64 FLRA No. 120

UNITED STATES
DEPARTMENT OF THE AIR FORCE
RANDOLPH AIR FORCE BASE
SAN ANTONIO, TEXAS
(Petitioner/Activity)

and

UNITED STATES
DEPARTMENT OF THE AIR FORCE
LANGLEY AIR FORCE BASE
LANGLEY AIR FORCE BASE, VIRGINIA
(Activity)

and

AIR FORCE MANPOWER AGENCY
2ND MANPOWER REQUIREMENTS SQUADRON
LANGLEY AIR FORCE BASE, VIRGINIA
(Activity)

and

NATIONAL ASSOCIATION
OF GOVERNMENT EMPLOYEES
LOCAL R4-26 AND R4-106
(Labor Organization/Incumbent)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1840
(Labor Organization/Interested Party)

WA-RP-08-0018

ORDER GRANTING
APPLICATION FOR REVIEW
AND REMANDING
TO THE REGIONAL DIRECTOR

April 20, 2010

Before the Authority: Carol Waller Pope, Chairman, and Thomas M. Beck and Ernest DuBester, Members [1]

I. Statement of the Case

This case is before the Authority on an application for review filed by the American Federation of Government Employees, Local 1840 (AFGE) under § 2422.31 of the Authority's Regulations. [2] The United States Air Force, Randolph Air Force Base (AFB), San Antonio, Texas (the Petitioner) filed an opposition to AFGE's application for review. The National Association of Government Employees, Locals R4-26 and R4-106 (NAGE) did not file an opposition to AFGE's application for review.

The Regional Director (RD) determined that, following a reorganization, approximately twenty-five employees at Langley AFB should not be automatically included in an existing certified unit represented by AFGE, and should remain in an existing certified unit represented by NAGE.

For the reasons that follow, we remand the matter to the RD for further action consistent with this decision.

II. Background and RD's Decision

A. Background

Following a reorganization, the Headquarters of the Air Force Manpower Agency (HQ AFMA) located at Randolph AFB created five "Manpower Requirements Squadrons" (MRSs or squadrons). RD's Supp. Decision at 4. Two of these MRSs are involved in this case. The 1st MRS (1MRS) is located at Randolph AFB in Texas. The 2nd MRS (2MRS) is located at Langley AFB in Virginia. [3] The squadrons are charged with helping AFMA HQ identify and provide the manpower required to effectively and efficiently accomplish the mission of the Air Force. *Id*.

2MRS employees, together with other Air Force civilian employees at Langley AFB in Virginia, are represented by NAGE. 1MRS employees, together with other Air Force civilian employees at Randolph AFB in Texas, are represented by AFGE. *Id.* at 1, 6 n.5.

1. Member Beck's dissenting opinion is set forth at the end of this decision.

2. Section 2422.31 of the Authority's Regulations provides, in pertinent part, that the Authority may grant an application for review when "[t]here is a genuine issue over whether the Regional Director has . . . [f]ailed to apply established law . . . ." 5 C.F.R. § 2422.31(c)(3)(i).

3. The other three MRSs are located at Scott AFB in Illinois, Buckley AFB in Colorado, and Tinker AFB in Oklahoma. The status of the other three MRSs is not at issue in this case.

The NAGE and AFGE bargaining units are defined according to the location of their servicing civilian personnel offices. Thus, NAGE, Locals R4-26 and R4-106 are certified as the exclusive representatives of a unit which includes "[a]ll non-professional [General Schedule (GS)] and [Wage Grade (WG)] employees serviced by the Central Civilian Personnel Office [CCPO], Langley AFB, Virginia." *Id.* at 3. AFGE is certified as the exclusive representative of a unit of non-professional employees, including "[a]ll permanent, full-time civilian employees paid from appropriated funds in all organizations serviced by the [CCPO] of Randolph Air Force Base, Texas." *Id.* at 4.

These certifications resemble in part an Air Force directive on civilian personnel servicing. The Air Force requires that its employees be serviced by the civilian personnel office located closest to their place of employment. *Id.* at 8 (citing Air Force Policy Directive 36-1, *Federal Civilian Personnel Provisions and Authorities*). However, an exception to this directive may be requested from Air Force Headquarters. *Id.* (citing Air Force Instruction 36-105, *Federal Civilian Personnel Servicing Arrangements*).

In October 2006, such an exception was filed concerning HQ AFMA and the five MRSs. The exception requested that all personnel servicing for HQ AFMA and the five squadrons be handled by the Randolph AFB civilian personnel office, rather than by the civilian personnel office located closest to each squadron. *Id*.

The request was granted and, in August 2007, the civilian personnel servicing for all five of the squadrons was centralized at the Randolph AFB civilian personnel office. *Id.* at 8. Consequently, the 2MRS employees at Langley AFB began receiving personnel servicing through Randolph AFB instead of through Langley AFB.

Because the scope of NAGE's and AFGE's bargaining units are defined according to the location of personnel servicing, an issue arose as to whether this change would affect the unit status of the 2MRS employees at Langley AFB represented by NAGE. Accordingly, the Petitioner filed a petition to determine "whether, as a result of a change to the servicing civilian personnel office for certain employees of the bargaining unit at Langley [AFB], represented by [NAGE], these employees should now be included in the bargaining unit of all employees serviced by the [CCPO] of Randolph [AFB], represented by [AFGE]." *Id.* at 2.

The parties took different positions on the issues raised in the petition. The Petitioner asserted that the 2MRS employees should be included in AFGE's unit because the "appropriate unit" criteria set forth § 7112(a) of the Federal Service Labor-Management Relations Statute (Statute) were met. *Id.* at 13. NAGE, in contrast, contended that it should continue to represent the 2MRS employees located at Langley AFB because it could provide on-site representation.

AFGE claimed that the 2MRS employees should be included in its unit at Randolph AFB. AFGE relied on *Department of the Army, Headquarters, Fort Dix, Fort Dix, New Jersey,* 53 FLRA 287, 294 (1997) (*Fort Dix*). AFGE argued that under *Fort Dix*, new employees are automatically included in a bargaining unit if their positions fall within the express terms of the unit's certification and their inclusion does not render that unit inappropriate. According to AFGE, since the "express terms" of AFGE's certification provide that all employees serviced by the Randolph AFB CCPO are included in the AFGE unit, and the 2MRS employees are serviced by the Randolph AFB CCPO, those employees should be included in its existing Randolph AFB unit. *Id.* RD's Supp. Decision at 13.

B. RD's Supplemental Decision [4]

The RD determined that the 2MRS employees should continue to be represented by NAGE. The RD rejected AFGE's argument that, under *Fort Dix*, the 2MRS employees should be automatically included in AFGE's bargaining unit. *Id.* at 2, 16. The RD gave the following reasons for his decision.

> To permit a change in a unit's exclusive representative simply by changing its servicing personnel center would leave employee representation subject to the whim of the Activity. In this respect, AFGE's position could produce an untenable result wherein, to the extent an agency experienced labor disputes with a union at one location, it need only change the locus of the personnel services to a different site with a more accommodating labor organization. Such an outcome is not what was intended by the language in the Randolph AFB unit description (and others of its kind written nearly forty years ago [and] prior to the Statute) and is not controlling language for automatic inclusion purposes under *Fort Dix*. Moreover, such a result does not further the purposes and policies of the Statute.

4. Because the application for review challenges only the RD's supplemental decision, we do not address the RD's initial decision, which the supplemental decision superseded.

Id. at 16. Accordingly, the RD concluded that the 2MRS employees at Langley AFB should not be included in the AFGE unit under the automatic inclusion principle of *Fort Dix*.

The RD also concluded that the 2MRS employees should remain in the NAGE unit based on "appropriate unit" considerations under § 7112(a) of the Statute. *See id.* at 19-20; 5 U.S.C. § 7112(a) (a unit may be found appropriate under § 7112(a) of the Statute only where it will: (1) ensure a clear and identifiable community of interest among the employees in the unit; (2) promote effective dealings with the agency; and (3) promote efficiency of the operation of the agency). The RD concluded that the inclusion of the 2MRS employees in AFGE's unit was not warranted because the 2MRS employees have a clear and identifiable community of interest that is separate and distinct from that of the unit represented by AFGE at Randolph AFB. *Id.* at 19-20. Furthermore, the RD proposed to clarify the NAGE and AFGE unit certifications. [5]

III. Positions of the Parties

A. AFGE's Application for Review

AFGE argues that the RD failed to apply established law. First, AFGE claims that under *Fort Dix,* 2MRS employees fall within the "express terms" of AFGE's existing unit certification and are, therefore, automatically included in the AFGE bargaining unit. Application for Review at 8-9 (quoting *Fort Dix* 53 FLRA 287). According to AFGE, the RD erred in determining that *Fort Dix's* automatic inclusion principle does not apply in this case because he erroneously based that determination on the age of the bargaining unit certification. To the contrary, AFGE argues that *Fort Dix* "explicitly rejected" the idea that the age of a unit certification should be considered as a factor in applying the automatic inclusion principle. "Bargaining unit certifications do not become stale over time, if they continue to accurately describe the organization and its employees[.]" *Id.* at 9 (quoting *Fort Dix,* 53 FLRA at 295).

Second, AFGE argues that the RD erroneously applied the criteria that the Authority uses to make appropriate unit determinations set forth in § 7112(a) of the Statute when he declined to find that the 2MRS employees should be included in AFGE's unit.

For these reasons, AFGE requeststhat the Authority grant the application for review, overturn the RD's Decision and Order, and find that the 2MRS bargaining unit employees are automatically included in the existing AFGE unit. In addition, AFGE requests that the Authority remand the case to the RD for clarification because the RD's proposed unit certifications are ambiguous and can be interpreted as granting the Petitioner's petition. *Id.* at 14-15.

B. Petitioner's Opposition

The Petitioner agrees with AFGE that the RD should have applied the automatic inclusion principle of *Fort Dix* for the reasons set forth in AFGE's application for review. The Petitioner also agrees with AFGE that application of the § 7112(a) appropriate unit criteria favors inclusion of the 2MRS employees in AFGE's unit. Petitioner's Opposition at 1.

IV. The RD failed to apply established law.

Under 5 C.F.R. § 2422.31(c)(3)(i), the Authority may grant an application for review when the application demonstrates that the RD failed to apply established law. The RD ruled that the automatic inclusion principle under *Fort Dix* is inapplicable in this case. RD's Supp. Decision at 17. For the reasons that follow, we conclude that by determining not to apply Authority precedent set forth in *Fort Dix*, the RD failed to apply established law.

A. Established Law

Fort Dix reaffirms longstanding Authority precedent holding that "[n]ew employees are automatically included in an existing bargaining unit where their positions fall within the express terms of a bargaining certificate[ion] and [their] inclusion [would] not render the bargaining unit inappropriate." *Fort Dix,* 53 FLRA at 294 (citing *U.S. Dep't of the Air Force, Carswell Air Force Base, Tex.*, 40 FLRA 221, 229–30 (1991); *U.S. Army Air Def. Artillery Ctr. and Fort Bliss, Fort Bless, Tex.,* 31 FLRA 938 (1988); *U.S. Dep't of Commerce, Nat'l Oceanic and Atmospheric Admin*., *Nat'l Marine Fisheries Serv., N.E. Region*, 24 FLRA 922, 926 (1986)).

The Authority has interpreted *Fort Dix* broadly to apply not only to new employees hired into previously existing positions, but also to employees in newly created positions that fall within the express terms of the existing certification. *See Soc. Sec. Admin., Office of Disability Adjudication & Review, Falls Church, Va.,* 62 FLRA 513, 514-15 (2008) (*Falls Church*) (citing *U.S. Dep't of Def., Def. Logistics Agency, Def. Supply*

5. The RD's proposed NAGE and AFGE unit certifications are set forth in the appendix.

Ctr. Columbus, Columbus, Ohio, 60 FLRA 523, 526 (2004) (citing *Fort Dix,* 53 FLRA at 294 (citations omitted)), *application for review dismissed*, 60 FLRA 974 (2005)). Moreover, the Authority has specifically rejected the assertion that *Fort Dix* should be interpreted narrowly. *See U.S. Dep't of Def., Def. Commissary Agency,* 59 FLRA 990, 991-92 (2004) (rejecting agency's request to reconsider *Fort Dix's* presumption that new categories of employees falling within express terms of a unit certification are included in the unit).

B. Application of Established Law

The RD should have applied the automatic inclusion principle set forth in *Fort Dix*. This case involves new categories of 2MRS employees created by the Petitioner; some of the MRS employees are new employees and the rest are existing employees who were placed in newly created positions. RD's Supp. Decision at 6-7.

Moreover, all 2MRS employees at issue fall within the express terms of AFGE's existing unit certification. As discussed previously, AFGE's existing unit includes "[a]ll permanent, full-time civilian employees paid from appropriated funds in all organizations serviced by the [CCPO] of Randolph [AFB], Texas." RD's Supp. Decision at 4. There is no dispute that the 2MRS employees fit this description; the Randolph AFB CCPO currently provides personnel servicing to the 2MRS bargaining unit employees at issue.

Authority precedent does not support the RD's conclusion that the 2MRS employees should not be included in AFGE's unit. As set forth above, the RD rejected the applicability of *Fort Dix*, finding that AFGE's certification supporting the 2MRS employees' inclusion in AFGE's unit was nearly forty years old. The RD also determined that applying *Fort Dix* would produce an unintended outcome that would "not further the purposes and policies of the Statute." RD's Supp. Decision at 16.

Fort Dix itself contradicts the RD's findings. In *Fort Dix,* the Authority specifically held that "[b]argaining unit certifications do not become stale over time, if they continue to accurately describe the organization and employees within their scope." *Fort Dix,* 53 FLRA at 295 (rejecting RD's suggestion that passage of twenty-five years from issuance of certification foreclosed inclusion of employees in unit); *see also* 5 C.F.R. § 2422.32(b) (grounds on which a certification may be revoked do not include age of certification).

Further, the RD's concerns that applying *Fort Dix* would not "further the purposes and policies of the Statute" are not substantiated by the record. There is no claim or evidence that the reorganization and personnel office redesignation were motivated by a desire to disrupt the Langley/NAGE bargaining relationship.

We therefore conclude that by failing to apply *Fort Dix* in this case, the RD failed to apply established law.

Thus, as the 2MRS employees fall within the express terms of AFGE's certification, under *Fort Dix,* they should be included in AFGE's unit unless their inclusion would render the unit inappropriate. *See U.S. Dep't of the Navy*, *Human Resources Serv. Ctr. Nw., Silverdale, Wash*., 61 FLRA 408, 412 (2005). However, the RD did not make and the record does not permit the Authority to make this determination. Accordingly, we remand the petition to the RD to determine under *Fort Dix* whether including the 2MRS in AFGE's bargaining unit would render the unit inappropriate. *See Falls Church,* 62 FLRA at 515.

We further find that the RD's proposed certifications are ambiguous. The RD found that the NAGE unit should continue to include the 2MRS employees, but the express terms of his proposed certifications would include the 2MRS employees in AFGE's unit. Accordingly, after applying *Fort Dix*, we further order that the RD issue new certifications.

V. Order

The matter is remanded to the RD for further processing consistent with this decision. [6]

6. In light of this ruling, we do not address AFGE's remaining arguments. *See, e.g., U.S. Dep't of the Army, Military Traffic Mgmt. Command, Alexandria, Va.,* 60 FLRA 390, 395 n.7 (2004).

APPENDIX

The RD proposed to clarify the NAGE and AFGE certifications as follows:

> A unit of professional employees represented by the [NAGE], Local R4-106.
>
> Included: All professional general schedule employees serviced by the CCPO . . . , Langley AFB, Virginia.
>
> Excluded: All nonprofessional employees, wage grade employees, management officials, supervisors, firefighters, guards, temporary employees with appointments of 90 days or less with no prospect of continuous employment and employees described in 5 U.S.C. [§] 7112(b)(2), (3), (4), (6) and (7).
>
> A unit of non-professional employees represented by [NAGE], Local R4-26 and R4-106.
>
> Included: All non-professional GS and WG Air Force employees serviced by the [CCPO], Langley AFB, Virginia.
>
> Excluded: All professional GS employees, management officials, supervisors, firefighters, guards, non-appropriated fund employees, temporary employees with appointments of 90 days or less and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6) and (7).
>
> A unit of non-professional employees represented by the [AFGE], Local 1840.
>
> Included: All permanent, full-time civilian employees paid from appropriated funds in all organizations serviced by the [CCPO] of Randolph [AFB], Texas.
>
> Excluded: All professional employees, management officials, supervisors, Fire Department employees, guards and employees described in 5 U.S.C. [§] 7112(b)(2), (3), (4), (6) and (7).

RD's Supp. Decision at 20.

Member Beck, Dissenting:

I do not agree with my colleagues insofar as they conclude that these circumstances require an application of *Fort Dix*. Consequently, I would not disturb the Regional Director's determination.

Fort Dix held only that new employees (hired into previously existing positions) automatically become part of an existing bargaining unit when they fall within the existing certification for that bargaining unit. *Dep't of the Army, Headquarters, Fort Dix, Fort Dix N.J.*, 53 FLRA 287, 294 (1997) (newly-hired civilian police officers and investigators included in existing bargaining unit consisting of administrative personnel, inspectors, and dispatchers). More recently, the Authority has effectively extended the automatic inclusion rationale adopted in *Fort Dix* to certain other situations — employees placed operationally or geographically under another organization as the result of a reorganization (*U.S. Dep't of the Navy*, *Fleet & Industrial Supply Ctr. Norfolk*, *Va*., 52 FLRA 950, 953-4 (1997)) and employees hired into newly created positions (*U.S. Dep't of Def., Def. Logistics Agency, Def. Supply Ctr., Columbus, Columbus, Ohio,* 60 FLRA 523 (2004)). In other words, *Fort Dix* and these later cases favor the status quo – that is, employee representation by the incumbent union — in situations where management elects to hire new employees or otherwise initiates a material reorganization or restructuring.

In contrast to *Fort Dix* and the other cases cited above, this case presents the question whether a different union should displace the incumbent union when no change has occurred in the composition of the workforce, their duties, location, or organizational command. The only change that occurred in August 2007 was the Agency's unilateral determination to change the office that provides human resource services to the 2MRS employees working at Langley Air Force Base. RD Decision at 8, 19. The same employees continue to perform the same type of work, at the same base, and report to the same command (HQ AFMA). *Id*. at 4, 7, 18.

Therefore, I do not agree that these circumstances required the Regional Director to apply *Fort Dix*.