68 FLRA No. 3

UNITED STATES
DEPARTMENT OF HOMELAND SECURITY
CUSTOMS AND BORDER PROTECTION
(Agency)

and

NATIONAL TREASURY
EMPLOYEES UNION
(Union/Petitioner)

WA-RP-13-0039

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ORDER DENYING
APPLICATION FOR REVIEW

October 17, 2014

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Before the Authority: Carol Waller Pope, Chairman, and Ernest DuBester and Patrick Pizzella, Members

I. Statement of the Case

The Union petitioned Federal Labor Relations Authority Regional Director Barbara Kraft (RD) to clarify the bargaining-unit status of supply-chain specialists (specialists) in the Customs-Trade Partnership Against Terrorism Program (C-TPAT or program). In the attached decision, the RD found that, because the specialists' work does not directly affect national security, they should be included in the bargaining unit.

In its application for review, the Agency contends that the RD made three clear and prejudicial errors concerning substantial factual matters, and, based on these mistakes, she "incorrectly determined [that] the [specialists'] work does not 'directly affect' national security."[1] First, the Agency alleges that the RD made a factual error in stating that the specialists' work consists of using a checklist. As this argument mischaracterizes the RD's findings, we find that it fails to demonstrate that the RD committed a prejudicial factual error.

Second, the Agency contends that the RD made a factual error, based on the first alleged error, in stating that the specialists' "duties consist of going through a 'fairly routine and automated review.'"[2] Because this argument likewise mischaracterizes the RD's findings, we rule that it fails to demonstrate that the RD committed a prejudicial factual error.

Finally, the Agency argues that the RD made a factual error in determining that management, not specialists, makes the decision as to program membership. As evidence directly supports the RD's findings, this argument challenges the weight accorded to the evidence by the RD. Therefore, we find that this argument fails to provide a basis for granting the Agency's application.

II. Background

The Union filed a petition seeking to clarify the bargaining-unit status of the specialists who work in the program. International trading entities voluntarily apply to participate in this program, which aims "to strengthen and improve the overall security of the international supply chain and United States border security . . . by providing benefits to participants meeting or exceeding the program requirements."[3] To join the program, these trading entities must meet certain requirements, including "a history of moving cargo in the international supply chain, conducting an assessment of its supply chain based on [Department of Homeland Security] security criteria, [and] implementing and maintaining security measures that meet [Customs and Border Protection] criteria."[4]

If an entity meets the required qualifications, it receives certain benefits such as less documentation required in advance of and during inspections. These benefits increase as a participant moves from being a Tier-1 participant – which is a temporary designation lasting up to a year – to a Tier-2 and Tier-3 participant.

As part of the program, the specialists receive applications for program participation. Using a "guide or checklist," specialists "review, or 'vet,' an applicant's security profile to make sure the applicant qualifies for the program."[5] After an initial assessment, the specialists determine "whether to certify a company for participation at [Tier 1], a process that involves a fairly routine and automated review of the application."[6]

Managers then decide "whether to validate a participant's security measures" and raise the company's participation to Tier-2 or Tier-3 status.[7] As part of the validation process, specialists "check[] the supply chain from the point where cargo is loaded at a foreign factory

[1] Application for Review (Application) at 2.
[2] *Id.* at 3 (quoting RD's Decision at 10).
[3] RD's Decision at 4 (quoting 6 U.S.C. § 961).
[4] *Id.* at 5.
[5] *Id.* at 10.
[6] *Id.*
[7] *Id.*; *see also id.* at 11 (noting that managers "make the decision whether to validate a participant's security measures and its Tier[-]2 or Tier[-]3 status").

to the cargo's arrival in the United States," which can lead to seven to ten days of travel a month.[8]

In the event of a security breach in a participant's supply chain, specialists conduct a post-incident analysis. This investigation seeks to correct any possible breaches in security. Only supervisors, however, "decide[] whether to suspend a company as a result of" one of these investigations.[9]

Specialists also monitor participant compliance. If a participant fails to comply with program requirements, a specialist may not pass it; however, only managers may suspend a participant from the program. Similarly, if a participant fails to provide information as part of the validation process, the participant may be suspended from the program; but, again, only managers can make this decision.

Under § 7112(b)(6) of the Federal Service Labor-Management Relations Statute (the Statute), employees who are "engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security" are excluded from bargaining units.[10] For an employee's work to "directly affect" national security, it must have a "straight bearing or unbroken connection that produces a material influence" on national security.[11]

Evaluating the evidence, the RD determined that the specialists' work investigating applicants and securing international supply lines qualifies as investigative and security work that relates to national security. However, the RD determined that, because the specialists' work does not have a straight bearing on national security, their work does not directly affect national security. Specifically, the RD found that supervisors and managers – not specialists – make "decisions whether to validate an entity's participation at a particular C-TPAT [t]ier, or whether to suspend it from C-TPAT altogether."[12] Although finding that specialists "have discretion in investigating and monitoring their companies," the RD determined that field-office directors review the specialists' work.[13] The RD also noted that "supervisors decide whether [to] suspend or terminate an entity from the program."[14]

As a result, the RD concluded that the specialists' positions should be included in the bargaining unit. The Agency then filed this application for review, and the Union filed an opposition to the Agency's application.

III. Analysis and Conclusion: The RD did not make clear and prejudicial errors concerning substantial factual matters.

The Agency argues that the RD made three clear and prejudicial errors concerning substantial factual matters resulting in her "incorrectly determin[ing that] the [specialists'] work does not 'directly affect' national security."[15] The Agency first argues that the RD based her conclusion that the specialists' work does not directly affect national security on the erroneous finding that the specialists use a checklist while "there is no evidence any [specialist] uses a checklist."[16]

This allegation, however, misconstrues the RD's decision. In describing the specialists' evaluation of applicants, the RD found that the specialists use a "*guide* or checklist" to review the initial evaluation of applicants to the program.[17] The RD based this finding in part on testimony from a witness who, when asked about a checklist, stated that "specialists use a guide, I would say, more than a checklist, but a guide to help them go through the criteria to make sure that they address all the questions and that type of thing."[18] Additionally, as the Agency admits, "[t]here is a guide and a series of [s]tandard [o]perating [p]rocedures which cover the multiple steps of investigation required for C-TPAT membership."[19] This evidence supports the RD's finding that specialists use a guide or checklist to perform certain duties.

As such, we find that this argument fails to demonstrate that the RD committed a prejudicial factual error.

Second, the Agency alleges that, based on the "mistaken . . . belief that the work of [the specialists] consists of simply going through a checklist," the RD ruled that the specialists' "duties consist of going through a 'fairly routine and automated review.'"[20] The Agency alleges that the RD "failed to acknowledge the evidence that the [specialists] engage in work that is non-routine and non-automated, particularly outside of the certification stage."[21] Specifically, the Agency notes that, after certification, the specialists must "personally assess the company's compliance with C-TPAT criteria," which includes travel to the company and a "physical inspection

[8] *Id.* at 11.
[9] *Id.* at 13.
[10] 5 U.S.C. § 7112(b)(6).
[11] *SSA*, 59 FLRA 137, 144 (2003).
[12] RD's Decision at 22.
[13] *Id.*
[14] *Id.*
[15] Application at 2.
[16] *Id.*
[17] RD's Decision at 10 (emphasis added).
[18] Tr. at 299.
[19] Application at 2; *see also* Joint Exs. J-1 - J-8.
[20] Application at 3 (quoting RD's Decision at 10.).
[21] *Id.*

of numerous aspects of the facility and management."[22] According to the Agency, "the [RD] essentially erred in limiting the [specialists'] national[-]security impact to 'failure to assist a non-compliant C-TPAT participant to resume compliance with the program or to self-correct a breach in the participant's supply chain,' ignoring the other described responsibilities the [specialists] have."[23]

This argument likewise misconstrues the RD's decision. As an initial matter, contrary to the Agency's assertion, the RD only mentioned a checklist and the work of the specialists as routine and automated once and only in connection with the initial evaluation of an entity's application. Additionally, the RD noted in her decision all of the tasks that the Agency points to as being non-routine and non-automated.[24] Therefore, the decision belies the Agency's contentions that the RD found that the specialists' work "consists of simply going through a checklist" and that the RD "failed to acknowledge" the specialists' "non-routine and non-automated" work.[25]

As the Agency's second argument also alleges a factual error based on a misreading of the RD's decision, we likewise find that this argument fails to demonstrate that the RD committed a prejudicial factual error.

Finally, the Agency argues that the RD made a clear and prejudicial error concerning a substantial factual matter by stating that specialists "submit . . . checklists to management, which makes a decision about an entity's involvement"[26] in the program and that "'management' makes the decisions about [program] membership."[27] As support, the Agency asserts that "[t]he testimony was . . . that the role of the supervisor is limited" and that approval and compliance decisions rest with the specialists.[28] According to the Agency, specialists "have broad discretion and general autonomy to investigate and make final determinations as to C-TPAT involvement without the involvement of management," including "whether to include a company in C-TPAT, whether an entity is fully compliant, whether and how to conduct investigations following incidents, and whether to recommend suspension or removal from C-TPAT."[29]

As an initial matter, the Agency's argument again misconstrues the RD's decision. Contrary to the Agency's assertions, the RD noted that specialists make the initial decision as to membership in the program.[30] Furthermore, the RD specifically found that specialists have discretion in investigating and monitoring their companies.[31] Moreover, testimony supports the RD's conclusion that managers make the final decisions whether to raise a participant to Tier-2 and Tier-3 status, as well as whether to suspend or terminate an entity from the program.[32] Consequently, the Agency's argument merely challenges the weight accorded to the evidence by the RD. It is well settled that any disagreement over the weight the RD accords certain evidence is insufficient to demonstrate that the RD committed a clear and prejudicial error concerning a substantial factual matter.[33]

Therefore, we find that this argument fails to demonstrate that the RD committed a prejudicial factual error.

As stated previously, the Agency claims that "[b]ased on various mistakes of fact, the [RD] incorrectly determined that the [specialists'] work does not 'directly affect' national security."[34] As we have rejected the Agency's factual challenge, we also reject the Agency's claim that the RD reached an incorrect conclusion based on those factual errors.

IV. Decision

We deny the Agency's application for review.

[22] *Id.*
[23] *Id.* (quoting RD's Decision at 22).
[24] RD's Decision at 11 ("Validation of a C-TPAT participant's supply chain involves the [s]pecialist checking the supply chain from the point where cargo is loaded at a foreign factory to the cargo's arrival in the United States . . . . Specialists typically are in contact with their assigned companies on a day-to-day basis, planning for initial validations and re-validations and collecting information relevant to their companies' supply chains. They may travel [seven to ten] days each month."); *id.*at 22 ("[Specialists] have discretion in investigating and monitoring their companies.").
[25] Application at 3.
[26] *Id.* at 2.
[27] *Id.* at 4.
[28] *Id.*
[29] *Id.* at 4-5.
[30] RD's Decision at 10 ("[Specialists] decide whether to certify a company for participation at the lowest level.").
[31] *Id.* at 22 ("[Specialists] have discretion in investigating and monitoring their companies.").
[32] Tr. at 173 (affirming that it is "the final decision of management" to elevate a participant to Tier 2 and 3); *id*. at 209 (stating that a specialist "do[es] not have the authority to physically remove somebody out of the C-TPAT. . . . That would be a supervisor or even a field director of the offices."); *id.* at 223 (stating that specialist submits incident report to his supervisor for approval); *id.* at 227 (stating that "[a] change to the company status, as far as if they're going to be suspended or removed, [a specialist] cannot make that change").
[33] *U.S. Dep't of the Army, Army Corps of Eng'rs, Directorate of Contracting Sw. Div., Fort Worth Dist., Fort Worth, Tex.*, 67 FLRA 211, 216 (2014).
[34] Exceptions at 2.

BEFORE THE
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON REGION

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DEPARTMENT OF HOMELAND SECURITY,
CUSTOMS AND BORDER PROTECTION,
(Agency)

and

NATIONAL TREASURY EMPLOYEES UNION
(Union/Petitioner)

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WA-RP-13-0039

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DECISION AND ORDER

I. Statement of the Case

On March 14, 2013, the National Treasury Employees Union (NTEU) filed a petition to clarify the bargaining unit status of approximately 110 GS-1801 – 12/13 Supply Chain Specialists (C-TPAT), who are employed in six regional or "field" offices that report to the Office of Field Operations (OFO), U. S. Customs and Border Protection (CBP). The petition seeks to include the Supply Chain Specialists in NTEU's nationwide unit of all professional and non-professional employees of U.S. Customs and Border Protection, excluding those employees in the Office of Border Patrol who are assigned to Border Patrol Sectors. Authority Exh. 1b; Tr. 8.[1] An Authority Hearing Officer conducted a hearing in this matter on August 14 and 15, 2013. His rulings were not prejudicial to either party, and I hereby affirm them. After consideration of the entire record, including the parties' post-hearing briefs, I have determined that the Supply Chain Specialists, also known Supply Chain Security Specialists, are included in NTEU's nationwide unit.

II. Findings of Fact

A. The C-TPAT Program

The Supply Chain Specialists work in a CBP program known as the Customs-Trade Partnership Against Terrorism, or C-TPAT, a program conceived of by former U. S. Customs Commissioner Robert C. Bonner following the September 11, 2001 terrorist attacks and before the establishment of the Department of Homeland Security. Commissioner Bonner worked with a team of Customs officials to develop a program that, partnering with domestic and foreign trading entities -- such as private companies that operate U. S. ports, air, highway and sea carriers, and importers -- would facilitate trade without compromising security. The outgrowth of this effort was the C-TPAT program, which was "stood up" in OFO field offices in several cities in 2003. Trading entities' participation in C-TPAT is voluntary. The purposes of C-TPAT are to make the supply chain more secure in order to prevent terrorism and to help facilitate and secure trade. Tr. I-11-13, 44-45, 68-76, 96, 104-105, 117-119, 152-153, 163-164.

On October 13, 2006, Congress passed the Security and Accountability For Every Port Act of 2006, or "SAFE Port Act." The Act is codified at 6 USC Sec. 901, *et seq.* and comprises 8 titles.[2] Tr. I-96; Agency Exh. A-3.[3]

Title I of the SAFE Port Act, "Security of United States Seaports," amended certain provisions in Title 46 USC concerning port security.[4] Among the amendments to Title 46 made by the SAFE Port Act was the addition of section 70107A, providing for the Secretary of the Department of Homeland Security (DHS) to establish "interagency operational centers for port security at all high-priority ports" within 3 years after the Act's passage. These centers "shall" include Coast Guard representatives.[5] In addition, the centers are

[1] "Tr." references are to the 2-volume transcript of the hearing held on August 14 and 15, 2013.

[2] This Decision and Order refers to the first 2 of the 8 Titles: Title I, Security of the United States, and Title II, Security of the International Supply Chain. The employees at issue here work in a program created under Title II. The other 6 Titles are, respectively: Title III, Administration; Title IV, Agency Resources and Oversight; Title V, Domestic Nuclear Detection Office; Title VI, Commercial Mobile Service Alerts; Title VII, Other Matters (involving security plans for essential air service and small community airports, disclosures regarding homeland security grants, trucking security, certain air and marine operations, methamphetamine, aircraft charter prescreening and protection of health and safety during disasters); and Title VIII, Unlawful Internet Gambling Enforcement.

[3] Agency Exh. A-3 is the text of the SAFE Port Act. Citations to the Act that appear here are to that Exhibit.

[4] Title 46 generally regulates shipping and establishes the Federal Maritime Commission. Its subtitles cover a wide range of subjects including vessels and seamen, maritime liability, regulation of ocean shipping, merchant marine, and clearance, tonnage taxes and duties. Subtitle VII addresses security and drug enforcement, and Chapter 703 of Subtitle VII, provisions of which were amended by the SAFE Port Act, regulates port security. Title 6 USC, of which the SAFE Port Act is part, covers Domestic Security and is commonly known as the Homeland Security Act of 2002.

[5] The Coast Guard determines security measures at U. S. ports. Its requirements are "more stringent" than the C-TPAT program's supply chain security requirements. Similarly, TSA maintains a program for airline freight security; in contrast to C-TPAT, the TSA program is mandatory. Tr. I-43-46, 111-112.

to "provide…as the Secretary [of DHS] determines appropriate," for participation by representatives of other agencies including CBP, Immigration and Customs Enforcement (ICE), the Transportation Security Administration (TSA), DOJ, DOD and other federal, state and local law enforcement "or port security personnel," as well as "other public and private sector stakeholders adversely affected by a transportation security incident or transportation disruption…" Agency Exh. A-3.

The new section 70107A also provided that the DHS Secretary "shall sponsor and expedite individuals participating in interagency operational centers in gaining or maintaining their security clearances."[6] Tr. 154-157.

Title II of the SAFE Port Act, "Security of the International Supply Chain," comprises three subtitles, including Subtitle B, "Customs-Trade Partnership Against Terrorism," which refers to the C-TPAT program that employs the Supply Chain Specialists in this case.

Title II's general provisions, in Subtitle A, require the Secretary of DHS to consult with Federal, State, local and tribal government agencies and private sector stakeholders responsible for security matters that affect the movement of containers through the international supply chain.[7] The Secretary is also to develop and implement a "strategic plan to enhance the security of the international supply chain." The strategic plan is to, among other things, "describe the roles, responsibilities and authorities" of these stakeholders, "provide incentives for additional voluntary measures to enhance cargo security…," "consider the impact of supply chain security requirements on small and medium size companies, "include a process for sharing intelligence and information with private-sector stakeholders to assist in their security efforts," and "identify a framework for prudent and measured response in the event of a transportation security incident involving the international supply chain." Title II also requires the Secretary of DHS to develop protocols for the resumption of trade following a "transportation disruption" or a "transportation security incident," terms defined elsewhere in the Act. The Secretary is also required to develop "a plan to redeploy resources and personnel, as necessary, to reestablish the flow of trade" after such events. Agency Exh. A-3.

Subtitle B of Title II, codified at 6 USC Secs. 961-973, establishes C-TPAT, "a voluntary government-private sector program…to strengthen and improve the overall security of the international supply chain and United States border security, and to facilitate the movement of secure cargo through the international supply chain, by providing benefits to participants meeting or exceeding the program requirements." 6 USC 961, Agency Exh. A-3. The employees at issue here work in the C-TPAT program. About 4000 importers participate in the program; importers "drive the program," according to one Agency witness. In addition, the program has over 6000 other members. Tr. 13, 18, 163-164, 210. C-TPAT tries to focus on companies producing goods in countries that pose the highest risk to the supply chain. Tr. 142, 167-168.

6 USC 962 describes those entities that can participate in C-TPAT. It provides that "importers, customs brokers, forwarders, air, sea, land carriers, contract logistics providers, and other entities in the international supply chain and intermodal transportation system are eligible to apply to voluntarily enter into partnerships with [DHS] under C-TPAT." 6 USC 963 describes the requirements an entity must meet in order to participate: these include demonstrating a history of moving cargo in the international supply chain, conducting an assessment of its supply chain based on DHS security criteria, implementing and maintaining security measures that meet CBP criteria, and meeting "all other requirements established by [CBP] in consultation with the Commercial Operations Advisory Committee."[8]

An entity may participate in C-TPAT as a Tier 1 participant, a Tier 2 participant or a Tier 3 participant. Applying criteria developed by DHS and CBP, the C-TPAT program certifies an entity that has met the requirements of a particular Tier. 6 USC 963-966. An entity achieves certification after C-TPAT has "validated" or confirmed that the entity has met these criteria.[9] Validation of an entity's security measures, and

[6] Title I, sec. 124, of the SAFE Port Act also amends the definition of "economic disruption" in Title 46, "Shipping," to exclude "a work stoppage, or other employee-related action not related to terrorism and resulting from an employee-employer dispute." Agency Exh. A-3.

[7] A C-TPAT manager testified to other agencies' roles under the SAFE Port Act. Tr. I-86-89.

[8] In 1987, when the Customs Service was still part of the Department of the Treasury, Congress had directed the Secretary of the Treasury to create the Commercial Operations Advisory Committee that is referred to in the 2006 SAFE Port Act. 19 USC 2071 note. The Committee was to be "representative of the individuals and firms affected by the commercial operations of the United States Customs Service," and would "provide advice to the Secretary of the Treasury on all matters involving the commercial operations of the United States Customs Service." *Id.* As a result of the creation of DHS, the functions of the Secretary of the Treasury were transferred to DHS pursuant to 6 USC Sec. 1, *et seq*., the Homeland Security Act of 2002. Section 551(d) of that Act accomplished the transfer. 19 USC 2071 note.

[9] The C-TPAT provisions of the SAFE Port Act require that DHS and CBP develop a plan for a "1-year voluntary pilot program" to decide whether to use "third party entities" to validate C-TPAT participants. The Secretary of DHS is

the resulting certification, confer benefits on the entity, which may include a reduction in the amount of supply chain data an entity must provide in advance of and during inspections in U. S. ports. Benefits increase as an entity moves up to the next Tier. To an entity, for example, that "demonstrate[s] a sustained commitment to maintaining security measures and supply chain security practices that exceed the guidelines established for validation as a Tier 2 participant," DHS and CBP "shall.…in consultation with the Commercial Operations Advisory Committee, and the National Maritime Security Advisory Committee…extend benefits that may include" the expedited release of the participant's cargo at U. S. ports, fewer examinations of cargo, and priority examinations of cargo.[10] Tr. 41-45, 50, 217-218.

C-TPAT may "revalidate" Tier 2 and 3 participants using "…a framework based on objective criteria for identifying participants for periodic revalidation not less frequently than once during each 4-year period following the initial validation." 6 USC 969 directs DHS to "develop and implement…an annual plan for revalidation" that includes performance measures, an assessment of the personnel needed to perform revalidations and the number of participants that will be revalidated. 6 USC 969 (1)-(3).

C-TPAT certification also means that C-TPAT and CBP can focus their resources on examining non-C-TPAT participant companies in the international supply chain. Tr. 107. In addition, a Tier 3 participant benefits from substantially reduced "risk scores" under the Act's Automated Targeting System (ATS). 6 USC 943 of the SAFE Port Act, which is not part of the C-TPAT provisions of Subtitle B, authorized DHS and CBP to obtain and analyze data "related to the movement of a shipment of cargo through the international supply chain." ATS is the name of this data collection and analysis. The data "[is] for improved high-risk targeting…to be provided as advanced information with respect to cargo destined for importation into the United States prior to loading such cargo on vessels in foreign seaports." The data required by ATS is to be electronically transmitted by supply chain partners, including governments and private entities.[11] In other words, the ATS program aims to identify risk in connection with the cargo of vessels bound for U. S. ports before those vessels leave foreign ports. A Tier 3 C-TPAT participant's vessel in a foreign port bound for the U. S. will, by virtue of the participant's Tier 3 status, receive a lower "risk score" under ATS, allowing DHS and CBP "to efficiently identify [the participant's] cargo…for expeditious release." 6 USC 943(e)(4); Tr. 13-14, 56, 65.[12]

If a C-TPAT participant's security practices fail to meet the requirements of its Tier, CBP may "deny the participant benefits otherwise available…" However, CBP "shall" provide "appropriate protections to C-TPAT participants before benefits are revoked." 6 USC 967(a). A participant can appeal a CBP decision denying benefits. 6 USC 967(c). If a participant fails these requirements, there are procedures for suspension, removal and appeal of those actions. C-TPAT has a lot of flexibility, however, to deal with participants in such a way to avoid these actions. Tr. 92, 173-175, 218-219.

B. The Work of the Supply Chain Security Specialists, a/k/a Supply Chain Specialists

1. Factual basis and representative testimony

The facts here are based on exhibits admitted into evidence and on the testimony of five managers, including three regional or field office managers, one former field office manager now employed in the C-TPAT program at OFO headquarters at CBP in Washington, DC, and a Special Agent from CBP's Office of Internal Affairs in Washington, DC.[13] There was also testimony from six Supply Chain Security Specialists. Although the parties did not expressly stipulate that the

required, "after consulting with private sector stakeholders," to report to the appropriate Congressional committees about such a plan. A third party entity can conduct validations in accordance with standard operating procedures, if it maintains liability insurance, and if it agrees to protect proprietary information. The C-TPAT participant must agree to pay all costs associated with the validation. 6 USC 968(f)(2).

[10] A trucking company, for example, that meets the more stringent criteria can use a faster lane at the border, and is able to make more round trips and thus make more money. Tr. 31. On the other hand, another federal agency may be able to interfere with a C-TPAT participant's speedy processing at a U. S. port. The FDA, for example, could prevent the participant's cargo from coming into the U. S. Tr. 45.

[11] Section 943 provides that DHS and CBP are to "consider the cost, benefit and feasibility of" compliance with ATS data requirements, and is to "consult with stakeholders, including the Commercial Operations Advisory Committee…" (see note 6 above) to identify the need for categories of data. 6 USC 943(c).

[12] Notwithstanding the benefit of lower ATS risk scores, Subtitle C of the SAFE Port Act, which is separate from Subtitle B and the C-TPAT program, provides for 100% screening of cargo containers originating outside the U. S. and unloaded at a U. S. seaport, and 100% scanning or searching of containers identified as high-risk. 6 USC 982. DHS, "in coordination with the Secretary of Energy and foreign partners…" must deploy an integrated scanning system provided that DHS determines, among other things, that the system "does not significantly impact trade capacity and flow of cargo at foreign or United States ports…" 6 USC 982(b). C-TPAT explains to its participants that it cannot stop container inspections. Tr. 59-63.

[13] See, Tr. 11, 67, 102, 122 and 320.

duties of the six Specialists, as described in their testimony, were representative of the duties of all C-TPAT Specialists who are the subject of this petition, I have decided to treat their testimony as representative of the group. Both the Agency and the Union adduced evidence and arguments that applied to Specialists in all six regional or field offices. For example, the Agency noted in its post-hearing brief (at 21) that the hearing record "illustrated numerous examples of how the subject employees meet each of the criteria" in section 7112(b)(6). I agree with the Union's statement in its post-hearing brief (at 2), that nothing in the record suggests that the Specialists' job duties differ significantly from one geographic region to another.

Finally, I note that the parties' representatives surveyed the Specialists in June 2013, two months before the hearing, to determine whether they had access to or use of classified information within the previous 12 months, whether they were likely to access it in the next few months, and whether they currently possessed or had access to specialized equipment that could generate, transmit, store or dispose of classified information. U. Exh. 4. The parties' representatives agreed on the wording of the survey questions. The Agency sent the survey to 120 Specialists. Forty-seven (47) Specialists returned completed surveys to the Agency. Of the 47, two Specialists responded affirmatively to the three questions. None of the other 45 Specialists responded affirmatively to any of the three questions. Neither of the two Specialists who responded affirmatively was called as a witness, and none of the managers' testimony discussed the duties of those two individuals.

Based on the record, which includes comprehensive testimony and documentary evidence descriptive of the duties of all the Specialists, I have determined to make findings and conclusions applicable to all of them.[14]

2. The Specialists' duties

At the time of the hearing, six field offices reported to the C-TPAT Program Director in the Office of Field Operations (OFO) at CBP Headquarters in Washington, DC. Each field office is staffed with a Director, one or more Supervisory Supply Chain Security Specialists and a number of Supply Chain Security Specialists. Tr. 12-13, 15-16, 123; Agency Exh. A-1.[15] In its formal Position Description, the Supply Chain Security Specialist position is called "Supply Chain Specialist." Agency Exh. A-2. The identity and location of the companies in the C-TPAT program largely determines how responsibilities are allocated among the field offices. Tr. 141-142.

The Supply Chain Security Specialist position requires a secret security clearance; the clearance facilitates overseas travel and access to embassies. Tr. 85. C-TPAT travel usually consists of a team going to an overseas plant or factory to meet with a U. S. contact and validate compliance with C-TPAT requirements at the plant or factory. Tr. 39, 57-58, 75-76, 85.[16] A Specialist may be working with close to 100 companies at a time, including those companies the C-TPAT program is "revalidating" every 4 years. Tr. I-22, 163-164.

Many Specialists used to be Customs inspectors or CBP officers. Most have more than 10 years of experience at CBP. Tr. 19, 35-36, 254.

Supply Chain Security Specialists receive and evaluate trading entities' applications for C-TPAT program participation. An entity files an application on the C-TPAT web portal and must upload a large amount of information to complete its application. Using a Treasury Department program and databases that are not classified, and a guide or checklist, Specialists review, or "vet," an applicant's security profile to make sure the applicant qualifies for the program.[17] Tr. 168-171, 230-236, 245-256, 290, 299-300. They decide whether to certify a company for participation at the lowest level, a process that involves a fairly routine and automated review of the application. One Specialist described the work as regulatory: "[I]t's not an enforcement type of program for us….:" trading entities "volunteer to abide by our criteria that we set for them, and if they don't, then they're either suspended or removed." Tr. 273.

[14] An RD cannot make "generalized findings" that apply across the board to groups of employees that perform different types of security work. *Dep't of Defense, Pentagon Force Protection Agency*, 164 FLRA 164, 172 (2007). In the instant case, however, the parties do not dispute that Specialists in all 6 field offices perform the same or similar work.

[15] A seventh Field Office in Washington, DC had recently been disbanded; C-TPAT at CBP Headquarters absorbed seven staff from that Office, and the Miami Field Office absorbed two. Tr. 157-158; Agency Exh. A-5.

[16] A manager decides whether C-TPAT personnel should visit a company in a foreign country. When a Specialist travels, she makes her own travel arrangements and is responsible to inform her Field Office management of her whereabouts. Tr. 37, 57-58.

[17] C-TPAT personnel certify whether a participant's security measures meet DHS and CBP guidelines for Tier 1 participation, which guidelines "shall include a background investigation and extensive documentation review." 6 USC 964(b). Tier 1 benefits may include an ATS score "not greater than 20% of the high-risk threshold established by the Secretary." 6 USC 964(a). To the extent practicable, CBP must complete a Tier 1 certification process within 90 days of receipt of an application. 6 USC 964(c).

Management decides whether to validate a participant's security measures so as to raise the participant to Tier 2 status. C-TPAT must validate the security measures of a Tier 1 participant not later than 1 year after certification as such. If it does so, CBP "shall extend benefits….as a Tier 2 participant," which benefits may include reduced ATS scores, reduced examinations of cargo and priority searches. Management ultimately controls the implementation of the benefits of Tier 2 status. 6 USC 965(a) and (b); Tr. 52-54, 71-73, 107-108, 162 (vetting an applicant for Tier 1), 172-173 (validating a Tier 1 applicant to Tier 2), 211-212, 226-227, 235-236 (if company meets security criteria, Specialist would certify it to become member of C-TPAT and explain validation requirements), 254-255 (Specialist conducts validation visit within a year of initial certification), 265 (Specialist recommends to supervisor whether Tier benefits are to be increased).

Similarly, DHS and CBP have "designate[d] criteria for validating a C-TPAT participant as a Tier 3 participant…." Those criteria may include compliance with additional DHS guidelines, "particularly with respect to controls over access to cargo throughout the supply chain;" "submission of additional information regarding cargo prior to loading…; utilization of container security devices, technologies and practices that meet DHS standards; and "compliance with any other cargo requirements established by [DHS.]" 6 USC 966. "Validation" may include getting clearance from the U.S. embassy in the foreign country in which the cargo originates. Tr. 22.

Validation of a C-TPAT participant's supply chain involves the Specialist checking the supply chain from the point where cargo is loaded at a foreign factory to the cargo's arrival in the United States. S/he does not access classified information in this process. Tr. 104-105, 115-116, 127-128, 175-180. Managers, not Specialists, make the decision whether to validate a participant's security measures and its Tier 2 or Tier 3 status (Tr. 53-54, 101, 239): a Specialist may be tasked to write a report called a "post-validation closeout." Tr. 74, 109, 194-196.

Security Specialists typically are in contact with their assigned companies on a day-to-day basis, planning for initial validations and re-validations and collecting information relevant to their companies' supply chains. They may travel 7-10 days each month, sometimes in pairs. They inform their companies of SAFE Port Act due dates for re-validation of security measures. They research where their companies import from, and seek to verify whether the supply chain conforms with requirements for those locales. Requirements differ depending on whether a locale is "high risk." Tr. 164-169, 263-264. Specialists use an "open source," non-classified database product to assess risk. Tr. 180. They may perform 25-30 "validation visits" each year on companies assigned to them, after which they report their findings to management. Tr. 255-256.

In the event of a breach in the security of a participant company's supply chain, the Specialist will work with the company to resolve the matter. Participants are, however, expected to "self-report" such breaches. Examples of events that could trigger a breach in security, or treatment of an incident as a breach, include the presence of narcotics, a suspect seal on a container, or theft of a container. Specialists do a lot of "outreach" to C-TPAT participants to resolve these incidents. Upon report of a breach, C-TPAT contacts ICE agents to see if ICE has already started to investigate the incident and to get ICE's approval to investigate. C-TPAT does not interrupt or get in the way of an ICE investigation. Upon ICE's approval, C-TPAT contacts the company, and according to its SOP, may do "post-incident analysis" ("PIA") of the breach. In doing PIA, they "give the company 24 hours to call…give them a chance to self-report….and then reach out to them." Tr. 22-23, 26-27, 90-91, 243, 267-269. The C-TPAT Specialist's PIA will often rely on information the ICE investigator developed before ICE decided not to pursue the matter. Tr. I-54-55, 269-270. C-TPAT will then recommend to the company how to fix the problem and avoid a repeat incident; at that point, the company is responsible for responding to C-TPAT as to whether it will take the steps C-TPAT is recommending. The goal is "not to come down hard" on the company, but to fix the breach. Tr. I-27, 46-48, 183. Management decides whether to suspend a company as a result of information in the Specialist's PIA. Tr. 287-288.

If a participant is not in compliance with the C-TPAT criteria for the Tier at which it has been validated, C-TPAT personnel work with the participant to bring it into compliance. C-TPAT personnel make recommendations to help a participant better secure its supply chain. If a participant fails to come into compliance, the Specialist may not "pass" it. C-TPAT management may suspend a participant from participation. Similarly, if a participant fails to provide information as part of the validation process, it may be suspended from the program. Field office managers, not the Specialists, decide whether to suspend. Tr. 51, 191-193, 222-224, 239.

The Specialists teach private companies and foreign governments how to set up supply chain security measures. They may have access to a C-TPAT participant's confidential information about its own security procedures. Tr. 22-23, 109-111, 162-163, 181, 267.

The Agency and the Union stipulated to 8 joint exhibits that comprise the standard operating procedures (SOPs) that Specialists are supposed to follow. Tr. 206-207. They include the SOP a Specialist uses to "vet" a company's application to join C-TPAT. Joint Exh. 4, Tr. 232. There is also a January 2010 SOP with instructions for completing post-incident analysis, or PIA. Tr. 292-293; U. Exh. 2. Evidence as to whether all Specialists are required to use the January 2010 SOP was inconclusive. Tr. 294-295.[18]

C. Specialists' Access to Sensitive and Classified Information

6 USC 971 of Title II of the SAFE Port Act provides that DHS and CBP must develop procedures to safeguard the proprietary information of trading entities that participate in C-TPAT: specifically, DHS and CBP must adopt procedures to "to ensure the protection of confidential data collected, stored or shared with government agencies or as part of the application, certification, validation, and revalidation processes." 6 USC 971(c). Similarly, Title III of the Act requires DHS, when issuing warnings "to relevant companies, targeted sectors, other governmental entities, or the general public regarding potential risks to the supply chain….[to]:"

> Take appropriate actions to protect from disclosure:
>
> (1) The source of any voluntarily submitted supply chain security information that forms the basis for the warning; and
> (2) Information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

6 USC 985(e).

One manager confirmed, for example, that there was "a big concern, at the very beginning, that [participating trading entities] just didn't want that—to lose that competitive edge and they didn't want all that information to be put out there…." Tr. 42.

Title II of the SAFE Port Act, which provides for the C-TPAT program, is silent with respect to collection and maintenance of and access to classified information.[19] The Specialist position description does not mention classified information, although a Specialist is required to undergo a background investigation. Union Exh. 1; Tr.187, 197.

As noted above, the Agency requires Specialists to have a Secret clearance, and the clearance facilitates the Specialists' communication with embassies. For example, an embassy may give a "security briefing" to a visiting C-TPAT team on political and social issues team members should be aware of. Tr. 39-40, 108, 133, 144-146, 189-190. One manager testified to a "classified briefing" with a participant in Jordan, stating that C-TPAT personnel "could" come across classified information. He wasn't sure whether he had to have a Secret clearance to receive the briefing. No Specialists were present at the briefing. He also testified that the requirement that Specialists have a Secret clearance was "in case they were to handle classified information," and that the Secret clearance facilitates entry at embassies. Tr. 77-78, 81-82, 85-86, 98. "It's possible" the Coast Guard could share sensitive or classified information with a Specialist, though the manager had no knowledge that the Specialists had received such information. Tr. I-94, 99. He acknowledged that he himself had never received classified information from the Coast Guard as a C-TPAT manager, however, and that his Field Office does not have equipment that could receive or dispose of classified information. Tr. I-98-99.

Other managers testified that, on two or three occasions, C-TPAT personnel visited private companies' facilities that manufactured aircraft parts for the military, and that security clearances were necessary for the visits. One manager did not know whether the Specialists saw classified information in connection with those visits. Tr. 108, 115. Another testified that a Specialist had to have a Secret clearance in order to get embassy briefings and to receive information about a company, and that DOD required Specialists to have clearances before they visited the aircraft parts manufacturing facility. Tr. I-128-132.

According to the testimony, the Specialists themselves do not access or use classified information,

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[18] Not all Specialists have had the opportunity to do PIA. Tr. 258. A Specialist may have occasion to do PIA using information developed by law enforcement authorities other than ICE who have investigated an incident. Tr. 182.

[19] One witness, a manager, testified he had, on one occasion in 2012, entered a Sensitive Compartmented Information Facility, or SCIF, that contained classified information related to a C-TPAT participant. The manager did not see the information, which he said came off a secured fax machine. As of the date of the hearing, investigation of an incident involving that participant was ongoing. On a second occasion, the same manager testified he was aware of, but had not witnessed, a Specialist's access to the SCIF to provide information; the manager later entered the SCIF to provide additional information. The manager estimated that the Specialists he had recently supervised, numbering between 8 and 21, may have accessed classified information two or three times in total. He had no knowledge of the frequency of such access. Tr. 135-138, 144, 146-148.

and their offices do not maintain equipment to generate, transmit or store classified information. Tr. 176-177 (no access to or training in handling of classified information), 248-249, 271, 291-292, 297. They have not been instructed on the consequences of losing their Secret clearances. Tr. 215-216, 256-257, 291.

Specialists are, however, expected to use the highest degree of care with respect to participating companies' proprietary information. CBP has determined that such information is not disclosable under the FOIA. A Specialist who is working on gathering information management will use to decide whether to validate a company's continued compliance with Tier 2 or 3 requirements, for example, may have access to confidential information that the company does not want to disclose to its competitors. The Specialists are responsible for not disclosing that information. In a phone conversation, a Specialist must verify that the caller is the registered point of contact for a particular company participant. Tr. I-40-42, 76-77.

A Specialist's research may include access to a database that includes incidents that have happened in a country and use of "open sources" on the Internet. Tr. I-20-25, 79-80. C-TPAT has retained a data service provided by a private company that ranks countries according to degree of terrorist threat. The Specialists have access to that data service. They also use the CIA World Fact Book, which is a public document. Tr. I-80-81, 99-100. Neither of these sources is classified.

Although the date is not clear from the record, at some point in May or July 2013, after the Union filed the petition in this case, the Agency established a new foreign travel reporting requirement for employees with access to sensitive and classified information. CBP determined to require these employees to inform CBP when they were about to engage in foreign travel, both personal and work-related. Tr.112-115, 302-309, 311, 328-329; Agency Exh. A-4.

III. Analysis and Conclusions

A. Section 7112(b)(6)

Section 7112(b)(6) of the Federal Service Labor-Management Relations Statute states that a bargaining unit may not include any employee engaged in intelligence, counter-intelligence, investigative, or security work which directly affects national security. Thus, the Supply Chain Security Specialists must be excluded from the bargaining unit if they are (1) engaged in intelligence, counterintelligence, investigative, or security work; (2) that directly affects; (3) national security. *See Dep't of Energy, Oak Ridge Operations*, 4 FLRA 644, 655 (1980) (*Oak Ridge*). The determination is based on employees "actual duties at the time of the hearing" rather than their "potential duties in the future." *Nuclear Regulatory Comm'n*, 66 FLRA 311, 317 (2011) (*NRC*).

i. Intelligence, Counterintelligence, Investigative, or Security Work

The Authority relies upon dictionary definitions of "intelligence" and "counterintelligence." *NRC*, 66 FLRA at 317–18. Thus,

> "[I]ntelligence" means "evaluated information concerning an enemy or possible enemy or a possible theater of operations and the conclusions drawn therefrom." *Webster's 3d New Int'l Dictionary* 1174 (2002) (*Webster's*). "[C]ounterintelligence" means "organized activity of an intelligence service designed to block an enemy's sources of information by concealment, camouflage, censorship, and other measures, to deceive the enemy by ruses and misinformation, to prevent sabotage, and to gather political and military information." [*Webster's*] at 519.

Id. at 318. *See also*, National Security Act of 1947, 50 U.S.C. § 401a.[20]

I have determined that the Specialists' work is not intelligence or counterintelligence work within the meaning of *NRC* or the National Security Act because the Specialists are not charged with, in the words of *Oak Ridge*, 4 FLRA at 655, "securing, guarding, shielding or protecting" information of the type described in *NRC* or the National Security Act, i.e. information related to the capabilities, intentions or activities of foreign governments or elements thereof, foreign organizations or persons or international terrorist activities. Rather, to the extent they are required to secure or protect information, it is proprietary or confidential information of participants in the C-TPAT program. When they

[20] (1) The term "intelligence" includes foreign intelligence and counterintelligence.
(2) The term "foreign intelligence" means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.
(3) The term "counterintelligence" means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

investigate a security breach in a participant's supply chain, they do so after ICE or another law enforcement authority has investigated, and only with ICE's or the other authority's approval. To the extent they may share information that ICE and other agencies have developed, there is no evidence such information is of the type described in *NRC*. And, in any event, such information-sharing is not, in and of itself, intelligence or counterintelligence work. *NRC*, 66 FLRA at 313.

Although the Authority has yet to define investigative work in the context of section 7112(b)(6), I have determined that, applying a standard dictionary definition of "investigate" as meaning "to search into so as to learn the facts; inquire into systematically," (*Webster's New World Dictionary of American English* 710 (Victoria Neufeldt et al. eds., 3d college ed. 1988)), the Specialists do investigate the trading entities' online applications for participation in the C-TPAT program, reports of breaches of the entities' supply chains, and compliance by the entities assigned to them with the requirements of the C-TPAT program. Although the Agency does not argue this point, I conclude that the Specialists are engaged in investigative work.

The Agency does argue that the Specialists engage in security work. Although the evidence is somewhat less than compelling, I agree that the Specialists' work is security work. They hold secret clearances, a relevant but not dispositive factor in determining whether their work is security work. *Dep't of Defense, Pentagon Force Prot. Agency*, 62 FLRA 164, 171 (2007). They travel to and/or work with C-TPAT participant companies and other entities to validate or confirm that the participants are meeting C-TPAT program requirements for supply chain security. The two-fold purpose of those requirements is not in dispute: to facilitate trade and to protect U. S. national security, and to achieve those purposes by providing incentives for compliance with supply chain security requirements. Although the Specialists themselves have not developed the supply chain security requirements, they are responsible for informing and educating their assigned entities about them, monitoring those entities' compliance with the requirements and reporting non-compliance up the chain of command to their managers. I conclude, therefore, that their work includes "securing, guarding, shielding or protecting" the supply chains of entities that voluntarily participate in C-TPAT and that export goods into the U. S.; that, at least indirectly, their work protects the U. S. against unlawful acts including terrorism; and that their work is security work within the meaning of the Statute. *Oak Ridge*, 4 FLRA at 655.

As there is scant evidence the Specialists regularly use or access classified information, I do not base my determination that they engage in security work on that analysis. *See*, for example, *Dep't of Defense, Army Aeronautical Serv. Agency*, 64 FLRA 217, 220 (2009) (RD applied proper test for whether employee was engaged in security work, i.e. whether his work involved regular use of or access to classified information.)

ii. National Security

"National security" is defined as sensitive activities of the government that are directly related to the protection and preservation of the military, economic and productive strength of the United States including the security of the Government in domestic and foreign affairs, against or from espionage, sabotage, subversion, foreign aggression, and any other illegal acts which adversely affects the national defense. *See*, *Dep't of the Air Force, Davis-Monthan Air Force Base, AZ*, 62 FLRA 332, 335 (2008). Work of civilian employees as well as military personnel may constitute work that relates to or affects national security. *Social Security Administration*, 59 FLRA 137, 145 (2003) (protection of SSA national facility and computer center involves protection of the economic strength of the Government from sabotage).

Although it is a close question, I find there is sufficient evidence that the Specialists' duties at least relate to national security. By encouraging compliance with C-TPAT supply chain security requirements, monitoring such compliance and responding to breaches of supply chain security, their efforts help to prevent damage to U. S. interests. Breaches of supply chain security have at least the potential to cause damage, not only to persons and property (as result of illegal conduct involving narcotics, for example), but also to commerce and the U. S. economy (as a result of goods and services not arriving in U. S. ports).

I conclude, therefore, that the work of the Specialists is investigative and security work that relates to national security.

iii. Directly Affects

The Authority has defined "directly affects" prong of the section 7112(b)(6) exclusion to mean that the security work employees perform has a "straight or unbroken connection that produces a material influence" on national security. *See*, *Social Security Administration*, 59 FLRA at 144. Employees are not excluded under section 7112(b)(6), even though they are engaged in investigative or security work that relates to national security, if the relationship of their work to national security is indirect or limited. *See*, *Dep't of Agriculture, Food Safety & Inspection Service*, 61 FLRA 397, 402 (2005). Thus, the Authority will not find that a position directly affects national security unless "there

are no intervening steps between the employees' failure to satisfactorily perform their duties and the potential effect of that failure on national security." *NRC*, 66 FLRA at 315 (quoting *Dep't of the Treasury, IRS*, 65 FLRA 687, 690 (2011) (Member Beck dissenting in part) (*IRS*)). "Similarly, where employees must go through another individual before their actions may impact national security, the Authority has declined to find a direct effect." *NRC*, 66 FLRA at 316 (citing *IRS*).

Applying this precedent, and having found that the Specialists' work is investigative and security work that relates to national security, I conclude that their work does not meet the "directly affects" test. The C-TPAT program is, at the outset, voluntary. A trading entity may choose to participate in it, and if the entity can meet program requirements, its potential reward is not only priority examination and expedited release of its cargo in U. S. ports, but also the benefit of the assumption – incorporated in the SAFE Port Act's Automated Targeting System – that its cargo presents a lesser risk than the cargo of a non-C-TPAT participant. By operation of the program, in other words, rather than as a direct result of the Specialist's performance of his duties, C-TPAT participants' voluntary compliance with program requirements achieves the purposes of the SAFE Port Act—facilitating commerce and guarding against dangers to national security. In fact, as noted above in n. 9, it appears that in passing the SAFE Port Act, Congress contemplated having private parties validate the supply chain security of trading companies: the C-TPAT provisions of the Act require CBP to, in consultation with "private stakeholders," consider using "third parties" to perform the validations that Specialists and their supervisors perform now. According to the Act, a third party entity could conduct validations if it maintains liability insurance, and if it agrees to protect proprietary information. 6 USC 968(f)(2).

Not only do Specialists monitor and encourage compliance with a program in which participation is voluntary, but in addition, decisions whether to validate an entity's participation at a particular C-TPAT Tier, or whether to suspend it from C-TPAT altogether, are not made by the Specialists, but by supervisors and managers above them. In *IRS*, the Authority reiterated that, to meet the "directly affects" test, the bearing of the employees' duties on national security must be "straight," the connection must be "unbroken," and any influence or alteration must be "material." 65 FLRA at 690 (citations omitted). The Specialists' work does not have this "straight bearing." As in *NRC*, 66 FLRA at 316-317, their work is reviewed by their field office directors and, although they have discretion in investigating and monitoring their companies, they are not directly responsible for the safety and security of agency facilities or security systems in agency facilities. Their failure to assist a non-compliant C-TPAT participant to resume compliance with the program or to self-correct a breach in the participant's supply chain may well result in the participant losing favored status under the program. There is no evidence, however, that a Specialist's failure in this regard would have a direct effect on national security. To the contrary, not only do their supervisors decide whether the suspend or terminate an entity from the program: in addition, other federal agencies maintain stringent port controls that non-C-TPAT entities are subject to in any event. The Coast Guard, for example, determines security measures at U. S. ports and enforces requirements that are more stringent than C-TPAT's supply chain security requirements. Similarly, TSA maintains a program for airline freight security; in contrast to C-TPAT, the TSA program is mandatory.[21]

"[T]he mere fact that employees' work may have a relationship to important national interests is not sufficient to find a direct effect on national security." *IRS*, 65 FLRA at 690. Recognizing the importance of the purposes served by the C-TPAT program as described in detail in the legislation itself, in other Agency exhibits and throughout the comprehensive record developed by the parties concerning the work of the Specialists, I have concluded that the work of the Specialists cannot be said to "directly affect" national security.

I find, therefore, that their positions should be included in the bargaining unit.

IV. ORDER

The Supply Chain Security Specialists, also known as Supply Chain Specialists, are included in NTEU's nationwide bargaining unit.

[21] See notes 10 and 12, *infra*.

V. RIGHT TO SEEK REVIEW

Under Section 7105(f) of the Statute and section 2422.31(a) of the Authority's Regulations, a party may file an application for review with the Authority within sixty days of this Decision and Order. The application for review must be filed with the Authority by **August 22, 2014** and addressed to the Chief, Office of Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 201, 1400 K Street, NW, Washington, DC 20424-0001. The parties are encouraged to file an application for review electronically through the Authority's website, www.flra.gov.[22]

Dated: June 23, 2014

_____
Barbara Kraft, Regional Director
Washington Regional Office
Federal Labor Relations Authority

Dated: June 23, 2014

[22] To file an application for review electronically, go to the Authority's website at www.flra.gov, select **eFile** under the **Filing a Case** tab and follow the instructions.