

**65 FLRA No. 129**

UNITED STATES  
DEPARTMENT OF THE AIR FORCE  
TYNDALL AIR FORCE BASE  
TYNDALL AFB, FLORIDA  
(Activity)

and

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 1113, AFL-CIO  
(Union/Petitioner)

AT-RP-10-0016

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ORDER DENYING  
APPLICATION FOR REVIEW

March 16, 2011

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

### I. Statement of the Case

This case is before the Authority on an application for review (application) filed by the Activity under § 2422.31 of the Authority's Regulations.<sup>1</sup> The Union did not file an opposition to the Activity's application.

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1. Section 2422.31 of the Authority's Regulations provides, in pertinent part:

(c) Review. The Authority may grant an application for review only when the application demonstrates that review is warranted on one or more of the following grounds:

- (1) The decision raises an issue for which there is an absence of precedent;
- (2) Established law or policy warrants reconsideration; or
- (3) There is a genuine issue over whether the Regional Director has:

- (i) Failed to apply established law;
- (ii) Committed a prejudicial procedural error;
- (iii) Committed a clear and prejudicial error concerning a substantial factual matter.

The Union filed a petition to determine whether the position of Air Force Police Officer (Officer) is properly within the bargaining unit. The Activity argued that Officers perform security work that directly affects national security within the meaning of § 7112(b)(6) of the Federal Service Labor-Management Relations Statute (the Statute) and thus are excluded from the bargaining unit. The Regional Director (RD) determined that Officers perform security work that involves national security; however, he concluded that the position's duties do not directly affect national security. The RD, accordingly, determined that Officers should not be excluded from the bargaining unit. For the reasons that follow, we deny the Activity's application.

### II. Background and RD's Decision

#### A. Background

The Activity is a military base for the United States Department of the Air Force (Air Force). The Activity's mission is to support the combat functions of the Air Force by providing training, maintenance personnel, and managers that provide combat assistance. *See* RD's Decision at 8. The Activity houses over thirty tenants who assist with this mission. *Id.* at 3. These tenants perform various functions, including responding to air threats located in the Activity's region, *id.*; evaluating the Air Force's "air to air weapons system," *id.*; researching, discovering, and developing technologies to "further air base capabilities," *id.*; and providing "tools, practices, and professional support to maximize Air Force civil engineer capabilities[.]" *id.* (quoting Activity Ex. 1 at 17).

The Activity employs fifteen Officers, a civilian position that is responsible for several security functions on the base.<sup>2</sup> *Id.* at 4. The position is considered "non-critical, sensitive," and Officers have a "secret level of security clearance." *Id.* (citing Tr. at 34). All Officers receive training in "basic law enforcement techniques[.]" *Id.*

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2. At the hearing, the parties stipulated that the duties performed by two Officers who testified -- Officers K and T -- were representative of the duties performed by all fifteen Officers. RD's Decision at 2.

At the beginning of each shift, Officers receive verbal briefings about security issues. *Id.* at 4-5. The information they receive is not typically classified and is often “watered-down” information that is available to the public. *Id.* at 6 (citing Tr. at 165); *see also id.* at 5. Officers do not regularly “destroy[], reproduc[e], stor[e], or handl[e] classified information.” *Id.* at 4 (citing Tr. at 66).

Officers are stationed at the Activity’s front gates. *Id.* at 5. They are responsible for checking identification and passes for visitors who pass through the front gates. *Id.* However, Officers do not issue identification or passes, except on weekends when they may hand out visitors’ passes. *Id.* On weekdays, commercial vehicles enter through a separate gate that is not staffed by Officers. *Id.* On weekends, however, commercial vehicles must come through the front gate. Officers visually inspect commercial vehicles that come through the front gate, but they do not use any equipment to do so. *Id.* Officers inspect other types of vehicles only when instructed to do so by the Activity as part of its “random anti-terrorist measure[.]” *Id.* at 5-6 (citing Tr. at 141).

Officers must respond to alarms that are activated at any of the Activity’s facility buildings. *Id.* at 4. Facility buildings are critical buildings or buildings that contain classified information. *Id.* Responding to alarms at facility buildings comprises most of the Officers’ duties and occurs, on average, twice a shift. *Id.* at 4, 6. When an alarm is activated, an Officer proceeds to the building and waits for a building custodian to arrive. *Id.* at 6. The Officer and the custodian walk through the facility to determine the cause of the alarm. *Id.* at 4. The facilities often contain classified information that the building owners must secure. *Id.* Officers potentially could view information that had been left unsecured, but none recalled actually seeing such information. *Id.* at 4, 6.

Officers also are responsible for responding to incidents involving suspicious packages or bomb threats. *Id.* at 5. If a suspicious package is reported, Officers and military police cordon off the area, evacuate unauthorized individuals inside the area, and prevent non-authorized individuals from entering it. *Id.* at 5, 6; Tr. at 168. Officers cordon-off the area until a fire chief (chief) with the Activity’s fire department or other official determines no threat is present. RD’s Decision at 6 (citing Tr. at 126-27, 137). Chiefs have the authority to send in bomb disposal units (disposal units) or military personnel with bomb-sniffing dogs. *Id.* at 5; Tr. at 137-38. The

disposal units are part of the Activity’s civil engineer unit and have no affiliation with the Officers. Officers cannot enter the cordoned-off area unless chiefs order them to do so. Tr. at 166. Officers also do not assist with the disposal of the package. *See id.*

#### B. RD’s Decision

The RD noted that, under § 7112(b)(6) of the Statute, a bargaining unit is not considered appropriate if it includes “any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security[.]” RD’s Decision at 7 (quoting 5 U.S.C. § 7112(b)(6)). The RD further stated that, in order to determine whether an employee fits within the foregoing standard, the Authority examines “whether employees are: (1) engaged in security work that (2) directly affects (3) national security.” *Id.* (citing *U.S. Dep’t of Def., Pentagon Force Prot. Agency, Wash., D.C., 62 FLRA 164, 171 (2007)*).

The RD concluded that the Officers’ duties involve security work within the meaning of § 7112(b)(6). *Id.* at 8. The RD reached this conclusion despite also finding that Officers “do not use classified information or have regular access to it.” *Id.* at 7. The RD determined that, although Officers, when responding to alarms, search facilities containing classified information, there is little chance that Officers could view or use the classified information in these buildings. *See id.* He also found that Officers receive only “watered down” information during their security briefings. *Id.* at 8. Thus, the RD found that Officers do not use or have “regular” access to classified information. *Id.* at 7. He nevertheless concluded that the Officers’ other duties -- including patrolling the base and its perimeter, monitoring the front gates, responding to suspicious packages and bomb threats, making routine traffic stops, monitoring gate cameras, responding to alarm facilities, and providing security for the Activity’s tenants -- establish that they perform security work under § 7112(b)(6). *See id.* at 8.

The RD also determined that Officers’ duties involve national security within the meaning of § 7112(b)(6) of the Statute.<sup>3</sup> *Id.* at 9.

Finally, the RD concluded that the Officers’ duties do not directly affect national security. He

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3. Neither party disputes this conclusion. Accordingly, we do not address it further.

stated that an employee's duties directly affect national security if they have "a straight bearing or unbroken connection that produces a material influence" on national security. RD's Decision at 8 (citing *SSA, Balt., Md.*, 59 FLRA 137, 144 (2003) (*SSA*) (Chairman Cabaniss concurring and then-Member Pope concurring in part and dissenting in part); *Dep't of Energy, Oak Ridge Operations, Oak Ridge, Tenn.*, 4 FLRA 644, 655 (1980) (*Oak Ridge*)). Relying on the foregoing standard, the RD examined several of the Officers' duties. As is relevant here, he analyzed their involvement with suspicious packages and the front gate.

The RD found that Officers must respond to incidents involving "bomb threats or suspicious packages[.]" *Id.* at 8. However, he found that Officers only secure and control the area containing these threats, whereas the fire chief or the bomb disposal unit deals with, and ultimately disposes of, the actual threat. *Id.* Thus, the RD concluded that the Officers' role in such situations is limited.

Examining the Officers' front gate duties, the RD found that Officers monitor gate cameras, check visitor identification and passes, perform random searches of non-commercial vehicles when ordered to do so during "random anti-terrorist measures[.]" and visually inspect commercial vehicles on weekends. *Id.* at 8-9. However, the RD also found that Officers do not actually determine who may access the base; indeed, the only time Officers issue visitors' passes is on the weekend, and visitors must be sponsored by someone else. *Id.* Further, the RD determined that Officers may not search non-commercial vehicles unless ordered to do so. *Id.* at 9. Additionally, the RD found that Officers are limited to searching commercial vehicles on the weekend and, even then, conduct only visual inspections. *Id.*

Based on the foregoing, the RD determined that the Officers' duties do not "have a clear, unbroken connection to national security." *Id.* The RD concluded that Officers should not be excluded from the bargaining unit because the duties they perform do not directly affect national security within the meaning of § 7112(b)(6) of the Statute. *See id.*

### III. Activity's Application

The Activity requests that the Authority grant its application. The Activity argues that the RD's Decision is incorrect for three reasons.

First, the Activity contends that the RD "ignored facts" when he determined that the Officers'

"relationship to national security is limited." Application at 1. Specifically, the Activity asserts that the RD did not properly evaluate how the Activity's "mission critically shortens the link between the [Officers'] duties and national security." *Id.* at 2. The Activity argues that its functions are "synonymous" with national security; as such, by protecting "a national security nerve center" like the Activity, a "link" is established between the Officers' duties and national security. *Id.* at 3. Therefore, according to the Activity, "[v]irtually every one of the criteria" in *Oak Ridge*, 4 FLRA at 655-56, is satisfied. *Id.*

Second, the Activity asserts that the RD "improperly" relied on his findings that Officers do not use, or have regular access to, classified information to support his conclusion that Officers do not directly affect national security. *Id.* at 4. The Activity contends that the RD should have limited the use of these findings to his analysis of whether Officers perform security work. *Id.* Based on this argument, the Activity also argues that the RD did not treat "access to" classified information and "use of" classified information equally. *Id.* According to the Activity, the RD improperly focused "on the use of classified information while" avoiding the Officers' "ease of regular access to classified materials." *Id.* at 5.

Third, the Activity contends that the RD "committed prejudicial error" by minimizing the Officers' duties concerning suspicious packages. *Id.* at 7. The Activity argues that the RD "gloss[ed] over" the Officers' duties by placing undue emphasis on the duties that the chief and the disposal units perform. *Id.* According to the Activity, in these situations, Officers respond to threats; "rapidly neutralize . . . the threat[.]" move people and assets away from the threat; apprehend suspicious persons; and "expose themselves to serious harm" by cordoning off the threat area. *Id.* Based on the foregoing, the Activity asserts that the chief and bomb technician's duties do not diminish the Officers' affect on national security. Furthermore, the Activity contends that the RD "inappropriately minimized" the Officers' duties with respect to the searching of commercial vehicles. *Id.* at 8. The Activity argues that the RD did not consider that, when Officers search commercial vehicles on the weekend, they search vehicles of various sizes. *Id.* at 8-9 (quoting Tr. at 134). Had the RD considered this fact, the Activity contends, he would have reached a different result. *See id.* at 8-9.

#### IV. Analysis and Conclusions

A. The RD did not commit clear and prejudicial error in connection with his examination of certain duties performed by Officers.

1. The RD did not commit clear and prejudicial error by disregarding facts linking the Activity's functions to the Officers' affect on national security.

The Activity first argues that the RD "disregarded facts" linking the functions performed by the Activity, the Officer's duties, and national security. Application at 1. According to the Agency, due to the importance of the Activity's work, the RD should have found that any security work performed on the base necessarily affects national security. *See id.* at 2-3. The Activity's argument is misplaced. In deciding whether a position directly affects national security within the meaning of § 7112(b)(6) of the Statute, the Authority has consistently looked *only* to the duties of the position at issue. *See, e.g., U.S. Dep't of the Air Force, Davis-Monthan Air Force Base, Ariz.*, 62 FLRA 332, 335 (2008) (Chairman Cabaniss concurring); *U.S. Dep't of Justice, Wash., D.C.*, 62 FLRA 286, 294 (2007) (Chairman Cabaniss concurring in part, dissenting in part); *Oak Ridge*, 4 FLRA at 655. The Authority has never stated that a position directly affects national security because of the duties performed by an activity. The Activity's argument is, therefore, incorrect.

Consistent with the foregoing, the Activity's reliance on *Oak Ridge* is misplaced. The Activity asserts that this matter satisfies "[v]irtually every one of the criteria" in *Oak Ridge*. Application at 3. The Activity does not explain what those "criteria" are, or how they apply in this matter. *Id.* Moreover, although the Authority in *Oak Ridge* examined the functions of the activity, it relied on the *duties of the position* at issue in order to determine whether that position directly affected national security. *See Oak Ridge*, 4 FLRA at 656. Consequently, *Oak Ridge* does not support the Activity's position.

Based on the foregoing, we deny the Activity's claim.

2. The RD did not commit clear and prejudicial error because he properly weighed the Officers' suspicious package duties.

The Activity contends that the RD committed prejudicial error because he failed to properly weigh: (1) the Officers' involvement with suspicious packages; and (2) the Officers' searching of commercial vehicles. As previously noted, under § 7112(b)(6) of the Statute, a bargaining unit is not appropriate if it includes any employee engaged in "security work which *directly affects* national security[.]" 5 U.S.C. § 7112(b)(6) (emphasis added). The Authority defines "direct effect" as "a straight bearing or unbroken connection that produces a material influence or [alteration]." *U.S. Dep't of Agric., Food Safety & Inspection Serv.*, 61 FLRA 397, 402 (2005) (*USDA*) (quoting *SSA*, 59 FLRA at 143); *Oak Ridge*, 4 FLRA at 655 (citing *Webster's Seventh New Collegiate Dictionary*). The Authority has found that a position does not directly affect national security if an intervening factor severs the position's affect on national security or otherwise limits it. *See, e.g., USDA*, 61 FLRA at 402.

The Activity first argues that the Officers' duties with respect to suspicious packages establish the Officers' direct effect on national security. The record reveals, however, that the Officers actual role in such situations is limited.

Officers are responsible for evacuating an area containing suspicious packages, cordoning-off the area, and preventing unauthorized individuals from entering the area. *See RD's Decision* at 8; Tr. at 126-27, 137. This is the extent of the Officers' functions; other positions are responsible for eliminating the threat posed by a suspicious package. A chief with the Activity's fire department is in charge of the situation and is the only individual who makes the decision as to how the situation should be resolved. *RD's Decision* at 6; Tr. at 137-38. To this end, only a chief can decide whether or not a disposal unit -- which contains no Officers -- or military personnel with bomb-sniffing dogs should be sent into the cordoned off area to dispose of the package. Tr. at 137-38. The disposal unit and military personnel are the only individuals who physically handle the package and ultimately decide how to dispose of it. *Id.* at 69-70. Moreover, although Officers cordon off the area, they do so in conjunction with military police. *Id.* at 168. Thus, even in the absence of Officers, other positions are available to cordon off the area. The Activity does not dispute any of the foregoing, nor has it averred that Officers have any

involvement with the actual disposal of any suspicious packages. Accordingly, the record establishes that the Officers' ability to eliminate any threat posed by a suspicious package is quite "limited." *USDA*, 61 FLRA at 402 (position's limited duties in resolving threat to national security supported finding that position did not directly affect national security).

The Officers' discretion in resolving situations involving suspicious packages is similarly limited. Officers are required to follow a chief's orders. Officers cannot even enter the cordoned area unless a chief orders them to do so. *Tr.* at 169. Moreover, the Activity has not asserted, and the record does not reveal, that Officers have any control over the disposal unit or military personnel's actions or decisions. Thus, Officers have a "less than direct" impact on how suspicious package situations are resolved. *USDA*, 61 FLRA at 402 (position's limited discretion in deciding how to resolve threats supported finding that position did not directly affect national security).

The foregoing supports the RD's conclusion that Officers do not directly affect national security. Nevertheless, the Activity contends that Officers "are the actual threat response," Application at 8, because they "move people and assets out of harm's way, . . . apprehend suspicious persons, and . . . expose themselves to serious harm" by cordoning off the area, *id.* at 7. Although Officers do remove individuals from the area, as established above, Officers have little to no role in the disposal of suspicious packages, which is the "actual threat" at issue. *Id.* Additionally, the Activity cites to nothing in the record that establishes that Officers apprehend individuals associated with suspicious packages, nor do they explain how Officers being exposed to harm directly affects national security. The Agency's position, therefore, does not result in a different conclusion.

The Activity also contends that the RD committed prejudicial error because he failed to consider the fact that, when Officers search commercial vehicles on the weekend, they search vehicles of various sizes. Application at 8-9. Even if the RD failed to consider the distinction in commercial vehicle sizes, the Activity does not explain how such a distinction could directly affect national security. Thus, even if the RD committed the foregoing error, that error would not lead us to determine that his overall conclusion was erroneous.

Based on the foregoing, we reject the Activity's claim that the RD committed prejudicial error by failing to properly weigh certain duties.

B. The RD did not fail to apply established law.

The Activity argues that the RD impermissibly considered the Officers' involvement with classified information in his analysis of whether Officers directly affect national security. Application at 4. Based on this argument, the Activity also asserts that the RD did not treat the *use of* classified information and *access to* classified information equally. *Id.* at 4-5. We construe the foregoing arguments as assertions that the RD failed to apply established law.

The Activity's assertions are flawed. Contrary to the Activity's claim, the RD did not rely on the Officers' involvement with classified information to decide whether Officers directly affect national security. In his decision, the RD stated that, "[d]espite" the Officers' limited involvement with classified information, their other duties establish that they "are involved in *security work* under the meaning of [§ 7112(b)(6) of the Statute], thereby satisfying *the first prong* of the test." RD's Decision at 8 (emphasis added). The RD made no mention of the "directly affects" prong of § 7112(b)(6). 5 U.S.C. § 7112(b)(6). The foregoing language, therefore, demonstrates that the RD considered the Officers' involvement with classified information *solely* for the purposes of deciding whether Officers perform security work within the meaning of § 7112(b)(6). This is further reinforced by the fact that the RD's discussion of whether Officers directly affect national security contains *no* reference to the Officers' involvement with classified information. *See id.* at 8-9.

The Officers' non-use of, and limited access to, classified information was not part of the RD's consideration of whether Officers directly affect national security. Thus, the Activity's argument is incorrect, and we reject it. Because this argument is the basis of the Activity's assertion that the RD did not treat "access to" and "use of" classified information equally, we likewise reject that argument as well. Application at 4.

## V. Order

The Activity's application for review is denied.