

63 FLRA No. 124

UNITED STATES DEPARTMENT OF THE ARMY
 ARMY MATERIEL COMMAND
 HEADQUARTERS, JOINT
 MUNITIONS COMMAND
 ROCK ISLAND, ILLINOIS
 (Activity/Petitioner)

and

UNITED STATES DEPARTMENT OF THE ARMY
 ARMY MATERIEL COMMAND
 HEADQUARTERS, ARMY
 SUSTAINMENT COMMAND
 ROCK ISLAND, ILLINOIS
 (Activity/Petitioner)

and

AMERICAN FEDERATION OF
 GOVERNMENT EMPLOYEES
 LOCAL 15, AFL-CIO
 (Exclusive Representative/Union)

CH-RP-07-0002

ORDER DENYING APPLICATION FOR REVIEW

May 29, 2009

Before the Authority: Carol Waller Pope,
 Chairman and Thomas M. Beck, Member

I. Statement of the Case

This case is before the Authority on an application for review filed by the American Federation of Government Employees (Union) under § 2422.31 of the Authority's Regulations.¹ The application for review requests review of the RD's decision on remand, following the Authority's Decision and Order on Review issued in *United States Department of the Army, Army, Materiel Command, Headquarters, Joint Munitions Command, Rock Island, Illinois*, 62 FLRA 313 (2008) (*Rock Island*).² The Joint Munitions Command (JMC) and Army Sustainment Command (ASC) filed an opposition to the Union's application for review.

In October 2006, the United States Army Materiel Command (AMC) underwent a reorganization that changed the JMC from a subordinate organizational component of the ASC to an independent major subor-

ordinate command equal in organizational status to the ASC. As relevant here, the ASC and JMC jointly filed a petition seeking to clarify the existing bargaining unit, given the reorganization. The RD concluded, on remand, that the changes to the existing bargaining unit resulting from the reorganization eliminated the community of interest among the affected employees. RD's Decision at 2. The RD also determined that, due to the changes resulting from the reorganization, the existing unit no longer promoted effective dealings and the efficiency of operations. *Id.* After finding that the proposed units would be appropriate, the RD granted the clarification and split the existing unit into two separate units: one consisting of ASC employees, and one consisting of JMC employees. *Id.*

For the reasons that follow, we deny the application for review.

II. Background and RD's Decision

A. Background

The bargaining unit dates back thirty years to the 1970s, during which time the nonprofessional and professional units were separate and each was represented by a different labor organization. *Id.* In May 2006, the nonprofessional and professional bargaining units were consolidated. *Id.* at 3. Currently, the Union is the certified exclusive representative of the bargaining unit which is described as including "[a]ll professional and

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.

2. In the Decision and Order reviewed in *Rock Island*, the RD ordered that the Union be certified as the exclusive representative for two separate bargaining units, one for Joint Munitions Command (JMC) employees, and one for Army Sustainment Command (ASC) employees after a reorganization. In *Rock Island*, the Authority determined that the record did not contain sufficient information to resolve the appropriate unit issues presented by the reorganization and remanded the case to the Region for further findings concerning whether the existing single unit of Army Sustainment Command (ASC) and Joint Munitions Command (JMC) employees remains an appropriate unit.

nonprofessional employees [within] the Headquarters, [AFSC], and Headquarters, [JMC], including temporary employees with appointments of 180 days or more, and third-year nonprofessional advanced interns.” *Id.* at 2. The unit excludes management officials, supervisors, “Wage Grade employees,” non professional employees with appointments of fewer than 180 days, and “employees described in 5 U.S.C. [§] 7112(b)(2), (3), (4), (6) and (7).” *Id.*

In October 2006, the AFSC and JMC underwent a substantial reorganization. The Army Field Support Command (AFSC) was renamed the ASC, and the JMC was removed from the command and control of the ASC, and established as a separate and independent organization. As such, since October 2006, the JMC and ASC have operated as separate and independent commands, each headed by a Commanding General who reports directly to the AMC. The JMC assumed the AFSC’s mission as the single manager of conventional ammunition, while the ASC took on a new and expanded mission as “the single force provider for logistics.” *Id.* at 3.

The JMC is responsible for providing ammunition to all United States military services, other government agencies, and foreign countries. The JMC employs 20 military personnel, over 5800 civilians, and 5550 contractors. Of the 734 civilians working at JMC’s Rock Island Headquarters, 615 are bargaining unit employees. The JMC nonprofessional unit employees occupy positions such as Ammunition Program Specialist, Ammunition Systems Management Specialist, Industrial Specialist, Logistics Management Specialist, Quality Assurance Specialist, Inventory Management Specialist, and Traffic Management Specialist. The JMC professional unit employees work in positions such as General Engineer, Health Physicist, and Operations Research Analyst. The predominant career program for JMC employees is ammunition management. *Id.*

The ASC is responsible for a wide range of material from vehicles to tents to socks, and logistics support -- such as transportation, fuel, water, and housing -- for current and future combat operations, ongoing Army training cycles, and worldwide disaster and humanitarian relief missions. *Id.* at 4. The ASC has brigades both in the United States and overseas and manages a network of more than 60 battalions and logistic support elements around the world. The ASC’s workforce consists of 727 military personnel, 1488 civilians, and 77,760 contractors. Of the 796 civilians employed at ASC’s Rock Island Headquarters, 501 are bargaining unit employees. The ASC nonprofessional unit employees are assigned to positions such as Contract Specialist,

Logistics Management Specialist, Procurement Analyst, and Plans Analyst. The ASC professional unit employees work in positions such as Accountant, Attorney-Adviser, and General or Mechanical Engineer. The predominant career program for ASC employees is contracting and acquisition. *Id.*

Prior to the reorganization, the JMC was subordinate to the AFSC, and as such, its employees were under the command and control of the AFSC. The RD found that, as a result of the reorganization, the ASC and JMC no longer shared the same command structure, as the ASC and JMC each developed their own chain of command for the day-to-day operation and management of its command and employees. *Id.* at 5. In addition, according to the RD, prior to the reorganization, there was one mission and one budget. The RD found that, as a result of the reorganization, the ASC’s mission expanded and its budget increased. *Id.* at 4.

The RD also found that personnel policies have changed since the reorganization. Prior to the reorganization, the AFSC and JMC employees were subject to the same personnel policies, practices, and procedures that were issued and administered by the same human resources office. The RD found that after the reorganization, the ASC and JMC each established separate human resources, equal employment opportunity, information management, and public affairs offices. *Id.* Further, the RD found that, although the ASC and JMC personnel policies and practices are similar since the reorganization, the ASC issued a number of personnel policies that only apply to ASC personnel, and the JMC issued particular procedures that did not apply to ASC employees. The RD also found that the JMC has issued its own policies and, as a subordinate command to the Joint Munitions and Lethality, Life Cycle Management Command, is subject to its policies, while the ASC is not. In addition, the RD found that each of the ASC and JMC human resources offices provides assistance and advice to their respective management staffs on classification, promotions, recruitment actions, and other personnel issues. The RD also found that, although the two Commands used to be included in the same area of consideration for job vacancies and reduction-in-force (RIF), they now have separate competitive areas for RIFs. *Id.* at 5. The JMC offers different awards policies from the ASC and the two Commands have “different approaches” to their Voluntary Separation Incentive Pay (VSIP) programs. The Commands’ leave policies are also administered differently. *Id.*

According to the RD, the ASC and JMC share “certain staff support offices” and signed a memorandum of agreement (matrix support agreement) specify-

ing that the Commands would share staff support offices for purposes of efficiency and economy. *Id.* at n.3. These support offices include Acquisition, Finance and Accounting, Internal Review and Audit, Military Personnel, Small Business, Safety/RAD Waste, OCONUS Travel Clearance, BRAC Support, and Civilian Deployment Support. The above offices provide support jointly to both ASC and JMC. *Id.*

The RD found that, before the reorganization, labor relations were handled by a single human resources office, which reported through the Chief of Staff to the AFSC Commanding General. *Id.* at 6. According to the RD, after the reorganization, the ASC and JMC each designated their own Ombudsman to handle labor relations matters with the Union, including day-to-day dealings with the Union, contract negotiations,³ grievances, “Union notification,” conflict resolution, and the resolution of third-party disputes. *Id.* However, the RD noted that “the parties” have also dealt with matters jointly that affect employees from both Commands. *Id.*

The Rock Island Civilian Personnel Advisory Center (CPAC) provides onsite personnel advice and services for both the ASC and JMC and all of the Army and Department of Defense units “on the Arsenal.” *Id.* The RD found that CPAC provides staffing and classification services and processes personnel actions. According to the RD, although the CPAC has not been given the authority to handle labor relations matters for either the ASC or JMC, it provides technical advice and assistance as requested by the Ombudsmen, who handle the ASC and JMC’s negotiations with the Union.

The RD found that the ASC and JMC employees work in the same building (Building 350) but, “[f]or the most part, [are] not working side-by-side in the same offices.” *Id.* The sixth floor houses the JMC commodities teams, which are responsible for developing the specifics of the ammunition to be purchased. Some ASC contract specialists and procurement contracting officers work with those teams. Contracts can only be negotiated by certified contracting officers and the JMC does not employ its own contracting personnel. Thus, the JMC relies upon the ASC contracting officers for the purchase of the ammunition. The RD noted that, although these ASC and JMC employees work alongside each other, “their duties and functions are not interchangeable.” *Id.* at 7. The RD also found that the ASC contract specialists and officers have moved from the

ASC to the Army Contracting Command, which is a new major subordinate command of the AMC. *Id.* at 6 n.5. In addition, the RD determined that there was no indication of significant employee interchange, finding that nine ASC employees have transferred from the ASC to the JMC, and three JMC employees have transferred from the JMC to the ASC. *Id.* at 7.

Before the RD, the ASC and JMC contended that the “current combined unit of ASC and JMC employees is no longer an appropriate unit following the reorganization” because “the JMC and ASC are two separate and independent organizations.” *Id.* In this regard, the ASC and JMC claimed that “[t]he employees are subject to separate and independent commands, separate missions, separate budgets and are subject to different personnel policies that are separately established and administered by separate commands.” *Id.* As such, the ASC and JMC argued that the employees no longer share a community of interest. In addition, the ASC and JMC contended that the existing unit does not “enhance effective dealings or efficient operations[,] as there is no longer a common locus, scope and authority on personnel and labor relations matters.” *Id.*

The Union maintained that the existing unit remains an appropriate unit because the employees continue to share a community of interest since they continue to perform the same work under the same working conditions. *Id.* The Union argued that “splitting the existing unit into two separate [bargaining] units would result in unwarranted unit fragmentation.” *Id.*

B. RD’s Decision

In determining whether to grant the requests of the ASC and JMC for separate bargaining units, the RD relied on Authority precedent used to determine appropriate bargaining units after a reorganization. As such, the RD held that, under § 7112(a) of the Statute, the Authority will determine a unit appropriate only if the determination will: (1) ensure a clear and identifiable community of interest among the employees in the unit; (2) promote effective dealings with the agency and; (3) promote efficiency of the operation of the agency. *Id.* at 8 (citing *United States Dep’t of the Navy, Fleet & Indus. Supply Ctr., Norfolk, Va.*, 52 FLRA 950, 960-61 (1997) (*FISC*)).

With regard to whether the employees share a community of interest, the RD noted that the fundamental premise of determining whether a community of interest exists among employees is to ensure that it is possible for employees to deal collectively with management as a single group. *Id.* at 9 (citing *FISC*, 52

3. The RD found that the ASC and JMC have each notified the Union of their intention to negotiate separate collective bargaining agreements. RD’s Decision at 6.

FLRA at 960-1). The RD further stated that, in determining whether a community of interest exists, the Authority looks at such factors as whether the employees in the proposed unit: are a part of the same organizational component of the agency; support the same mission; are subject to the same supervision and chain of command; have similar or related duties, job titles and work assignments; have regular contact and interchange; are subject to the same general working conditions; and are governed by the same personnel and labor relations policies that are administered by the same personnel office. *Id.* (citing *United States Dep't of Agric., Office of the Chief Info. Officer; Info. Tech. Servs.*, 61 FLRA 879, 883 (2006)). The RD also noted that the Authority considers geographic proximity; unique conditions of employment; distinct local concerns; degree of interchange between other organizational components; and functional or operational separation. *United States Dep't of the Navy, Naval Facilities Eng'g Command, Se. Jacksonville, Fla.*, 62 FLRA 480, 487 (2008).

In concluding that the ASC and JMC employees no longer share a community of interest, the RD found that the reorganization “significantly altered the scope and character” of the combined unit because it “split a unified and integrated organization into two separate and independent commands that are operationally, organizationally and functionally distinct.” RD’s Decision at 9. In this regard, the RD found that “[e]ach organization has its own unique mission, function, . . . budget, [and] authority concerning personnel and labor relations matters.” *Id.*

In addition, the RD concluded that “[e]ach organization carries out its personnel and labor relations responsibilities through separate offices and representatives who operate independently of [CPAC].” *Id.* The RD also found it relevant that the JMC and ASC employees do not “share common supervision.” In addition, the RD held that “there is little interchange or transfers between the groups” and that the ASC and JMC employees’ roles, functions, and career programs are “different and separate.” *Id.* The RD also found that the employees “continue to report to their separate and independent chains of command.” *Id.*

Although the RD found that the personnel and labor relations policies issued by the organizations are “very similar,” he found that they had “meaningful differences in content and implementation.” *Id.* In this regard, the RD found relevant that the two Commands have separate RIF competitive areas, that each has “limited the area of consideration for vacancies to its own employees[.]” that they have different VSIP programs, and that the Commands’ leave policies are administered

differently. *Id.* The RD also found it significant that, as separate and independent organizations, each organization makes its own determination with respect to its organizational structure; numbers, types and grades of employees; assignment of work; the technology, methods, and means of performing the work; and operating hours, hiring, promotion, employee leave, overtime, discipline, awards, performance standards, training and other matters affecting working conditions. *Id.* at 10. Accordingly, the RD found that “the previous community of interest shared by the employees in the existing unit no longer exists.” *Id.*

In determining that the existing unit does not promote effective dealings, the RD considered such factors as: the past collective bargaining experience of the parties; the locus and scope of authority of the personnel office responsible for administering the personnel policies covering employees in the proposed unit; the limitations, if any, on the negotiation of matters of critical concern to employees in the proposed unit; and the level at which labor relations policy is set in the agency. *Id.* (citing *FISC*, 52 FLRA at 961).

With regard to the parties’ past collective bargaining experience, the RD found that the professional employees were included in a separate unit represented by NAGE, while the nonprofessional employees were in a separate unit represented by NFFE until 1995, when the Union was designated as the exclusive representative for the nonprofessional employees. According to the RD, the professional and nonprofessional employees were in separate units until the Union became the exclusive representative of the professional employees and the units were consolidated in May 2006. In this regard, the RD determined that the bargaining history for the combined professionals and nonprofessionals unit has been “brief.” *Id.* at 11. The RD also found relevant that “the employees who transferred to new entities have been treated as separate units.” *Id.* at 12. The RD determined that, since October 2006, “the parties have conducted separate dealings on labor relations matters and such dealings were successful.” *Id.* at 11. Citing National Labor Relations Board case law, the RD concluded that, “past bargaining history has less weight when, as here, there have been significant changes in the employer’s operations and organization.” *Id.* at 12.

With regard to the locus and scope of authority of the personnel office responsible for administering personnel policies covering employees in the proposed unit, the RD found that, since the reorganization, each Command has been separately and independently responsible for determining and administering its own personnel and labor relations policies. *Id.* The RD also

noted that the Ombudsmen are independent of CPAC. In addition, the RD found that the record did not establish any limitations on either Command with respect to their ability to negotiate over matters of critical concern to their unit employees. The RD found that the two Commands must negotiate with the Union as a single collective bargaining entity, which “promotes cumbersome dealings as it treats separate and independent organizations, each having the authority to determine its own labor relations and personnel policies and bargaining positions, as a single entity.” *Id.* The RD also found that “the current structure precludes the two separate organizations from pursuing their announced intention to each negotiate separate collective bargaining agreements with the Union.” *Id.* at 11-12. As such, the RD concluded that “[u]nder these circumstances, the existing combined unit no longer promotes effective dealings as required by . . . the Statute.” *Id.* at 12.

In concluding that the current unit structure does not promote the efficiency of operations, the RD found that “[t]he current unit structure does not bear a rational relationship to the operations and organizational structure of the employing entities.” *Id.* In this regard, the RD determined that the current unit structure is based on a single employer which no longer exists. As such, the RD found that, now that there are two “separate and distinct organizations,” a single unit does not “enhance efficient utilization of resources or operations.” *Id.* In this respect, the RD found it significant that each organization has its own budget, chain of command, separate and independent bargaining authority, and day-to-day management and operations. *Id.* The RD also acknowledged that, since October 2006, “the parties have conducted separate dealings on labor relations and personnel matters and these separate dealings have been efficient.” *Id.* at 12-13. As such, the RD concluded that “the current combined unit structure does not promote the efficiency of operations as required by . . . the Statute.” *Id.* at 13.

Turning to whether the ASC and JMC’s proposed units are appropriate, the RD found that ASC and JMC employees each have a separate and distinct community of interest because:

[t]he employees in each proposed separate unit are part of the same organizational component; support the same mission; are subject to the same chain of command; have similar or related duties, job titles and work assignments; are subject to the same general working conditions; and are governed by the same personnel and labor relations policies that are centrally established and administered.

Id.

The RD also determined that separate units would promote effective dealings and the efficiency of their respective operations because “the units are co-extensive with their respective activity’s operational and organizational structure and both exist at the level where personnel and labor relations policies are established.” *Id.* The RD also concluded that two units would be appropriate because both the ASC and JMC have successfully conducted separate dealings and negotiations as individual entities. *Id.*

Further, the RD found that the proposed separate units would not result in unnecessary unit fragmentation because “the organizations are each independently and separately responsible for the day-to-day operation of their commands and the determination and administration of personnel policies, practices and other matters affecting the working conditions of their employees.” *Id.*

Thus, the RD ordered that the Union be certified as the exclusive collective bargaining unit for separate ASC and JMC bargaining units.

III. Positions of the Parties

A. Union’s Application for Review

The Union argues that the RD committed clear and prejudicial factual errors in finding that, following the reorganization, the ASC and JMC employees no longer shared “the same mission, same budget[,] or same command structure.” Application for Review at 2. With regard to the Commands’ missions, the Union claims that the record shows that the ASC and JMC “and their predecessors always had distinct but related missions.” *Id.* at 3. In addition, with respect to the Commands’ budgets, the Union claims that “[t]here have always been separate funding sources for [the] ASC and JMC.” *Id.* Specifically, according to the Union, the JMC’s budget is “managed and administered” by the ASC. *Id.* In terms of command structure, the Union alleges that, in determining that “there is ‘little’ interchange between JMC and ASC employees[,]” the RD did not consider testimony evidencing the significant interchange between the organizations, nor the “matrix support” service agreement between the two groups. *Id.* According to the Union, under the matrix support agreement, the ASC and JMC share acquisition, finance and accounting, internal review and audit, military personnel, small business, safety, OCONUS Travel Clearance, BRAC Support, and Civilian Deployment Support functions. *Id.* at 3-4. The Union claims that, in addition to demonstrating a high level of interchange among ASC and

JMC employees, the matrix support agreement shows that the two Commands are not “‘operationally, organizationally and functionally distinct[,]’ as found by the [RD].” *Id.* at 4 (quoting RD’s Decision at 9). The Union further claims that the two Commands “are not self-sufficient and are forced to share resources since neither was given sufficient funding to duplicate certain functions.” *Id.* (emphasis omitted).

The Union also argues that the RD committed factual errors by ignoring “the significant involvement of the CPAC in personnel, labor relations and disciplinary matters.” *Id.* According to the Union, CPAC represents the ASC and JMC in labor relations and disciplinary matters, writes and reviews disciplinary actions for both Commands, and participates in contract negotiations on behalf of the Commands. *Id.* at 4-5. In addition, the Union contends that the RD erroneously found that the reorganization resulted in the designation of two Ombudsmen to handle labor relations matters. Instead, the Union claims, each Command employed one Ombudsman prior to the reorganization and the duties of those Ombudsmen did not change after the reorganization. *Id.* at 5.

In addition, the Union argues that the RD failed to follow established law. In this regard, the Union claims that the RD did not properly consider Authority precedent expressing “reluctance to disturb long standing bargaining units when bargaining in those units has been successful.” *Id.* (citing *Defense Logistics Agency, Defense Supply Center Columbus, Columbus Ohio*, 53 FLRA 1114, 1124 (1998) (*DLA, Columbus*)). The Union argues that the RD should have considered the entire 33-year history of the bargaining unit in question because the consolidation of professionals into the non-professional unit in 2006 should not “erase[] the 31 years of prior bargaining history where ASC/JMC and its predecessors successfully bargained with a single unit.” *Id.* at 6. Specifically, the Union claims that the Authority should consider the unit’s bargaining history extending as far back as 2003, “when JMC was stood up as a separate but subordinate command to AFSC.” *Id.* at 7 n.3.

In addition, the Union argues that the RD applied the wrong criteria when finding a lack of community of interest between the parties because “the duties of ASC and JMC employees are not ‘interchangeable.’” *Id.* at 8. According to the Union, the RD should have considered whether the employees’ duties are related to each other and whether there is “employee interchange.” *Id.* In this regard, the Union alleges that there is extensive interaction between ASC and JMC employees and that the current contract covers employees’ transfers and

details between the two Commands. *Id.* In addition, with respect to the other factors considered by the Authority when examining whether employees share a community of interest, the Union argues that almost all of the bargaining unit employees and the ASC and JMC personnel offices are located in the same building, and that the two Commands still have the same policies. *Id.* at 9. The Union claims that, although the RD found that the ASC and JMC have separate chains of command, the evidence shows that none of the employees “had any changes to their working conditions, including to their immediate supervision, as a result of the reorganization.” *Id.*

The Union also contends that the record evidence demonstrates that the current unit structure promotes effective dealings and that there has been no “deterioration of effective dealings between the parties.” *Id.* at 8. In addition, the Union claims that the RD failed to follow established law in determining that a single unit no longer promotes efficiency of agency operations because he made no specific findings with regard to the cost, productivity, and use of resources of the proposed unit. In this regard, the Union contends that, even though the RD found that the dealings among ASC, JMC and AFGE’s single bargaining unit efficient, he found that the unit should be divided. *Id.* at 10. The Union argues that this split would create “duplicative bargaining[,]” which would increase cost and decrease productivity. *Id.* at 11. The Union requests that the Authority grant review and find that ASC and JMC employees should remain in a single unit. *Id.* at 13.

B. Agency’s Opposition⁴

The Agency argues that there is no longer a community of interest among ASC and JMC employees because, along with a change in chain of command, other extensive changes took place, such as the ASC and JMC’s newly separated and independent labor relations authority and authority to establish separate personnel policies. Opposition at 5. The Agency contends that the RD found that the employees no longer share a community of interest as a result of the reorganization because each Command is “a separate and independent Command with its own mission; chain of command; budget; policies; HR, EEO, Information Management and Public Affairs offices[.]” *Id.* In addition, the Agency alleges that the RD properly found that a community of interest no longer exists because labor relations authority was moved from CPAC to each of the Command’s

4. For purposes of recounting the Opposition, the ASC and JMC will be collectively referred to as the Agency.

Ombudsman, there is little interchange between the Commands, each Command independently determines its organizational structure and personnel issues in terms of the numbers and types of employees they each employ, assignments of work, technologies and methods of performing work, hiring, promotion, leave, overtime, discipline, awards, performance standards, training, and other matters affecting working conditions. *Id.*

The Agency argues that the RD's Decision is not erroneous as alleged by the Union just because some of the ASC and JMC's personnel policies remained the same after the reorganization. According to the Agency, even though ASC and JMC's personnel policies are similar, it is significant that they each have the authority to issue their own personnel policies and that the philosophies of the two Commands are different. *Id.* at 7

With regard to the change in chain of command, the Agency claims that, even though both the ASC and JMC report to the AMC, the significance in the change in chain of command lies in the fact that the JMC is now a major subordinate command to the AMC and is no longer a subordinate command to the ASC. *Id.* Additionally, according to the Agency, the Union mistakenly asserts that "there were no changes in supervisors" because "[w]hen offices were split to effectuate the split in Commands, supervisors in those offices changed." *Id.* In this respect, the Agency argues that each Command is responsible for the day-to-day management of its employees and must follow and apply "their respective Command's policies and philosophies in policy administration." *Id.* at 8.

The Agency claims that the Union erroneously argues that the RD erred in determining that the current unit structure does not promote effective dealings because he failed to consider the bargaining history of the unit, did not follow Authority precedent preserving the *status quo* of a unit, and incorrectly determined the length of the bargaining history. *Id.* Specifically, the Agency argues that the RD properly considered the bargaining history of the unit and determined that there were significant changes to the operations and organization that favored splitting the unit. *Id.* The Agency contends that the RD properly found that the "separation and independence" of each Command over personnel and labor relations matters, the lack of shared supervision or management between the organizations, and "the independence to determine and administer personnel policies, practices, and other matters affecting the working conditions of the employees" does not promote its effective dealings with the Union. *Id.* at 9.

In addition, the Agency claims that the Union incorrectly contends that the RD "ignored the Authority's directive to consider the effect of the proposed unit in terms of cost, productivity and use of resources." *Id.* (quoting Application for Review at 10). In this regard, the Agency contends that it is sufficient that the RD made specific factual findings in order to properly make an efficiency of operations finding. The Agency argues that the RD properly found that the single unit no longer promotes efficiency of the operation because there are now two Commands with separate labor relations authority, and as such, one unit must bargain with two separate Commands. According to the Agency, this results in "more costly, and . . . less productive labor-management relations, than would a unit that bears a more rational relationship to the structure of labor-relations authority within the Agency." *Id.* at 9-10 (citing *United States Dep't of the Navy, Commander, Naval Base, Norfolk, Va.*, 56 FLRA 328, 336 (2000) (*Naval Base, Norfolk*)).

With regard to the Union's claim that the RD committed clear and prejudicial errors regarding substantial factual matters, the Agency contends that the Union erroneously asserts that the Commands' changed missions are not significant because "the ASC and JMC and their predecessors always had 'distinct but related missions.'" *Id.* at 11. According to the Agency, the organizations' changed missions are significant because they do not overlap. In addition the Agency claims that the JMC was given the ammunition mission that was the ASC's mission and that the ASC then took on additional missions. *Id.* at 11 (citing Tr. 80-86, 90-91).

Similarly, the Agency also claims that the Union erroneously contends that the "JMC always had 'separate funding' and therefore nothing changed after the reorganization." *Id.* The Agency argues that, while each mission received a piece of the overall budget prior to the reorganization, that budget "was handled by one resource management office with final authority and approval of the budget by the AFSC [c]ommanding [g]eneral." *Id.* (citing Tr. 87, 371-72). The Agency contends that, since the split of the Commands, the ASC and JMC each have their own resource management and budget office. In addition, the Agency argues that each Commander has the authority to approve the budget for their respective Commands: the JMC Commander no longer obtains approval from the ASC Commander. *Id.* at 12 (citing Tr. 384). The Agency also notes that the ASC's budget "has increased substantially from approximately \$900 million to \$2.4 billion." *Id.* According to the Agency, the Union mistakenly argues that there was

no change to the budgets, when, in fact, there are now two budgets, one for each Command. *Id.*

In addition, the Agency claims that the Union mistakenly asserts that the RD erred in determining that there is little interchange between the Commands. The Agency contends that the RD properly found that, while the JMC commodity teams work alongside ASC contracting teams, “their duties and functions are not interchangeable.” *Id.* at 13 (quoting RD’s Decision at 7). According to the Agency the RD properly considered all of the interchange between the two Commands, including the matrix support agreement. *Id.* In this regard, the Agency contends that the Union does not support its contention that the overlap provided by the matrix support agreement outweighs the degree of separation otherwise found between the two Commands. The Agency also claims that the Union erroneously argues that the ASC and JMC employees’ interaction with one another supports their community of interest. In this regard, the Agency asserts that the ASC is no longer providing acquisition support to the JMC, as the contracting and acquisition became a separate major subordinate command, known as the Acquisition and Contracting Command (ACC). As such, the Agency claims, “most of the employees of the ACC have physically moved out of Building 350.” *Id.* According to the Agency, “[t]he ACC has determined that the employees who were physically located on JMC commodity teams will no longer be located among the JMC employees.” *Id.* The Agency asserts that the ACC is a separate Command and “it may pursue a petition to establish its own bargaining unit because of its separation from ASC.” *Id.* In addition, the Agency argues that the contracting specialists that provide support to the JMC and sit on their commodity teams are not under the authority of the JMC. According to the Agency, these contract specialists are not supervised or reviewed by JMC supervisors and are under the direct supervision and review of their Command. *Id.* at 14.

In addition, the Agency claims that the RD properly found that the reorganization resulted in the designation of two Ombudsmen to handle labor relations matters and addressed the role of CPAC in personnel, labor relations, and disciplinary matters. *Id.* In this respect, the Agency states that the “labor relations authority was de-centralized” and the ASC and JMC each acquired an Ombudsman to handle labor relations matters. While the Ombudsmen have extensive labor relations authority, CPAC, the Agency argues, handles staffing and classification services, serves in an “advisory capacity” and has no authority over labor relations matters. *Id.* at 15. Even though there were two

Ombudsmen serving both the ASC and JMC prior to the reorganization, the Agency argues that it is significant that, post-reorganization, those Ombudsmen no longer share a workload. *Id.* The Agency asserts that, while CPAC is involved in personnel, labor relations, disciplinary matters, and grievance procedures, only the Ombudsmen have the authority to resolve grievances for their respective Commands, and thus, the Union is “asserting a greater significance to CPAC’s presence than is warranted.” *Id.* at 16. In sum, the Agency claims that the Union “has failed to identify any law not followed and failed to present evidence that the RD made any clear and prejudicial error with regard to a substantial factual matter” and requests that the Authority deny the Union’s Application for Review and its request to have the RD’s Decision overturned. *Id.*

IV. Discussion

To determine whether a unit is appropriate under § 7112(a) of the Statute, the Authority considers whether the unit would: (1) ensure a clear and identifiable community of interest among employees in the unit; (2) promote effective dealings with the agency involved; and (3) promote efficiency of the operations of the agency involved. *See FISIC*, 52 FLRA at 959-62. A proposed unit must meet all three criteria in order to be found appropriate. *United States Dep’t of the Army, Military Traffic Mgmt. Command, Alexandria, Va.*, 60 FLRA 390, 394 (2004) (*Army*). Determinations as to each of these criteria are made on a case-by-case basis. *Id.* The Authority has set out factors for assessing each criterion, but has not specified the weight of individual factors or a particular number of factors necessary to establish an appropriate unit. *Id.*

For the reasons set forth below, we find that the Union has not demonstrated that the RD committed a clear and prejudicial error concerning a substantial factual matter and/or failed to apply established law in applying the appropriate unit criteria.

A. The RD did not commit a clear and prejudicial error concerning a substantial factual matter.

Under § 2422.31(c)(3)(iii) of the Authority’s Regulations, the Authority may grant an application for review when the application demonstrates that there is a genuine issue over whether the RD has committed a clear and prejudicial error concerning a substantial factual matter.

Initially, the Union contends that the RD committed a clear and prejudicial error concerning a substantial factual matter because the RD found that the two Commands executed two different missions, even though,

according to the Union, the ASC and JMC “and their predecessors always had distinct but related missions.” Application for Review at 3. The RD found that, after the reorganization[,] the JMC was established as “a separate and independent organization,” and assumed the AFSC’s mission to provide ammunition to all United States military services. RD’s Decision at 3. In addition, after the reorganization, the ASC took on a much broader mission than it had executed prior to the reorganization, including “managing, cataloging, disposal, procurement, distribution, overhaul and determination of material requirements . . . [and] maintenance and material asset redistribution, contingency contracting for combat support services such as food and lodging, and training equipment missions.” *Id.* at 4. The ASC’s mission is now so broad that one witness testified that its “mission changes on a monthly basis.” Tr. at 87. The RD accordingly found that, since the reorganization, the ASC and JMC each have adopted their own “unique” missions. RD’s Decision at 9. As such, the Union has not established that the RD committed a clear and prejudicial error concerning a substantial factual matter in this regard.

The Union also argues that the RD committed a clear and prejudicial error concerning a substantial factual matter because the RD found that the two Commands operate under separate budgets and, according to the Union, “[t]here have always been separate funding sources for [the] ASC and JMC.” Application for Review at 3. Even assuming that the Union correctly asserts that there have always been “separate funding sources” for the ASC and JMC, the RD properly found that the Commands’ budgets have changed since the reorganization. RD’s Decision at 5. Specifically, the RD found that the ASC’s expanded mission caused its budget to “greatly increase.” *Id.* at 4. Since the reorganization, the ASC’s budget has at least doubled, to \$2.4 billion. Tr. at 380. Moreover, prior to the reorganization, the JMC’s budget was dependent upon the AFSC’s approval. However, now that the JMC has become a major subordinate command, it now has its own budget. *Id.* at 88, 372, 384. Accordingly, the RD properly found that the two Commands operate under separate budgets, *see* RD’S Decision at 5, and since the reorganization, the monetary amount of those budgets and the way that the budgets are managed, have significantly changed. As such, the Union has not established that the RD committed a clear and prejudicial error concerning a substantial factual matter in this regard.

In addition, the Union contends that the RD committed a clear and prejudicial error concerning a substantial factual matter because, in determining that the

ASC and JMC do not share the same command structure, the RD did not consider testimony evidencing the significant interchange between the organizations. The RD found that the ASC and JMC employees work in the same building but, “[f]or the most part, [are] not working side-by-side in the same offices.” RD’s Decision at 6. Although there are ASC contract specialists who work with the JMC commodities teams who are responsible for developing the specifics of the ammunition to be purchased, the RD noted that these contract specialists and officers “were assigned to the ASC’s Acquisition Center . . . on October 1, 2008,” and moved from the ASC to the Army Contracting Command, which is a new major subordinate command of the AMC. *Id.* at n.5. According to the Agency, most of those employees have now physically moved out of the building in which the JMC commodities teams are located. Opposition at 13. In addition, the RD found that, of all of the ASC and JMC employees, only nine ASC employees have transferred to the JMC and only three JMC employees have transferred to the ASC. As such, the RD properly concluded that there was no indication of significant interchange between JMC and ASC employees. RD’s Decision at 7; *see also* Tr. at 423, 533.

Also with regard to the RD’s determination that the ASC and JMC do not share the same command structure, the Union contends that the RD committed a clear and prejudicial error concerning a substantial factual matter because he did not consider the matrix support service agreement providing for shared services between the two Commands. The Union contends that this agreement demonstrates that the Commands are “not self-sufficient and are forced to share resources since neither was given sufficient funding to duplicate certain functions.” Application for Review at 4 (emphasis omitted). The RD noted that the ASC and JMC share “certain staff support offices” and that the Commands signed a memorandum of agreement specifying that they would share staff support offices for purposes of efficiency and economy. RD’s Decision at 5 n.3. None of the record evidence establishes that the matrix support agreement provides for a level of interchange that would warrant a change in the outcome of the case had the RD detailed the interchange involved in the agreement. Although the Union argues that the matrix support agreement demonstrates that the Commands are not self-sufficient, this is not a requirement in determining whether two units, rather than one, would be appropriate. In addition, although the Authority has set out factors for assessing each appropriate unit criteria, it has not specified the weight of the individual factors, and the interchange that may exist in relation to the matrix support agreement is just one factor. *Army*, 60 FLRA at

394. As such, the Union has not established that the RD committed a clear and prejudicial error concerning a substantial factual matter in this regard.

In addition, the Union claims that the RD committed a clear and prejudicial error concerning a substantial factual matter because the RD erroneously found that the reorganization resulted in the designation of two Ombudsmen to handle labor relations matters. According to the Union, each Command employed one Ombudsman prior to the reorganization and the duties of those Ombudsmen did not change after the reorganization. Application for Review at 5. To the contrary, the RD found that the Ombudsmen's roles did change after the reorganization. "Following the reorganization, the ASC and JMC each designated their own [Ombudsman] representative . . . for labor relations matters." RD's Decision at 6. The record demonstrates that, prior to the reorganization, the two Ombudsmen shared their responsibilities between the ASC and JMC so that they could evenly distribute their workloads. See Tr. at 339. However, since the reorganization, the Ombudsmen no longer share their responsibilities and their duties do not overlap. Tr. at 340-41. In addition, the record reflects that, since the reorganization, the Ombudsmen's responsibilities have expanded "tremendously."

Tr. at 340. Accordingly, the RD found that, after the reorganization, the Ombudsmen's responsibilities expanded to include day-to-day dealings with the Union, contract negotiations, grievances, "Union notification," conflict resolution, and the resolution of third-party disputes. RD's Decision at 6. As such, the RD properly concluded that the reorganization "significantly changed how labor relations matters are handled and decided." *Id.* Thus, the Union has not established that the RD committed a clear and prejudicial error concerning a substantial factual matter in this regard.

The Union also argues that the RD committed a clear and prejudicial error concerning a substantial factual matter because he failed to address "the significant involvement of the CPAC in personnel, labor relations and disciplinary matters." Application for Review at 4. To the contrary, the RD found that, while CPAC provides onsite personnel advice and services and processes personnel actions for both the ASC and JMC and other Army and Department of Defense units, it has not been given the authority to handle labor relations matters for either the ASC or JMC. RD's Decision at 6. The RD also determined that CPAC provides technical advice and assistance as requested by the Ombudsmen. The record establishes that, although CPAC is involved in personnel, labor relations, and disciplinary matters, the involvement is only to the extent that the Ombuds-

men determine is necessary. The Ombudsmen go to CPAC for technical advice and assistance, but all of the decision-making authority is retained by the Ombudsmen. See Tr. at 52; 107-08; 180; 254; 262; 276; 283. Accordingly, the RD properly concluded that, after the reorganization, labor relations are no longer handled by a single human resources office but are handled individually by the ASC and JMC Ombudsmen. RD's Decision at 6. Thus, the Union has not established that the RD committed a clear and prejudicial error concerning a substantial factual matter in this regard.

Accordingly, we find that the Union has not established that the RD committed a clear and prejudicial error concerning a substantial factual matter warranting a review of his decision.

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

In determining whether an existing unit remains appropriate after a reorganization, the Authority focuses on the changes caused by the reorganization, see *Morale, Welfare and Recreation Directorate, Marine Corps Air Station, Cherry Point, N.C.*, 45 FLRA 281, 286 (1992) (*Marine Corps Air Station*), and assesses whether those changes are sufficient to render a recognized unit inappropriate. See *DLA, Columbus*, 53 FLRA at 1122-23. If the scope and character of a unit is not significantly altered by a reorganization, then the unit remains appropriate. See *Dep't of the Interior, Nat'l Park Serv., W. Reg'l Office, San Francisco, Cal.*, 15 FLRA 338, 341 (1984).

Where there are claims alleging different appropriate units, the Authority will first consider the appropriate unit claim that will most fully preserve the *status quo* in terms of unit structure and the relationship of employees to their chosen exclusive representative. *Naval Base, Norfolk*, 56 FLRA at 332. This rule stems from the Authority's reluctance to disturb long standing bargaining units when bargaining in those units has been successful. *DLA, Columbus*, 53 FLRA at 1124. Further, the Authority has held that there is a preference in the Statute for preventing unit fragmentation when an existing unit otherwise remains appropriate. *Naval Base, Norfolk*, 56 FLRA at 333; see also *United States Dep't of the Air Force, Air Force Materiel Command, Wright-Patterson Air Force Base, Ohio*, 55 FLRA 359, 361 (1999); *Library of Congress*, 16 FLRA 429, 431 (1984).

The Union argues that the RD failed to follow established law. In this regard, the Union initially claims that the RD did not properly consider Authority precedent expressing "reluctance to disturb long stand-

ing bargaining units when bargaining in those units has been successful.” Application for Review at 5 (citing *DLA, Columbus*, 53 FLRA at 1124). With regard to bargaining history, the RD acknowledged that the unit dates back to the 1970s, during which time the non-professional and professional units were separate and each represented by different labor organizations. *Id.* at 5-6. According to the RD, the professional and non-professional employees were in separate units until the Union became the exclusive representative of the professional employees and the units were consolidated in May 2006. As such, the RD determined that the bargaining history for the combined professionals and non-professionals unit has been “brief.” RD’s Decision at 11. Citing National Labor Relations Board case law, the RD concluded that, “past bargaining history has less weight when, as here, there have been significant changes in the employer’s operations and organization.” *Id.* at 12.

Although Authority precedent expresses a reluctance to disturb longstanding bargaining units when bargaining in those units has been successful, here the RD found that the history of the bargaining unit including both professional and nonprofessional employees was relatively short. *Id.* at 11. In addition, a unit’s bargaining history is just one factor that the Authority considers when making appropriate unit determinations. Although the Authority has set out factors for assessing each appropriate unit criteria, it has not specified the weight of the individual factors. *Army*, 60 FLRA at 394. Here, the RD clearly considered the bargaining unit’s history, but determined that its history was not of such strength and longevity to outweigh other factors favoring separate units. As such, the Union has not demonstrated that the RD failed to follow established law.

The Union also argues that the RD failed to follow established law because he erred in his application of several of the community of interest factors in determining that the ASC and JMC employees no longer share a community of interest. Initially, in this regard, the Union argues that the RD applied the wrong criteria when finding a lack of community of interest between the ASC and JMC employees because “the duties of ASC and JMC employees are not ‘interchangeable.’” Application for Review at 8. According to the Union, the RD should have considered whether the employees’ duties are related to each other and whether there is “employee interchange.” *Id.*

In considering whether ASC and JMC employees enjoy regular contact and interchange, the RD found that the ASC and JMC employees work in the same building, but that most of them do not work together. In addition, the RD found that the ASC and JMC employ-

ees that do work together perform duties that are related to each other but are not interchangeable. RD’s Decision at 7. Although the RD acknowledged that ASC contract specialists and procurement officers work together with JMC employees on the JMC commodity teams located on the sixth floor of Building 350, he noted that these ASC contract specialists and officers have moved from the ASC to the Army Contracting Command, which is a new major subordinate command of the AMC. *Id.* at 6 n.5. In addition, although the Union asserts that there is extensive interaction between ASC and JMC employees, the record does not support this assertion. *See* Tr. at 533. With regard to interchange between the ASC and JMC employees, the RD found that only nine ASC employees have transferred to the JMC and three JMC employees transferred to the ASC. RD’s Decision at 7. As such, the RD properly concluded that there was no indication of significant interchange between JMC and ASC employees and the Union has not demonstrated that the RD failed to follow established law.

In addition, the Union argues that the RD mistakenly found a lack of community of interest between the parties because, although the ASC and JMC chain of commands have changed, the two Commands maintain the same policies. According to the Union, none of the employees “had any changes to their working conditions, including to their immediate supervision, as a result of the reorganization.” Application for Review at 9.

In considering whether the employees are governed by the same personnel and labor relations policies that are administered by the same personnel office, the RD found that the ASC and JMC each have set up various offices designed to create and issue individualized personnel policies. The RD further found that the ASC has issued “a number of personnel policies that apply only to ASC personnel.” RD’s Decision at 5. In addition, the RD found that the JMC has issued its own policies and, as a subordinate command to the Joint Munitions and Lethality, Life Cycle Management Command, is subject to its policies, while the ASC is not. *Id.* The RD further found that the Commands have separate competitive areas for RIFs, different awards policies, different approaches to their VSIP programs, and administer leave differently. *Id.* As such, while some of the ASC and JMC personnel policies may be similar, each organization has the authority to issue distinct personnel policies.

With respect to the post-reorganization working conditions, many ASC and JMC employees are subject to similar general working conditions because they

work in the same building. In determining whether an existing unit remains appropriate after a reorganization, the Authority focuses on the changes caused by the reorganization, *see Marine Corps Air Station*, 45 FLRA at 286, and assesses whether those changes are sufficient to render a recognized unit inappropriate. *See DLA, Columbus*, 53 FLRA at 1122-23. Here, the RD determined and the record reflects that the changes caused by the reorganization “significantly altered the scope and character” of the combined unit. RD’s Decision at 9. Specifically, the RD properly found that the ASC and JMC now have separate and distinct chains of commands and missions, drastically changed budgets, authority to administer their own personnel policies, and the authority to make independent labor relations decisions. The RD properly found that the totality of these circumstances outweighs the fact that the ASC and JMC employees still work in the same building. Consequently, the Union has failed to establish that review is warranted because there is a genuine issue over whether the RD failed to apply established law in his conclusion that the ASC and JMC employees no longer share a community of interest. As such, we find that the Union has not established that the RD failed to apply established law applying the appropriate unit factors and deny the application for review.⁵

V. Order

The application for review is denied.

5. As all three criteria under § 7112(a) must be met in order to find a unit to be appropriate, the finding that the RD did not err in finding that there is no longer a community of interest among ASC and JMC employees in a single unit makes it unnecessary to address the other two criteria. *See Dep’t of the Interior, Nat’l Park Serv., Lake Mead Nat’l Recreation Area, Boulder City, Nev.*, 57 FLRA 582, 585-86 (2001); *Dep’t of the Navy, Naval Computer & Telecomm. Area Master Station-Atlantic, Base Level Commc’n Dep’t, Reg’l Operations Division, Norfolk, Va., Base Communications Office-Mechanicsburg*, 57 FLRA 230, 236 (2001).