

Severance

Severance issues arise when a petitioner seeks to "carve out" or sever employees from an established bargaining unit to establish a separate unit. Any election petition requesting severance from an existing unit requires a 30 percent showing of interest in the petitioned-for unit, not 30 percent of the existing bargaining unit. *Office of Hearings and Appeals, Social Security Administration*, 16 FLRA 1175 (1984).

Standard: Severance is granted only in the rare circumstances where:

- (1) the existing unit continues to be appropriate under the criteria set forth in section 7112(a)(1) of the Statute; and
- (2) unusual circumstances are present which justify removing the particular group of employees from the existing unit.

U.S. Department of Veterans Affairs (Veterans Affairs), 35 FLRA 172, 179-80 (1990) (severance denied) and *U.S. Department of the Treasury, Bureau of Engraving and Printing (BEP)*, 49 FLRA 100 (1994) (severance granted). Where the Authority determines that the existing unit remains appropriate and no unusual circumstances exist which would warrant severance, there is no need to make any further finding with respect to whether the petitioned-for unit would also constitute a separate appropriate unit. *Carswell Air Force Base, Texas (Carswell Air Force Base)*, 40 FLRA 221, 228 (1991).

Unit continues to be appropriate: Where an established unit continues to remain appropriate and no unusual circumstances are present, then the Regional Director does not grant a petition for severance and dismisses the petition. Therefore, the Hearing Officer ensures that the record contains all evidence necessary to make an appropriate unit determination in the existing bargaining unit, applying the criteria of section 7112(a)(1) of the Statute. See, Section 37, Appropriate unit determinations.

As a rule, the Authority relies on the second and third criteria of the appropriateness of unit test to find severance is not warranted where it would result in unit fragmentation. Thus, in *Library of Congress*, 16 FLRA 429 (1984), the Authority concluded that "a petition seeking to remove certain employees from the overall unit and to separately represent them

must be dismissed, in the interest of reducing the potential for unit fragmentation and thereby promoting effective dealings and efficiency of agency operations.”

Unusual circumstances are present: In evaluating whether unusual circumstances warranting severance exist, the Authority looks at a number of factors.

- A. *Reorganization:* The exclusion or “severance” of a group of employees from the existing unit due to a substantial change in the character and scope of the unit may be an unusual circumstance which would warrant severance. In such cases, the employees who are severed from the existing unit no longer have a community of interest with the remaining employees. *U.S. Department of Labor*, 23 FLRA 464 (1986).
- B. *The adequacy of the representation afforded by the incumbent:* The Authority will consider the incumbent union’s failure to represent the petitioned-for employees fairly and effectively in evaluating whether severance is warranted. See *Veterans Affairs*, 35 FLRA at 180; *Department of the Navy, Naval Air Station, Point Mugu, California (Point Mugu)*, 26 FLRA 620 (1987); and *Department of the Army, Headquarters, Fort Carson, and Headquarters, 4th Infantry Division, Fort Carson, Colorado*, 34 FLRA 30 (1989).
- C. *Inequities in working conditions among employees in the same classifications and job assignments who are in different bargaining units.* See *International Communication Agency and the National Federation of Federal Employees, Local 1418 and International Communication Agency and the American Federation of Government Employees, Local 1812*, 5 FLRA 97 (1981).

The following do not evidence inadequacy of representation by an incumbent unit for the purpose of establishing unusual circumstances:

- A bare disclaimer of interest, without more. *BEP*, 49 FLRA at 107 n.3.
- A small percentage of membership in the incumbent union. *Carswell Air Force Base*, 40 FLRA at 230-231.

- The lack of a collective bargaining agreement, where there is no evidence that the failure to renegotiate such an agreement has deprived unit employees of rights under the Statute or otherwise has not affected the petitioned-for employees any differently than other employees in the unit. *Point Mugu*, 26 FLRA at 623.
- Unrepresented employees. Severance concerns carving out a group of employees from an existing represented bargaining unit. *Library of Congress*, 16 FLRA at 432.
- The size of the incumbent's membership is not indicative of the quality or extent of the incumbent's representation of the group of employees that the petitioner seeks to sever. *Carswell Air Force Base*, 40 FLRA at 230.

In addition to obtaining a complete record on the appropriateness of the existing unit, and evidence of unusual circumstances warranting consideration of severance, the Hearing Officer obtains a complete record as to the appropriateness of the proposed unit of severed employees. This is not inconsistent with the Authority's finding in *Carswell Air Force Base*. Since only the Regional Director is empowered to make representation case determinations, the Hearing Officer obtains a complete and adequate record, without pre-judging the results.

See *BEP*, 49 at 107, where the Agency opened a new facility and most of the employees were transferred along with the parties' agreements to recognize the exclusive bargaining relationships that exist at the first plant. However, the circumstances surrounding the special police at the new facility were completely different and warranted an appropriate severance as the police formed an appropriate functional unit.

See HOG 45 for specific guidance on developing a record about this topic at hearing.

Other references:

Defense Logistics Agency, Defense Supply Center Columbus, Columbus, Ohio, 53 FLRA 1114 (1998).

National Association of Government Employees, Service Employees International Union, Local 5000, AFL-CIO-CLC and Service Employees International Union, AFL-CIO-CLC and Department of Veterans Affairs, 52 FLRA 1068 (1997).

Department of Health and Human Services, 43 FLRA 1245 (1992)

