

68 FLRA No. 113

SOCIAL SECURITY ADMINISTRATION
(Agency)

and

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

WA-RP-14-0055
WA-RP-15-0018

ORDER DENYING
APPLICATION FOR REVIEW

June 24, 2015

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

I. Statement of the Case

The Union filed an application for review (application) of the attached decision of Federal Labor Relations Authority (FLRA) Regional Director Barbara Kraft (RD). The Union filed two petitions requesting that the RD clarify whether new employees – forty new professional employees and sixty-eight new non-professional employees – should be included in the Union’s existing bargaining units.

Finding that the employees at issue do not fall within the express terms of the existing bargaining-unit certifications, the RD dismissed both petitions on the same grounds in a single consolidated decision and order (RD’s Decision).

The question before us is whether the RD failed to apply established law because she allegedly failed to analyze whether the employees at issue fall within the express terms of the existing-unit certifications. Because the RD correctly assessed whether the employees fall within the express terms of the existing-unit certifications, as required by law, and the Union’s arguments are largely based on a misunderstanding of the RD’s decision, the answer is no.

II. Background and RD’s Decision

The Agency’s Office of Disability Adjudication and Review (ODAR) administers a hearings and appeals program for the Agency dealing with disability claims. ODAR is headquartered in Falls Church, Virginia. ODAR has approximately ten regional offices, 168 hearing offices, five national hearing centers, and two national case assistance centers (NCACs) – NCAC Central and NCAC East. This case concerns the employees of NCAC East.

In May 2014, NCAC East opened in Baltimore, Maryland to help address backlog initiatives within ODAR by assisting hearing offices and national hearing centers nationwide. The NCAC East workforce includes newly hired professional and non-professional employees (employees).

Several years before NCAC East’s opening, the FLRA certified the Union as the exclusive representative of two bargaining units that include:

(1) “[a]ll professional employees of the [Agency] assigned to: the Headquarters Bureaus and Offices in the Baltimore metropolitan area, including . . . [ODAR] in its Headquarters in the Washington metropolitan area”;¹ and

(2) “[a]ll [nonprofessional] . . . employees of the [Agency’s] Headquarters Bureaus and Offices . . . in . . . Baltimore [and] the Headquarters, [ODAR], in the Washington Metropolitan area.”²

The Union petitioned the RD to clarify whether the employees should be included in the existing units.

Before the RD, the Union contended that the employees should be automatically included in the existing units because their positions fall within the express terms of the existing-unit certifications. The Agency asserted that although “NCAC East is geographically located in close proximity to the Agency’s Headquarters complex in Baltimore, . . . NCAC East, like NCAC Central, does not perform a headquarters function.”³

The RD applied the principles set forth in *Department of the Army Headquarters, Fort Dix*,

¹ RD’s Decision at 2.

² *Id.* at 2-3.

³ *Id.*

Fort Dix, New Jersey (Fort Dix).⁴ Under *Fort Dix*, “new employees are automatically included in an existing [bargaining] unit where their positions fall within the express terms of [an existing bargaining-]unit certification and their inclusion would not render the [bargaining] unit inappropriate.”⁵ In addition, the RD stated that this holding applies “not only to new employees hired into previously existing positions, but also to employees in newly []created positions that fall within the express terms of the existing certification.”⁶

The RD applied this legal framework to both petitions and found that the employees should not be automatically included in the existing units. Specifically, she found that the express terms of the certifications only apply to employees “assigned to” and “of” “Headquarters Bureaus and Offices [(HQBOs)] in the Baltimore, Maryland metropolitan area [(Baltimore)],” and “ODAR in its Headquarters in the Washington, D.C. metropolitan area [(D.C.)].”⁷ Citing Authority precedent,⁸ the RD found that “assigned to” and “of” refer to an “organizational assignment rather than a geographic one”⁹ and that the certifications address geographic assignments separately. Accordingly, she interpreted the certifications as including employees who are: (1) organizationally assigned to Agency HQBOs – which the RD later abbreviated as “Agency Headquarters”¹⁰ – and physically located in Baltimore; and (2) organizationally assigned to ODAR Headquarters and physically located in D.C.

Turning to the NCAC East employees, the RD found that NCAC East organizationally falls under ODAR and its employees perform ODAR functions, but are physically located in Baltimore. Applying the express terms of the certifications to the employees, the RD found that although the employees are physically located in Baltimore, the employees are organizationally “assigned to” and “of” ODAR, not Agency HQBOs.¹¹ Further, she found that the employees do not work for ODAR Headquarters in D.C. Accordingly, the RD found that the new employees cannot “be considered Agency

[HQBO] employees in the Baltimore area, nor are they ODAR Headquarters employees in [D.C.]”¹²

Finding that the employees do not fall within the existing unit certifications, the RD dismissed both petitions.

The Union filed an application for review of the RD’s decision. The Agency filed an opposition to the Union’s application, but later requested to withdraw its opposition, and the Authority’s Office of Case Intake and Publication granted the request.

III. Analysis and Conclusions

The Union contends that the RD failed to apply established law¹³ under the *Fort Dix* doctrine when she concluded that the employees are not automatically included in the existing units.¹⁴ Specifically, the Union argues that the RD failed to: (1) “fully” analyze the express terms of the existing-unit certifications; (2) interpret *Fort Dix* broadly; and (3) afford the Union an opportunity to present witness testimony.¹⁵ As discussed below, the Union has not established that the RD failed to apply established law under the *Fort Dix* doctrine. Accordingly, we deny the Union’s application for review.

Under the Authority’s *Fort Dix* doctrine, “[n]ew employees are automatically included in an existing bargaining unit where their positions fall within the express terms of a bargaining certificat[ion] and where their inclusion does not render the bargaining unit inappropriate.”¹⁶

Regarding its first argument, the Union asserts that the RD failed to investigate whether the employees of NCAC East “work for” Agency HQBOs.¹⁷ The Union misunderstands the RD’s decision. The RD addressed whether the employees “work for” HQBOs when she determined whether these employees were “assigned to” and “of” Agency HQBOs or ODAR Headquarters within the meaning of the certifications.¹⁸ She determined, and it is undisputed,¹⁹ that the NCAC East employees are organizationally assigned to and work for ODAR in Baltimore, not Agency HQBOs in Baltimore or ODAR Headquarters in D.C.²⁰

⁴ 53 FLRA 287, 294 (1997).

⁵ RD’s Decision at 3 (quoting *U.S. Dep’t of the Navy, Human Res. Serv. Ctr. Nw., Silverdale, Wash.*, 61 FLRA 408, 412 (2005) (internal quotation marks omitted) (citing *Fort Dix*, 53 FLRA at 294)).

⁶ *Id.* (quoting *SSA, Office of Disability Adjudication & Review, Falls Church, Va.*, 62 FLRA 513, 514-15 (2008) (citations omitted) (internal quotation marks omitted)).

⁷ *Id.* at 4.

⁸ *U.S. Dep’t of the Navy, Naval Facilities Eng’g Command Se., Jacksonville, Fla.*, 68 FLRA 244, 246, 251 (2015) (*Navy*) (citations omitted).

⁹ RD’s Decision at 4 (internal quotation marks omitted).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Application at 7 (citing 5 C.F.R. § 2422.31(c)(3)(i)).

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 7-13.

¹⁶ *Fort Dix*, 53 FLRA at 294.

¹⁷ Application at 7-10, 12.

¹⁸ RD’s Decision at 4.

¹⁹ Application at 3 (“[I]t is undisputed that the employees fall within the organizational structure of . . . ODAR.”).

²⁰ RD’s Decision at 4.

The Union further argues that the RD failed to investigate whether ODAR itself is an HQBO.²¹ Once again, the Union misunderstands the RD's decision. As the RD recognized, the certifications specifically include ODAR *Headquarters* in *D.C.* as an example of an Agency HQBO. But as the RD also explained, the certifications do not expressly include any sub-component of ODAR. Therefore, although the Union claims that ODAR – as a “subordinate [Agency] component”²² – reports to an Agency HQBO or that ODAR's chain of command goes through an Agency HQBO, this claim is not inconsistent with the RD's determination that the certifications only extend to ODAR “employees who are *both* organizationally assigned to ODAR Headquarters *and* physically located in [D.C.]”²³

Regarding its second argument, the Union claims that the RD erred by not “broadly” applying the *Fort Dix* doctrine, citing *NFFE, FD-1, IAMAW, AFL-CIO (NFFE)*.²⁴ But the holding in *NFFE* is inapplicable here. *NFFE* held that *Fort Dix*'s automatic-inclusion principles should be applied “broadly” to cover not only “new” employees, but also existing employees who are newly unrepresented.²⁵ Here, the RD found, and there is no dispute, that the only employees at issue are “new” employees. Because applying *Fort Dix* “broadly” to extend it to existing employees is not an issue in this case, *NFFE* is inapplicable.

Finally, regarding its third argument, the Union contends that the RD failed to properly investigate the express terms of the certifications under *Fort Dix* because the RD did not afford the Union an opportunity to present witness testimony during a hearing or through an affidavit.²⁶

Under § 2422.30 of the Authority's Regulations, RDs have broad discretion to investigate a representation petition “as the [RD] deems necessary.”²⁷ An RD “may determine, on the basis of the investigation . . . that there are sufficient facts not in dispute to form the basis for a decision or that, even where some facts are in dispute, the record contains sufficient evidence on which to base a decision.”²⁸

The Union fails to demonstrate how the RD's conduct of the investigation prejudiced the Union's presentation of its case. The Union does not challenge the RD's statement that she “conducted an investigation and both parties provided information and their respective positions.”²⁹ Therefore, the Union was not precluded during the investigation from presenting any evidence or arguments that it considered relevant to the RD's consideration of its petitions.³⁰ Accordingly, the Union fails to demonstrate that the RD abused her discretion or failed to apply established law in this regard.

We therefore reject the Union's contention that the RD failed to apply established law.

IV. Order

We deny the Union's application for review.

²¹ Application at 9.

²² *Id.*

²³ RD's Decision at 4 (first emphasis added).

²⁴ Application at 10 (citing 67 FLRA 643, 644 (2014)).

²⁵ *NFFE*, 67 FLRA at 644.

²⁶ Application at 11.

²⁷ *U.S. Dep't of the Air Force, Travis Air Force Base, Cal.*, 64 FLRA 1, 6 (2009) (quoting 5 C.F.R. § 2422.30(a)).

²⁸ *See U.S. Dep't of VA, VA Conn. Healthcare Sys. W. Haven, Conn.*, 61 FLRA 864, 870 (2006) (citations omitted).

²⁹ RD's Decision at 1.

³⁰ *See USDA, Forest Serv., Chattahoochee-Oconee Nat'l Forests, Oconee Ranger Dist., Monticello, Ga.*, 43 FLRA 911, 914 (1991) (finding that where party was not precluded from presenting evidence during RD's investigation did not demonstrate that RD's findings or conclusions on any substantial factual issue were clearly erroneous).

BEFORE THE
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON REGIONAL OFFICE

SOCIAL SECURITY ADMINISTRATION
(Agency)

and

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

WA-RP-14-0055
WA-RP-15-0018

DECISION AND ORDER
DISMISSING PETITIONS

I. INTRODUCTION

The American Federation of Government Employees, AFL-CIO (AFGE) filed the petition in WA-RP-14-0055 to clarify whether newly-hired professional employees at the Social Security Administration’s (Agency’s) National Case Assistance Center in Baltimore, Maryland (NCAC East) should be included in the AFGE’s existing consolidated bargaining unit of professional employees of the Agency.

AFGE filed the petition in WA-RP-15-0018 to clarify whether NCAC East nonprofessional employees should be included in AFGE’s separate existing consolidated unit of nonprofessional employees.

In both petitions, AFGE contends that automatic inclusion of the unrepresented NCAC East employees is proper because the employees fall within the express terms of AFGE certifications. The Agency disagrees with AFGE’s contention.

The Region conducted an investigation and both parties provided information and their respective positions. No facts are in dispute. Accordingly, no hearing is necessary.

II. STATEMENT OF THE CASE

NCAC East is a relatively new component of the Agency’s Office of Disability Adjudication and Review (ODAR). ODAR is headquartered in Falls Church, Virginia, a suburb of Washington, DC. ODAR consists of approximately 10 Regional Offices, 168 Hearing Offices, 5 National Hearing Centers, and 2 National Case

Assistance Centers (NCACs) –NCAC Central and NCAC East.

In 2010, ODAR opened NCAC Central in St. Louis, Missouri.¹ On May 19, 2014, NCAC East opened in Baltimore. The NCACs help address backlog initiatives within ODAR by assisting Hearing Offices and National Hearing Centers nationwide with decision writing and case pulling.

AFGE’s existing bargaining unit of professional employees, in a certification last amended in 2008,² is described as follows:

Included:	All professional employees of the Social Security Administration assigned to: the Headquarters Bureaus and Offices in the Baltimore metropolitan area, including the Office of the General Counsel; Payment Centers (Program Services Centers); the Office of Research and Statistics in Washington, D.C.; the Office of Disability Adjudication and Review in its Headquarters in the Washington metropolitan area, Hearing Offices in Region IV, and Hearing Offices in Puerto Rico, the Office of the Regional Commissioner in Regions I, II, III, IV, V, VI, VII, VIII, IX and X; the Office of General Counsel in Regions I, II, III, IV, V, VI, VII, VIII, IX and X.
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Excluded:	All non-professional employees, management officials, supervisors, and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6) and (7).
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¹ In 2013, after an election, AFGE was certified as the exclusive representative of NCAC Central nonprofessional employees (DE-RP-13-0003). In 2014, after an election, the National Treasury Employees Union was certified as the exclusive representative of NCAC Central professional employees (DE-RP-14-0022).

² AFGE’s certification was granted in Case Nos. 22-09146(UC)-002, August 30, 1979 and WA-RP-60039, May 31, 1996, and amended in Case No. WA-RP-06-0068, 62 FLRA No. 95, October 16, 2008.

As clarified during the investigation, AFGE's position is that NCAC East professional employees – currently unrepresented – fall under the express terms of the certification, either because they are assigned to “the Headquarters Bureaus and Offices in the Baltimore metropolitan area, including the Office of the General Counsel,” or because they are assigned to “the Office of Disability Adjudication and Review in its Headquarters in the Washington metropolitan area.”

With respect to the nonprofessional employees, AFGE relies on the following language from its certification:³

Included: All nonsupervisory General Schedule and Wage Grade employees of the Social Security Administration Headquarters Bureaus and Offices, including the Office of the General Counsel, in the Baltimore SSA. (As clarified in WA-RP-60039, 5/31/96)

Excluded: Guards, supervisors, management officials, professional employees, employees engaged in personnel work other than in a purely clerical capacity, investigative personnel and employees transferred to the Health Care Financing Administration.

Included: All nonprofessional employees both GS and WG, including temporary nonprofessional of 700 hours appointments or more, of the Headquarters, Office of Disability Adjudication and Review, Social Security Administration, in the Washington Metropolitan Area.

Excluded: All professional employees, management officials, supervisors and employees described in 5 USC 7112(b)(2), (3), (4), (6) and (7). (WA-RP-07-0009, 7/16/2008)

AFGE argues that the unrepresented NCAC East nonprofessional employees fall under the express terms of the certification because they are either employees “of the Social Security Administration Headquarters Bureaus and Offices, including the Office of the General Counsel, in the Baltimore SSA,” or “of the Headquarters, Office of Disability Adjudication and Review, Social Security Administration, in the Washington Metropolitan Area.”

The Agency asserts that AFGE's certifications do not cover NCAC East employees. The Agency describes NCAC East as a new support organization for ODAR Hearing Offices throughout the country. Though NCAC East is geographically located in close proximity to the Agency's Headquarters complex in Baltimore, the Agency contends NCAC East, like NCAC Central, does not perform a headquarters function. The Agency further argues that NCAC East is not part of ODAR in the Washington metropolitan area because it is located in Baltimore.

III. ANALYSIS AND CONCLUSIONS

AFGE's position, that NCAC East employees are automatically included in the existing professional and nonprofessional units, is based on *Department of the Army, Headquarters, Fort Dix, Fort Dix, New Jersey*, 53 FLRA 287, 294 (1997) (*Fort Dix*). Under *Fort Dix*, “new employees are automatically included in an existing unit where their positions fall within the express terms of a unit certification and their inclusion would not render the unit inappropriate.” *U.S. Dep't of the Navy, Human Res. Serv. Ctr. Nw., Silverdale, Wash.*, 61 FLRA 408, 412 (2005) (citing *Fort Dix*). The Authority has held that the *Fort Dix* principles apply “not only to new employees hired into previously existing positions, but also to employees in newly-created positions that fall within the express terms of the existing certification.” *SSA, ODAR, Falls Church, Va.*, 62 FLRA 513, 514-15 (2008) (citations omitted).

AFGE's professional certification applies to employees “assigned to” Headquarters Bureaus and Offices in the Baltimore metropolitan area and employees “assigned to” ODAR in its Headquarters in the Washington metropolitan area. Similarly, AFGE's nonprofessional certification applies to employees “of” Headquarters Bureaus and Offices “in the Baltimore SSA” and employees “of” ODAR Headquarters in the

³ Ref. 22-09146(UC)-001, August 30, 1979; WA-RP-60039, May 31, 1976 and BN-RP-00045, November 26, 2001.

Washington metropolitan area. The Authority has upheld regional director determinations that interpreted “assigned” as “referring to an organizational assignment rather than a geographic one.” *U.S. Dep’t of the Navy, Naval Facilities Eng’g Command Se., Jacksonville, Fla.*, 68 FLRA 244, 246 (2015) (citing *SSA, ODAR, Dallas Region, Dallas, Tex.*, 66 FLRA 1 (2011)).⁴

Consistent with Authority precedent, I interpret “assigned to” and “of” in AFGE’s certifications as referring to employees who are *organizationally* assigned to Agency Headquarters and ODAR Headquarters. The certifications address the *geographic* assignment of the employees separately. Thus, AFGE is certified to represent employees who are both organizationally assigned to Headquarters Bureaus and Offices *and* physically located in the Baltimore metropolitan area; AFGE is also certified to represent employees who are both organizationally assigned to ODAR Headquarters *and* physically located in the Washington metropolitan area. That is, AFGE represents Agency Headquarters employees in the Baltimore area, and ODAR Headquarters employees in the Washington area.

Organizationally, NCAC East falls under ODAR, and its employees perform ODAR functions. The NCAC East employees are therefore “assigned to” and “of” ODAR. Geographically, they are assigned to the Baltimore metropolitan area. They work for ODAR, not Agency Headquarters, in Baltimore. They cannot, therefore, be considered Agency Headquarters employees in the Baltimore area, nor are they ODAR Headquarters employees in the Washington area.⁵ Accordingly, I find that the petitioned-for NCAC East employees do not fall within the express terms of AFGE’s certifications.

IV. ORDER

The petitions are dismissed.

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 seek review of this Decision by filing an application for review with Federal Labor Relations Authority. The application for review must be filed with 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 application for review must be received by the Authority in Washington by **April 28, 2015**. The application for review may be filed electronically through the Authority’s website, www.flra.gov.⁶

Barbara Kraft
Regional Director, Washington Region
Federal Labor Relations Authority

Dated: February 27, 2015

⁴ The Regional Director had also interpreted “of” the same way as “assigned to”: to “work for.” 68 FLRA at 251.

⁵ The National Hearing Centers are equivalent to the NCACs with respect to their level in the ODAR organization. Notably, in 2011, AFGE was certified as the exclusive representative of nonprofessional employees of the National Hearing Center in Baltimore. This occurred after an election, not through application of the *Fort Dix* automatic inclusion principle. WA-RP-11-0009, February 22, 2011. The National Treasury Employees Union represents the professional employees of the National Hearing Center in Baltimore. WA-RP-10-0017, February 11, 2010.

⁶ 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 detailed instructions.