5 U.S.C. § 7121(f); 5 U.S.C. § 4303; 5 U.S.C. § 7512. Morrison, however, contends that this court should transfer the matter to either the United States Court of Appeals for the Ninth Circuit or the D.C. Circuit pursuant to 28 U.S.C. § 1631. That statute authorizes transfer to a court in which the appeal could have been brought at the time it was filed "if it is in the interest of justice."

We cannot say that transfer here would be in interest of justice. Courts, including the Ninth Circuit and D.C. Circuit, have held that decisions by the FLRA General Counsel to file (or not file) unfair labor practice complaints are unreviewable. See *Patent Office Prof'l Ass'n v. Fed. Labor Relations Auth.*, 128 F.3d 751, 753 (D.C. Cir. 1997) ("[B]ecause the court is without jurisdiction to review the General Counsel's decision not to issue an unfair labor practice complaint, we dismiss the petition for review."); *Columbia Power Trades Council v. United States Dep't of Energy*, 671 F.2d 325, 329 (9th Cir. 1982) (same).

In arguing that one of the regional circuits would have jurisdiction over this appeal, Morrison points out that 5 U.S.C. § 7123(a) provides that “[a]ny person aggrieved by any final order of the [FLRA] . . . may . . . institute an action for judicial review of the [FLRA’s] order in the United States court of appeals.” Based on § 7123(a), Morrison contends that she may appeal from the General Counsel’s ruling.

The flaw in Morrison’s argument is that § 7123(a) only authorizes courts to review certain final decisions of the FLRA, not the General Counsel, and only the General Counsel, not the FLRA, is authorized to decide whether to issue a complaint on the unfair labor charge. See 5 U.S.C. § 7118(a)(1).

Although the Ninth Circuit stated in *Montana Air Chapter No. 29 v. Fed. Labor Relations Auth.*, 898 F.2d 753, 756 (9th Cir. 1990) that the General Counsel’s determination to issue a complaint could possibly be reviewed where a decision is based either on the agency’s conclusion that it lacked jurisdiction or on a general policy “so extreme as to amount to an abdication of its statutory responsibilities,” nothing suggests that such narrow grounds for review are present here.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion to transfer is denied.
- (2) The petition for review is dismissed.
- (3) Each side shall bear its own costs.

FOR THE COURT

JUL 20 2012

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

JUL 20 2012

JAN HORBALY
CLERK

MORRISON v. INTERIOR

4

cc: Cheryl Morrison
Michael D. Austin, Esq.

s19