

64 FLRA No. 3

UNITED STATES
DEPARTMENT OF THE NAVY
FLEET READINESS CENTER SOUTHEAST
JACKSONVILLE, FLORIDA
(Activity)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1943
(Union/Petitioner)

AT-RP-08-0027

ORDER DISMISSING
APPLICATION FOR REVIEW

August 27, 2009

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

I. Statement of the Case

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

As relevant here, the Union filed a petition seeking clarification of the bargaining unit status of the Electronics Engineer, GS-0855-13, Computer Engineer and GS-0854-13 sub-team leader positions. The Regional Director (RD) determined that the positions should be excluded from the unit because the incumbents are

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.

supervisors within the meaning of § 7103(a)(10) of the Federal Service Labor-Management Relations Statute (the Statute).²

As explained below, we dismiss the Union's application for review.

II. Background and RD's Decision

The Union was initially certified as the exclusive representative of a unit of all professional employees of the Naval Aviation Depot and the Weapon System Support Office³ located in Jacksonville, Florida, excluding all non-professional employees, employees engaged in personnel work in other than a purely clerical capacity, confidential employees, management officials and supervisors as defined in the Statute. *See* RD's Decision at 3. The Activity is a tenant activity at the Naval Air Station, Jacksonville, Florida, and is comprised of several groups or organizations. The positions at issue in this case are located in the Avionics Department (AD) which reports to the Research and Engineering Group. The AD consists of four Fleet Support Teams (FST). Each FST has a leader. Each FST leader routes assignment to a sub-team leader. *See id.* at 3-4.

As noted above, the Union's petition seeks clarification of the bargaining unit status of the Electronic and Computer engineers in the sub-team leader positions.

The Union argued before the RD that the positions are properly included in the unit because these positions are merely "[g]ate [k]eepers" who essentially track assignments through their completion, and that as such, they are not supervisors under the Statute. *See id.* at 2, 7. The Activity argued that the positions should be excluded because the incumbents of the positions exercise significant independent judgment and thus are

2. 5 U.S.C. § 7103(a)(10) provides:

"supervisor" means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority[.]

3. In 2001, the Activity changed its name to Department of the Navy, Fleet Readiness Center Southeast, Jacksonville, Florida.

supervisors within the meaning of § 7103(a)(10). *See id.* at 2, 8.

The RD noted that an employee need only to exercise one of the responsibilities listed in § 7103(a)(10) of the Statute with independent judgment to be found to be a supervisor. RD's Decision at 8. Here, the RD found that the sub-team leaders exercise discretion — when assigning work to team members, when they reassign work to other team members, and when they assess that the work is deficient and needs to be returned — beyond the routine review of work for accuracy that the Authority has considered when finding that an employee is not a supervisor. *See* RD's Decision at 9-10 (citing *United States Dep't of Energy, W. Area Power Admin., Lakewood, Colo.*, 60 FLRA 6 (2004)). The RD also found that the sub-team leaders provide significant input concerning requests for overtime, leave, work performance, and recommendations for monetary awards upon which upper management relies and consistently adopt. *See id.* Based on the foregoing, the RD concluded that the sub-team leaders should be excluded from the unit because they exercise independent judgment when they assign work to team members, recommend performance awards and assign overtime. *See id.* at 10.

III. Procedural History

The Union filed an application for review, and the Activity filed no opposition. The initial filing of the application for review was deficient as the Union failed to submit the correct number of copies and a correct statement of service with its filing. The Union also failed to serve the RD. *See* Notice and Order. The Authority's Case Intake and Publication Office (CIP) issued a July 8, 2009 Notice and Order to the Union to cure the deficiencies no later than July 22, 2009, noting that failure to comply with the order may result in dismissal of the application. *See id.* at 2. The Union submitted an untimely response to the Authority's Notice and Order postmarked July 29, 2009. On August 6, 2009, the Authority issued an Order to Show Cause directing the Union to show cause why its application should not be dismissed for failure to timely respond to the Authority's July 8, 2009 Notice and Order. *See* Order to Show Cause at 2. The Union was also notified that its response to the July 8, 2009 Notice and Order was procedurally deficient because a copy was not served on the RD and because it did not contain a correct statement of service. *Id.* The Union was also directed to file with the Authority six copies of its response to the Order to Show Cause and six copies of

its original statement of service, showing service of the application and the Notice and Order on counsel of record and the RD. *Id.* The Union was further notified that failure to comply with the Order to Show Cause by August 14, 2009 may result in dismissal of the case. *Id.* at 3. In the Union's response to the Order to Show Cause, the Union failed to explain why the Authority should consider its untimely response to the Notice and Order or why the Authority should consider its application for review. *See* Response to Order to Show Cause.

IV. Analysis and Conclusions

The Authority will dismiss a party's filing that is procedurally deficient under the Authority's Regulations when the party fails to comply with an Authority Order directing the party to cure its deficiencies. *See, e.g., AFGE, Local 1417*, 63 FLRA 349, 350 (2009) (*AFGE*) (Authority dismissed union's exceptions for failure to show cause why its exceptions should not be dismissed for failure to comply with a deficiency order); *United States Dep't of Veterans Affairs*, 60 FLRA 479, 479 n.1 (2004) (Authority dismissed Union's opposition that was deficient under 5 C.F.R. §§ 2429.25 and 2429.27 after union failed to comply with a deficiency order and a subsequent order to show cause); *NAGE, Local R3-32*, 57 FLRA 624, 624 n.1 (2001) (agency's opposition was dismissed because agency did not comply with an order to show cause why its opposition should not be dismissed because, among other reasons, the agency failed to include the correct number of copies).

Although the Union apologizes for not following the Authority's regulatory requirements for filing its application for review, it does not explain why the Authority should consider its procedurally deficient application for review. *See* Response to Order to Show Cause at 2. The record establishes that the Union did not submit the correct number of copies of its application for review, did not provide a statement of service, and did not serve the RD. In its response to the Order to Show Cause, the Union asserts that the deficiencies have been cured without providing sufficient explanation or evidence as to why the Authority should consider its untimely cure of the deficiencies or why the Authority should consider its application for review. Instead, the Union asserts that its filing was procedurally deficient because the RD's Decision did not set forth all of the regulatory requirements for filing an application for review. *See id.* The Union fails to address why it did not acknowledge that its response to the Notice and Order was untimely or request waiver of the expired time period. *See* Order to Show Cause at 2. For the

foregoing reasons, we find that the Union failed to timely cure the deficiencies set forth in the Notice and Order and did not adequately respond to the Order to Show Cause. *See AFGÉ*, 63 FLRA at 350.

V. Order

The application for review is dismissed.