

# OFFICE OF THE GENERAL COUNSEL

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REORGANIZATIONS

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## Reorganizations

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Implications for Unit Representation

## **REORGANIZATION DESCRIPTIONS**

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1. Reduction in force
2. Transfer of function
3. Realignment
4. Restructuring
5. Re-engineering
6. Downsizing (no RIF's involved)
7. Consolidation/Merger of organizations
8. Creation of a new entity as the result of any of the above happening \*\*\*

3

## **REORGANIZATIONS -POTENTIAL EFFECTS ON EMPLOYEES:**

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- A. Reduction of work force
- B. Displacement of people
- C. Reorganization of remaining structure and adjustments for remaining staff
- D. Realignment of work responsibilities
- E. Redesign of work processes
- F. Acquisition and assimilation of employees from another entity or new hires \*\*\*

4

## REORGANIZATIONS -OBLIGATIONS

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To ensure the impact of reorganization on employees is minimized through bargaining on procedures and appropriate arrangements; and

To ensure representation issues are resolved timely and appropriately.

### A. Who should the parties' focus on:

- ❶ Prior to effective date of reorganization - *all employees affected by reorganization - raises bargaining issues*
- ❷ After the effective date of the organization-
  - (1) *remaining employees in the unit*
  - (2) *acquired employees*

### B. Issues raised by reorganizations

- ❶ Bargaining
- ❷ Representation \*\*\*

5

## Summarizing the Scenarios #1

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### Basic concepts

There may be only technical changes

Employees may have “accreted” into a represented

Bargaining units may be combined into a new unit

An existing unit may transfer to a “successor” employer

Units may be consolidated or split up

6

## **Summarizing the Scenarios #2**

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### Basic concepts

There are technical changes that do not affect the appropriateness of the unit

Duties of positions change and affect their bargaining unit status

New positions are created and questions exist as to unit eligibility

Parties dispute the eligibility of existing positions

There are substantial changes in the scope of the unit that raise issues relating to representation

7

## **How to get started**

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### A. Planning for Change

Gathering facts:

1. Describe the unit; its mission, functions, working conditions, chain of authority before the change;
2. Describe the change - what happened;
3. Describe the effect of the change on bargaining unit employees:
  - a. What do they do now?
  - b. What has changed?
  - c. Why have there been changes? \*\*\*

8

# How to get started

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B. Identify representation issues while planning and negotiating over reorganizations

Identify all of the represented units affected by a proposed reorganization

Attempt to reach consensus with parties having competing claims and develop appropriate options to resolve problems

9

# Identifying Possible Problems

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## Planning for Change

Does the reorganization combine units represented by different unions?

Does the reorganization combine units represented by different locals of the same union?

Is the “chain of command” changing in a way that affects existing union organization lines?

10

# **Advice from the FLRA**

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## **Planning for Change**

FLRA Regional Offices will meet with you before or after a petition is filed to help you sort out your representation issues

You may file a petition to resolve any matter relating to the representation of employees

Matters over which the union and agency agree, that do not require a modification of the certification of representative, need not be filed with the Authority

11

## **Meetings prior to filing a representation petition**

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### **2422.13 (a)**

All parties affected by the representation issues that may be raised in a petition are encouraged to meet prior to the filing of the petition to discuss their interests and narrow and resolve the issues. If requested by all parties, a representative of the appropriate Regional Office will participate in these meetings.

12

## **Meetings to narrow and resolve the issues after the petition is filed.**

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### **2422.13 (b)**

**After a petition is filed, the Regional Director may require all affected parties to meet to narrow and resolve the issues raised in the petition.**

13

## **Purposes of post-filing meeting**

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### **2422.13(b)**

Instructional--Attended by all parties to assist them in defining the issues, identifying affected parties and outlining specific information needed to resolve the case;

Investigatory--May be held when the RD is about ready to issue a Notice of Hearing (or take other appropriate action) to focus on the substantive issues, the parties' interests and the appropriate procedures for resolution; or

Prehearing--Required whenever a Notice of Hearing is issued to discuss hearing procedures, review the issues to be addressed at the hearing, and explore the potential for even further narrowing those issues.

14

A REPRESENTATION PETITION IS  
FILED TO RESOLVE ANY MATTER  
RELATING TO THE  
REPRESENTATION OF  
EMPLOYEES. \*\*\*

15

## **APPROPRIATE UNIT DETERMINATIONS**

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Statutory basis: 5 U.S.C. § 7112 (a)

“The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of the agency involved.”

- ▶ Note: The Statute does not require a unit proposed for exclusive recognition be the only appropriate unit or the most appropriate unit. The proposed unit meets the requirements of the Statute if it is **an** appropriate unit. *American Federation of Government Employees, Local 2004*, 47 FLRA 969 (1993). \*\*\*

16

## **Appropriate Unit Determinations**

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### Basic concepts

Establishes whether a particular group of employees can be represented by a single union representative

Units may be based on agency, installation, functional, or other line

The unit need not be the most appropriate  
u an appropriate unit is sufficient

17

## **Appropriate Unit Determinations**

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### Basic concepts

Section 7112(a) sets out three criteria for appropriate units:

- ▶ There must be a clear and identifiable community of interest
- ▶ The unit must promote effective dealings between the union and the agency
- ▶ The unit must promote the efficiency of agency operations

18

## APPROPRIATE UNIT CRITERIA

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1. Community of interest is a commonality or sharing of interests between the employees in a unit. The fundamental premise is to ensure that it is possible for them to deal collectively (with management) as a single group.
  
2. Effective dealings pertains to the relationship between management and the exclusive representative selected by unit employees in an appropriate unit.
  
3. Efficiency of operations concerns the benefits to be derived from a unit structure bearing a rational relationship to the operational and organizational structure of the agency.

– United States Department of the Navy, Fleet and Industrial Supply Center, Norfolk, Virginia 52 FLRA 950 (1997) \*\*\*

19

## APPROPRIATE UNIT CRITERIA

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1. **Community of interest is a commonality or sharing of interest between the employees in a unit.** The fundamental premise is to ensure that it is possible for them to deal collectively (with management) as a single group.

Some of the factors considered:

- a) mission
- b) organizational component within the agency
- c) chain of command
- d) duties, job titles and work assignments
- e) general working conditions \*\*\*

20

(community of interest factors - cont'd)

f) geographic proximity

g) distinct local concerns

h) degree of interchange between other organizational components

i) unique conditions of employment

j) functional or operational separation \*\*\*

21

## **APPROPRIATE UNIT CRITERIA**

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2. *Effective dealings* pertains to the relationship between management and the exclusive representative selected by unit employees in an appropriate unit. Factors include:

a) the efficient use of resources which might be derived from inclusion in other units

b) the locus and scope of authority of the responsible personnel office

c) limitations on the negotiation of matters of critical concern to employees

d) the actual experience of the agency in other bargaining units  
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22

3. Efficiency of operations concerns the benefits to be derived from a unit structure bearing a rational relationship to the operational and organizational structure of the agency.

Factors examined pertain to the effect of the proposed unit on agency operations in terms of cost, productivity and use of resources.

Note: The Authority has not specified the precise factors or number of factors considered in determining these issues. However, equal weight must be given to effective dealings and efficiency of operations as is given to community of interest factors.

For more on effective dealings and efficiency of operations, see: United States Department of the Navy, Fleet and Industrial Supply Center Norfolk, Virginia, 52 FLRA No. 97, 52 FLRA 950 (1997). \*\*\*

23

## **APPROPRIATE UNIT CRITERIA**

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Case citations (shortened names only):

*AFMC*, 47 FLRA 602 (1993)

*DCASR*, 4 FLRC 669 (1976)

*DHHS*, 42 FLRA 1245 (1992)

*DODDS*, 6 FLRA 297 (1981)

*DPRO - Thokol*, 41 FLRA 316 (1991)

*FAA*, 20 FLRA 224 (1985)

*FISC, Norfolk*, 52 FLRA No. 97, 52 FLRA 950 (1997)

*OCIJ Chicago*, 48 FLRA 620 (1993)

*Tulsa AFS*, 3 FLRC 235 (1975) \*\*\*

24

## **SUCCESSORSHIP**

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Successorship involves a determination of the status of a bargaining relationship between an agency/activity which acquires employees who were in a previously existing bargaining unit and a labor organization that exclusively represented those employees prior to their transfer. \*\*\*

25

## **SUCCESSORSHIP**

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*In Naval Facilities Engineering Service Center, Port Hueneme, California, 50 FLRA No. 56 (1995), the Authority established three criteria to determine whether, following a reorganization, a new employing entity is the successor to a previous one such that a secret ballot election is not necessary to determine representation rights of employees who were transferred to the successor. The Authority will “find that a gaining entity is a successor and a union retains its status as the exclusive representative of employees who are transferred to the successor, when: \*\*\**

26

## SUCCESSORSHIP CRITERIA

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1. An entire recognized unit, or a portion thereof, is transferred and the transferred employees:
  - ▶ (a) are in an appropriate bargaining unit under section 7112 (a) (1) of the Statute; and
  - ▶ (b) constitute a majority of the employees in such unit;
  
2. The gaining entity has substantially the same organization mission as the losing entity, with the transferred employees performing substantially the same duties and functions under substantially similar working conditions in the gaining entity;
  
3. It has not been demonstrated that an election is necessary to determine representation. \*\*\*

27

## SUCCESSORSHIP CRITERION #1

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(1) An entire recognized unit, or a portion thereof, is transferred and the transferred employees: (a) are in an appropriate bargaining unit under section 7112 (a) (1) of the Statute; and (b) constitute a majority of the employees in such unit;

**Note:** An entire unit need not be transferred intact to the new entity.

Acquired employees must be in appropriate units both before and after successorship.

Portion of the unit which is transferred need not constitute a separate appropriate unit by itself, provided that the transferred employees constitute a majority of the post-transfer unit.

– See *Naval Facilities Engineering Service Center*, 50 FLRA 363 (1995) \*\*\*

28

The method used to move the employees from one entity to another has no bearing on the requirement that they be transferred.

- *U.S. Department of the Navy, Fleet and Industrial Supply Center, Norfolk, Virginia (FISC), 52 FLRA 950 (1997)*

“Transferred employees” set forth in *FISC* is a generic term that refers to any organizational movement of employees within an agency or between agencies, regardless of the method of the reorganization.

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

Majority standard applies.

- *Department of the Interior, Bureau of Land Management, Sacramento, California, and Department of the Interior, Bureau of Land Management, Ukiah District Office, Ukiah, California, 53 FLRA 1417 (1998). \*\*\**

29

## **SUCCESSORSHIP CRITERION #2**

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(2) The gaining entity has substantially the same organizational mission as the losing entity, with the transferred employees performing substantially the same duties and functions under substantially similar working conditions in the gaining entity:

**Note:** The Authority will not require that the missions of the predecessor and the claimed unit be identical.

The questions is whether is a basic sense, the new entity is in essentially the same business as its predecessor. \*\*\*

30

The emphasis will be on the employees' perspective. Are the employer's operations, as they affect unit employees, essentially the same after the transfer?

The Authority's approach is primarily factual and based on the totality of circumstances in a given situation.

– *Naval Facilities Engineering Service Center*, 50 FLRA 363 (1995)

31

### **SUCCESSORSHIP CRITERION #3**

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(3) It has not been demonstrated that an election is necessary to determine representation.

Note:

- ▶ The mere filing of a representation petition will not preclude the finding of successorship. See *Naval Facilities Engineering Service Center*, 50 FLRA 363 (1995)
- ▶ The Authority will continue to decide whether units continue to be appropriate after reorganizations, and if not, whether and when an election is necessary
- ▶ An election may be necessary after a reorganization when more than one labor organization represents employees transferred into one new unit. See *Social Security Administration, District Office, Valdosta, Georgia*, 52 FLRA 1084 (1997), and *Defense Logistics Agency, Defense Supply Center Columbus, Columbus, Ohio*, 53 FLRA 1114 (1998) citing *Martin Marietta Co.* 270 NLRB 821 (1984) and *Boston Gas Company*, 221 NLRB 628, 629 n.5. (1975) \*\*\*

32

## ACCRETION

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ACCRETION REFERS TO THE ADDITION, WITHOUT AN ELECTION, OF A GROUP OF EMPLOYEES TO AN EXISTING BARGAINING UNIT.

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### Criteria:

- ▶ For accretion to be found, the employees in the resulting unit must share a community of interest and the resulting unit must promote effective dealings with and efficiency of operations of the agency.
- ▶ Employees must be functionally and operationally integrated into gaining organization such that they do not have a clear and identifiable separate community of interest.

### Caution:

- ▶ Criteria must be carefully examined. Accretion forecloses an employee's basic right to select his/her representative. \*\*\*

34

## **ACCRETION**

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Criteria for appropriate unit are followed  
Examine factors on a case-by-case basis  
Organizationally and operationally integrated  
Loss of separate identity  
Requires movement of employees into an  
already established, recognized unit

*Dept of Energy. Oak Ridge Operations Office, 15  
FLRA 130, 132 (1985).*

35

## **ADDITIONAL FACTORS**

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The Authority may consider the following additional factors  
when examining an accretion petition:

Geographic separation  
Limited contact between employees  
Organizational independence  
Performing distinct functions  
Workforce integration  
Differences in supervision  
Functional interchange  
Only centralized personnel authority

36

## Steps:

- ▶ Do the acquired employees constitute a separate appropriate unit?
  - a. If “yes,” no accretion is found.
    - Note: under these circumstances there may be other issues such as successorship or self-determination issues.
  - b. If “no,” is it appropriate to accrete the acquired employees into the existing unit?
    - (i) If “yes,” accrete.
    - (ii) If “no,” dismiss. \*\*\*

37

## POSSIBLE ACCRETION SCENARIOS

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1) If accretion is not appropriate, the additional employees may constitute a separate appropriate unit.

- ▶ Naval Facilities Engineering Service Center (NFESC), 50 FLRA 363 (1995).

2) Even assuming accretion is appropriate, if the additional employees also constitute a separate appropriate unit, a self-determination election is appropriate.

- ▶ U.S. Department of Labor, Pension and Welfare Benefits Administration, 38 FLRA 65,73 (1990). \*\*\*

38

3) If the transferred employees are functionally and administratively integrated into the gaining organization's pre-existing unit(s), and that adding the transferred employees to the unit (s) would be appropriate under section 7112 (a), an accretion will be found

▸ U.S. Department of the Navy, Fleet and Industrial Supply Center, Norfolk, Virginia (FISC), 52 FLRA 950 (1997) citing U.S. Department of the Air Force, Air Force Material Command, Wright Patterson Air Force Base, 47 FLRA 602 (1993).

4) If including the transferred employees in the established unit would not be appropriate, any petition(s) claiming an accretion will be dismissed.

▸ FISC, 52 FLRA 950 (1997). \*\*\*

39

## WHEN SUCCESSORSHIP AND ACCRETION ARE CLAIMED

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In *United States Department of the Navy, Fleet and Industrial Supply Center, Norfolk Virginia*, 52 FLRA No. 97, 52 FLRA 950 (1997) the Authority announced a framework to decide cases where employees are transferred to a pre-existing or newly established organization and both successorship and accretion principles are claimed to apply:

❶ The Authority will determine whether employees who have been transferred are included in and constitute a majority of employees in a separate appropriate unit in the gaining organization under section 7112 (a).

40

② If the transferred employees are in a separate appropriate unit(s) in the gaining organization under section 7112 (a), and if they constitute a majority of the employees in the unit, the Authority will apply the remainder of the successorship factors set forth in *Port Hueneme*. The outcome of the *Port Hueneme* analysis will determine whether the gaining organization is a successor for purposes of collective bargaining with the labor organization(s) that represented the transferred employees at their previous employer.

③ If the transferred employees are not included in and constitute a majority of employees in, a separate appropriate unit in the gaining organization, the Authority will apply accretion principles to determine whether the transferred employees have accreted to a pre-existing unit in the gaining organization. \*\*\*

41

## Sorting it out

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Summarizing the FISC framework

Are preexisting units appropriate

If there are competing claims of successorship and accretion, determine successorship first

The rule respects employees' choices of a representative

42

## **Merged Units and Questions of Representation**

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The Statute provides that the Authority should order an election if there is a question of representation

If two units represented by different unions are combined into one new unit, an election may be ordered

43

## **Consolidation**

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Basic concepts

The Statute permits unions to consolidate existing bargaining units as long as the consolidated unit is appropriate

Reorganizations may make new consolidated units appropriate or existing consolidated units inappropriate

44