

69 FLRA No. 7

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
UNITED STATES PARK POLICE
(Agency)

and

U.S. PARK POLICE
SERGEANTS ASSOCIATION
(Union/Petitioner)

WA-RP-14-0053

ORDER DENYING
APPLICATION FOR REVIEW

October 27, 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 of the attached decision of then-Federal Labor Relations Authority (FLRA) Regional Director Barbara Kraft (RD). The Union petitioned the RD to order an election to determine whether approximately 100 U.S. Park Police sergeants (sergeants) wished to be represented by the Union in the bargaining unit. After the parties stipulated to exclude from the unit certain sergeants – those assigned to Internal Affairs, the Secretary of the Interior, Intelligence Details, and the Public Information Officer – the RD considered the remaining disputed sergeants employed within fifteen different Agency branches. The RD excluded nearly all the sergeants from the petitioned-for unit, finding that their positions are supervisory under § 7112(b)(1) of the Federal Service Labor-Management Relations Statute (the Statute).¹ However, the RD ordered an election among the sergeants she did not exclude. The Union challenges the RD's decision excluding certain sergeants from the petitioned-for unit.

The question before us is whether the RD failed to apply established law in concluding that sergeants who, the RD found, conduct performance appraisals, are supervisors under § 7103(a)(10) of the Statute,² rendering their inclusion in the unit inappropriate under § 7112(b)(1). Because the RD's conclusions are consistent with established law, the answer is no.

II. Background and RD's Decision

The Agency is a police organization with three primary divisions and multiple branches. It consists of the Chief of Police, the Assistant Chief of Police, deputy chiefs, majors, captains, lieutenants, sergeants, and officers. The officers are represented by the Fraternal Order of Police in their own bargaining unit. The Union petitioned the RD to order an election to determine whether approximately 100 sergeants wished to be represented by the Union for collective-bargaining purposes. The positions at issue included: (1) detective sergeants; (2) communications sergeants; (3) patrol sergeants; (4) horse-mounted sergeants; (5) motorcycle sergeants; (6) marine-patrol sergeants; (7) canine sergeants; (8) Special Weapons and Tactics Team (SWAT) sergeants; (9) Aviation Unit sergeants; (10) recruiting sergeants; (11) training-instructor sergeants; (12) administrative sergeants; (13) court-liaison sergeants; (14) Audit and Evaluation Unit sergeants; and (15) Planning Unit sergeants.

The RD determined that certain sergeants are eligible for inclusion in the petitioned-for unit because they are not excluded under § 7112(b)(1) as supervisors. These sergeants include certain non-supervisory sergeants in the Aviation Unit, and all recruiting sergeants, training-instructor sergeants, administrative sergeants, court-liaison sergeants, Audit and Evaluation Unit sergeants, and Planning Unit sergeants. Because no party challenges the RD's determination as to these positions, we do not discuss them further.

Regarding the remaining sergeants, the RD analyzed each position to determine the sergeants' occupational responsibilities, and concluded that these sergeants are not eligible for inclusion in the petitioned-for unit because, applying the definition set forth in § 7103(a)(10), they are supervisors under § 7112(b)(1). Analyzing the § 7112(b)(1) exclusion as it relates to the sergeant positions, the RD identified the pertinent legal framework. Referencing the Statute, the RD found that "an individual who consistently exercises *one* of the supervisory functions listed in § 7103(a)(10) is a supervisor within the meaning of the Statute."³ As the RD explained, these include functions such as promoting

¹ 5 U.S.C. § 7112(b)(1).

² *Id.* § 7103(a)(10).

³ RD's Decision at 15.

and rewarding employees, or effectively recommending such actions, if the function “requires the consistent exercise of independent judgment.”⁴

The RD further explained:

Although conducting performance evaluations is not specifically mentioned in the Statute, an individual may be a supervisor if . . . he or she “exercises independent judgment in evaluating employee performance, and . . . that evaluation is relied upon by upper-level management in taking an action listed among the indicia of supervisory authority specified in § 7103(a)(10), thereby constituting an effective recommendation of that action.”⁵

Applying this framework, the RD determined that the remaining sergeant positions should be “excluded from the petitioned-for unit under § 7112(b)(1) of the Statute.”⁶ Specifically, as to the (1) detective sergeants, (2) communications sergeants, (3) patrol sergeants, (4) Aviation Unit Chief Medic and Chief Pilot sergeants, (5) SWAT sergeants, (6) motorcycle sergeants, (7) horse-mounted sergeants, (8) canine sergeants, and (9) marine-patrol sergeants, the RD determined that these sergeants are supervisors under § 7103(a)(10). The RD based her determinations on findings that the sergeants “conduct performance appraisals of employees who work under them,”⁷ and “exercise independent judgment when they evaluate employee performance.”⁸

The RD found further that these sergeants evaluate their subordinate employees’ performance under the Agency’s Employee Performance Appraisal Plan (EPAP). Under the EPAP, supervisors meet with each of their employees at least twice during the performance period to discuss the employee’s performance. At the beginning of the performance year, the supervisor must review the EPAP with the employee, document the meeting, and develop an individual development plan. During the performance year, the supervisor must also conduct and document a mid-year performance evaluation with the employee. And at the end of the performance year, the supervisor, as the rating official, is required to appraise – with an explanatory narrative – the employee’s performance in each element.

A rating official’s mid-tier performance ratings (Fully Successful and Superior) are not reviewed by a higher-level supervisor. Only the highest (Exceptional) and lowest (Unsatisfactory) ratings assigned by a rating official require approval by a reviewing official. Management uses performance evaluations to determine cash and time-off awards, as well as promotion and advancement decisions.

The RD determined that the sergeants at issue serve as rating officials, and “exercise independent judgment when they evaluate employee performance.”⁹ Specifically, the RD found that “[a]lthough [s]ergeants must follow instructions, and take into account performance standards[] included in the EPAP, . . . they exercise independent discretion as they must apply those standards to evaluate their daily interactions with employees.”¹⁰ And the RD noted that although “evidence demonstrate[s] that a [r]eviewing [o]fficial, namely a [l]ieutenant, reviews certain ratings issued by [s]ergeants, . . . the testimony also shows that a vast majority of the ratings issued by [s]ergeants are upheld upon review.”¹¹ Having identified the sergeants’ rating autonomy, the RD concluded that they are supervisors because management relies on their performance evaluations to determine whether to reward or promote employees – two supervisory functions listed under § 7103(a)(10).

Accordingly, the RD concluded that the sergeants at issue should be excluded from the petitioned-for unit. The RD then ordered that an election be conducted among the eligible, non-supervisory positions – (1) certain Aviation Unit sergeants, and all (2) recruiting sergeants, (3) training-instructor sergeants, (4) administrative sergeants, (5) court-liaison sergeants, (6) Audit and Evaluation Unit sergeants, and (7) Planning Unit sergeants – to determine whether those employees wished to be represented by the Union.

The Union filed an application for review (application) of the RD’s decision. The Agency filed a motion (motion) for leave to file an otherwise untimely opposition to the Union’s application.

III. Preliminary Matter: We deny the Agency’s motion for leave to file its opposition.

On August 31, 2015, the Union filed its application with the Authority’s Office of Case Intake and Publication (CIP), and emailed a copy of its application to the Agency’s representative.¹² On September 1, 2015, CIP sent a notice to the parties

⁴ *Id.* (internal quotation mark omitted).

⁵ *Id.* (citing *U.S. Dep’t of the Interior, Bureau of Indian Affairs, Navajo Area Office, Gallup, N.M.*, 45 FLRA 646, 651 (1992) (*Navajo*)).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 16.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Application at 14.

confirming that the application was received, and reminding the parties to comply with the Authority's filing deadlines.¹³ Under the Authority's Regulations, the Agency's deadline for filing its opposition to the Union's application was September 10, 2015.¹⁴

On September 28, 2015, the Agency filed a motion for leave to file its opposition, and included a copy of the opposition.¹⁵ In the motion, the Agency alleges that it never received the Union's August 31, 2015 email containing the application. Further, the Agency alleges that, although it received a physical copy of the application on September 14, 2015,¹⁶ the Agency representative did not receive the copy in his mailbox until September 21, 2015. The Union did not respond to the Agency's motion.

Even assuming, without deciding, that the Agency did not receive the August 31, 2015 email copy of the application that the Union served, we deny the Agency's motion. The Agency's ten-day period for filing its opposition began no later than September 14, 2015, when the Agency was served with a physical copy of the application.¹⁷ Because the time period for filing the opposition expired no later than September 24, 2015, the Agency's motion seeks a waiver of an expired time limit. The Authority will waive certain expired time limits in extraordinary circumstances.¹⁸ However, the Agency's motion does not allege such circumstances. In this regard, the seven-day delay in the Agency representative's receipt of a copy of the application, after its receipt in the Agency's mailroom on September 14, 2015, is not such a circumstance.¹⁹ Moreover, the Authority advised the Agency in CIP's September 1, 2015 notice that the Union had filed an application. Accordingly, we do not consider the Agency's opposition in resolving the Union's application for review.

IV. Analysis and Conclusion: The RD did not fail to apply established law.

The Union argues that the RD failed to apply established law when she concluded that the sergeants at issue are supervisors under § 7103(a)(10).²⁰ The Union claims that the sergeants are not supervisors because: (1) their actions in creating and applying individual EPAPs are "merely clerical;"²¹ and (2) EPAPs with employee evaluations – which, it is not disputed, form a basis for rewarding or promoting employees²² – must be "reviewed by and approved by [a] lieutenant,"²³ effectively minimizing a sergeant's independent discretion in evaluating employees. For the reasons that follow, we conclude that the RD did not fail to apply established law when she determined that the sergeants are supervisors.

The Authority has held that an employee is a supervisor when: (1) the employee has the authority to engage in any of the supervisory functions listed in § 7103(a)(10); and (2) the employee's exercise of such authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment.²⁴

The Authority has also held that an individual is a supervisor where an individual's exercise of independent judgment in evaluating employee performance "is relied on by upper-level management in taking an action listed among the indicia of supervisory authority specified in [§] 7103(a)(10)," effectively making the individual's evaluation a "recommendation of that action."²⁵ Additionally, it is "not necessary . . . that [an individual's] evaluations and recommendations constitute management's final decision . . . ; only that management rely on them in making the . . . decision without seeking independent information."²⁶

Regarding the Union's first argument, the Union asserts that the RD erred in relying on *U.S. Department of the Interior, Bureau of Indian Affairs, Navajo Area Office, Gallup, New Mexico (Navajo)*²⁷ because the sergeants' participation in creating and applying

¹³ Notice at 1-2.

¹⁴ 5 C.F.R. § 2422.31(d).

¹⁵ Agency's Mot. for Leave, Attach., Ex. 2, Agency's Opp'n to Application.

¹⁶ *Id.*, Attach., Ex. 1 at 1, Declaration of Toye Olarinde.

¹⁷ 5 C.F.R. § 2422.31(d) ("[a] party may file with the Authority an opposition to an application for review within ten (10) days after the party is served with the application").

¹⁸ *Id.* § 2429.23(b).

¹⁹ See *NTEU*, 64 FLRA 833, 835 (2010) (internal mail room delays do not establish extraordinary circumstances justifying waiver of expired time limit).

²⁰ Application at 11-12.

²¹ *Id.* at 6.

²² *Id.* at 5.

²³ *Id.* at 6.

²⁴ 5 U.S.C. § 7103(a)(10); see *SSA*, 60 FLRA 590, 592 (2005); *U.S. Dep't of Energy, W. Area Power Admin., Lakewood, Colo.*, 60 FLRA 6, 8-9 (2004); *U.S. Dep't of the Army, Army Aviation Sys. Command & Army Troop Support Command, St. Louis, Mo.*, 36 FLRA 587, 592-96 (1990).

²⁵ *Navajo*, 45 FLRA at 651.

²⁶ *Id.* at 656-57.

²⁷ *Id.* at 646.

individual EPAPs is “merely clerical.”²⁸ Specifically, the Union argues that, unlike the employee at issue in *Navajo*, “sergeants merely record what [a subordinate employee] has done during the year . . . [and] do not evaluate what tasks the employee has performed.”²⁹ We find the Union’s first argument unpersuasive.

In *Navajo*, the Authority found that an employee was a supervisor because he evaluated employees by rating their performance, conducting performance-appraisal meetings with those employees, and making recommendations concerning the employees’ continued employment.³⁰ Here, the RD made similar factual findings supporting her determination concerning the sergeant’s consistent exercise of independent judgment in performing a supervisory function.³¹ Analogous to *Navajo* – and contrary to the Union’s argument³² – the RD found that sergeants: (1) meet with subordinate employees at least two times in a performance year to discuss performance-appraisal issues;³³ (2) “exercise independent discretion” in applying Agency “standards to *evaluate their daily interactions* with [their] employees;”³⁴ (3) formally rate employees’ performances at the end of the performance year;³⁵ and (4) draft narratives supporting each rating.³⁶ Furthermore, comparable to *Navajo*,³⁷ the performance appraisals are “used to determine whether employees qualify for performance awards and for promotion or advancement.”³⁸ The Union does not challenge the RD’s factual findings. Accordingly, we find that the Union’s first argument does not demonstrate that the sergeants’ actions in creating and applying individual EPAPs are “merely clerical.”³⁹

Regarding the Union’s second argument, the Union asserts that EPAPs with employee evaluations must be “reviewed by and approved by [a] lieutenant”⁴⁰ – effectively minimizing a sergeant’s independent discretion in evaluating employees. We find the Union’s second argument unpersuasive for two reasons. First, contrary to the Union’s assertion, the record reflects that annual performance evaluations with mid-tier ratings (Fully Successful and Superior) do not require a

lieutenant’s approval.⁴¹ Therefore, EPAPs with mid-tier ratings that are completed by sergeants do not require a lieutenant’s review and are final. Second, as to the Exceptional and Unsatisfactory evaluations, the RD determined – consistent with the record – that “a vast majority of the ratings issued by [s]ergeants are upheld upon review.”⁴² Authority precedent provides that it is “not necessary . . . that [a supervisor’s] evaluations and recommendations constitute management’s final decision . . . ; only that management rely on them in making . . . decision[s] without seeking independent information.”⁴³ Here, lieutenants “by and large . . . upheld [s]ergeants’ initial ratings of [subordinate employees],”⁴⁴ and management uses those ratings “in deciding whether to promote or reward employees”⁴⁵ – two supervisory functions listed under § 7103(a)(10).⁴⁶ Therefore, because management relies upon the sergeants’ discretionary evaluations in deciding whether to promote or reward employees, we find the Union’s second argument unpersuasive.

Accordingly, we reject the Union’s contention that the RD failed to apply established law.

V. Order

We deny the Union’s application for review.

²⁸ Application at 6

²⁹ *Id.* at 11.

³⁰ *Navajo*, 45 FLRA at 655.

³¹ RD’s Decision at 16-17.

³² Application at 11.

³³ RD’s Decision at 16 (citing Tr. at 78, 142, 145-45, 169, 183, 187, 196-97, 201, 362-63).

³⁴ *Id.* (emphasis added) (citing Tr. at 79, 170-71, 197-98, 225-26, 343, 356).

³⁵ *Id.* (citing Tr. at 79, 169, 258-59, 304, 313-14, 342-43, 363).

³⁶ *Id.*

³⁷ See *Navajo*, 45 FLRA at 650-51.

³⁸ RD’s Decision at 16-17.

³⁹ Application at 6.

⁴⁰ *Id.*

⁴¹ RD’s Decision at 16 (citing Tr. at 80, 180, 213, 377).

⁴² *Id.* (citing Tr. at 49, 137-39, 170, 198, 314, 365).

⁴³ *Navajo*, 45 FLRA at 656-57.

⁴⁴ RD’s Decision at 11.

⁴⁵ *Id.* at 17.

⁴⁶ 5 U.S.C. § 7103(a)(10).

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON REGION

U.S. DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE,
U.S. PARK POLICE
(Agency)

and

U.S. PARK POLICE SERGEANTS ASSOCIATION
(Union/Petitioner)

WA-RP-14-0053

DECISION AND ORDER

I. Statement of the Case

On July 1, 2014, the U.S. Park Police Sergeants Association (USPPSA) filed a petition under § 7111(b) of the Federal Service Labor-Management Relations Statute (Statute). Tr. 7; Authority Ex. 1a.¹ The petition sought an election in order to determine if certain individuals employed by the U.S. Department of the Interior, National Park Service, U.S. Park Police (Agency), namely approximately 100 U. S. Park Police Sergeants, wished to be represented for the purpose of collective bargaining by USPPSA. Tr. 8-9; Authority Ex. 1a.²

Authority Hearing Officers conducted a hearing on this matter on February 24 and 25, 2015. At the hearing, the parties stipulated that Sergeants in Internal Affairs, and the Sergeant working as the Public Information Officer, should be excluded from the petitioned-for unit, and that Sergeants who work on the

Secretary of the Interior and Intelligence Details should be excluded while they are on detail.³ Tr. 10-11. The issue remaining after this stipulation was whether the other Sergeants were eligible for inclusion in the bargaining unit for which USPPSA was seeking an election, or whether they should be excluded under § 7112(b)(1) of the Statute.⁴ Tr. 11. The Hearing Officers' rulings were not prejudicial to either party, and I hereby affirm them.

After consideration of the entire record, including the parties' post-hearing briefs, I have determined that, pursuant to § 7112(b)(1) of the Statute, almost all the Sergeants *are not eligible* for inclusion in the petitioned-for unit: this includes Detective Sergeants, Communications Sergeants, Patrol Sergeants, Sergeants serving in certain specialized units (namely the Horse-Mounted, Motorcycle, Marine-Patrol, Canine, and Special Weapons and Tactics Team (SWAT) Units), and two Sergeants serving in the Aviation Unit, namely the Chief Pilot and Chief Medic.

Other Sergeants, including the remaining Sergeants in the Aviation Unit, Recruiting Sergeants, Training Instructor Sergeants, Administrative Sergeants, Court Liaison Sergeants, and Sergeants serving in the Audit and Evaluation Unit (Audit Unit) and Planning Unit, *are eligible* for inclusion in a bargaining unit because they are not excluded under § 7112(b)(1) as supervisors.

I have determined, moreover, that since most of the Sergeants are not eligible, the bargaining unit should include those who are eligible, provided the unit meets the criteria for an appropriate unit in section 7112(a) – i.e. the employees share a community of interest; the unit would promote effective dealings between the union and the agency; and the unit would promote efficiency of operations. Based on those considerations, this Decision and Order will direct an election in the unit described under Part IV below.

¹ "Tr." References are to the two-volume transcript of the hearing held on February 24, 2015 and February 25, 2015.

² All Authority Exhibits will be noted as "Authority Ex.," Agency Exhibits will be noted as "Agency Ex.," and Joint Exhibits will be noted as "Jt. Ex."

³ In its post-hearing brief, USPPSA indicated that: (1) Sergeants working in Internal Affairs were excluded under § 7112(b)(7) of the Statute; (2) the Sergeant who worked directly with the Agency's Chief as the Public Information Officer was excluded under § 7112(b)(2) of the Statute; and (3) Sergeants working on the Secretary of the Interior and Intelligence Details were excluded under § 7112(b)(6) of the Statute. USPPSA's Brief at 1-2.

⁴ The parties agreed that Sergeants do not hire, transfer, furlough, layoff, or recall employees. Tr. 12.

II. Findings

A. Agency's Hierarchy

The Agency is a police organization that comprises three primary divisions, namely the Homeland Security Division, the Services Division, and the Field Operations Division. Agency Ex. 3. The Agency's command structure is headed by the Chief of Police. Tr. 33. An Assistant Chief of Police works directly under the Chief of Police. Below the Assistant Chief of Police are three Deputy Chiefs who head up the Divisions; currently, three Majors are serving, in an acting capacity, as the Deputy Chiefs. *Id.*

The three Divisions control not only the Agency's operations in the Washington, DC metropolitan area (DC) but also the San Francisco (SF) and New York (NY) Field Offices. Agency Ex. 3. Whereas overall supervision of the Agency's operations in Washington, DC is divided among the three Deputy Chiefs, the NY Field Office is specifically commanded by the Deputy Chief of the Homeland Security Division, and the SF Field Office is commanded by the Deputy Chief of the Field Operations Division. *Id.*

Under the three Deputy Chiefs, Majors are responsible for running the various Agency branches and the NY and SF Field Offices. Tr. 33. Below the Majors are Captains, who supervise Districts, such as the East and West Districts in DC. Tr. 34. And under the Captains are Lieutenants who are responsible for running the various Stations. Lieutenants also perform specialized assignments, such as in the Motorcycle and SWAT Units. *Id.* Sergeants fall under the Lieutenants, and, as discussed further below, work in a variety of assignments throughout the Agency. *Id.* Finally, Officers are at the bottom of the command structure, and, to move to a higher rank, they have to be promoted.⁵ *E.g.*, Tr. 34-35, 68, 81, 240, 289, 332, 369.

B. Employee Performance Appraisal Plans (EPAPs)

The Agency has instituted an Employee Performance Appraisal Plan (EPAP). Under the EPAP, the performance cycle runs from October 1st of one year to September 30th of the following year, and the Agency issues instructions to supervisors for each cycle. Tr. 225; Agency Ex. 2; Jt. Ex. 1. The EPAP instructions for the 2013 and 2014 performance cycles are virtually

⁵ During the hearing, the parties stipulated that Officers are represented by the Fraternal Order of Police in a separate bargaining unit. Tr. 13-14. Also, at the hearing, USPPSA's Counsel indicated that the petitioned-for unit excludes Officers as they are already included in an existing bargaining unit. Tr. 13.

identical.⁶ For instance, the EPAP instructions for both cycles require a supervisor to go over the EPAP with the employee at the start of the performance year, and require both the supervisor and the individual to sign and date a form documenting that such a review took place. The instructions also require the supervisor to send the form to the Employee and Labor Relations Unit (ELRU) by November 30th. Agency Ex. 2; Jt. Ex. 1. Similarly, the instructions provide that the supervisor must assist the individual in creating an individual development plan (IDP), that both the supervisor and the individual have to sign and date the IDP, and that the original must be submitted to the Training Branch by November 30th. Agency Ex. 2; Jt. Ex. 1. And the instructions require that the supervisor conduct the individual's mid-year performance evaluation and that they both sign and date the same form, acknowledging that the review took place, by March 30th. Agency Ex. 2; Jt. Ex. 1.

In addition, the EPAP instructions address how the individual's final or end-of-year performance review must be conducted. Agency Ex. 2; Jt. Ex. 1. The instructions for four ratings, namely Unsatisfactory (Level 0), Fully Successful (Level 3), Superior (Level 4), and Exceptional (Level 5).⁷ Agency Ex. 2; Jt. Ex. 1. The instructions indicate that a narrative summary for each element is recommended for all rating levels but that a summary must be completed for every element assigned a Level 0, 4, or 5 rating. Agency Ex. 2; Jt. Ex. 1. The instructions state that, if the Rating Official rates an individual as Unsatisfactory, a Reviewing Official must concur with the rating, and the rating must be approved by the ELRU before it can be issued to the individual. Agency Ex. 2; Jt. Ex. 1. Similarly, the instructions provide that, if the Rating Official rates an individual in any critical element other than Fully Successful, namely either a Level 4 or Level 5 rating, the Reviewing Official must concur before the Rating Official discussed the rating with the individual.⁸ Agency Ex. 2; Jt. Ex. 1. The instructions further indicate that, if a "Reviewing Official disagrees with any portion of the rating computation, he/she must provide, in writing to ELRU, specific reasons for disagreeing with the rating that has been determined by the rating supervisor."⁹ Agency Ex. 2; Jt. Ex. 1

⁶ The 2013 performance cycle ran from October 1, 2012 to September 30, 2013, and the 2014 performance cycle ran from October 1, 2013 to September 30, 2014. Agency Ex. 2; Jt. Ex. 1.

⁷ Captain Raymond Closs testified that the Agency had in the past used a Minimally Successful (Level 2) rating and that it no longer used that rating. Tr. 80.

⁸ Despite this language in the instructions for the 2014 performance cycle, testimony indicated that, in 2014, the Agency announced that a Reviewing Official would no longer be required to sign off on Level 4 ratings or Level 3 ratings. Tr. 80, 180, 213-14, 377.

⁹ The instructions for the 2015 performance cycle also contain this requirement. Tr. 139.

(emphasis omitted). And the instructions state that, once the review is completed, the supervisor and the individual must sign and date the review and send the entire EPAP to the ELRU. Agency Ex. 2; Jt. Ex. 1.

The EPAP instructions denote the elements that the individual is rated on and the performance standards for each element, namely what the individual is required to do to achieve a certain rating for each element. Agency Ex. 2; Jt. Ex. 1. Both supervisory and non-supervisory personnel are rated on four of critical elements, namely: (1) Element 1: Basic Police Duties; (2) Element 2: Recording and Disseminating Information; (3) Element 3: Interpersonal Skills; and (4) Element 4: Use and Care of Government Equipment. Agency Ex. 2; Jt. Ex. 1. While supervisory and non-supervisory personnel have to complete some of the same performance standards for each element to achieve the same rating, supervisory personnel are required to meet additional standards for each element to achieve the same rating. Agency Ex. 2; Jt. Ex. 1. In addition, supervisory personnel are rated on a fifth critical element that non-supervisory personnel are not rated on, namely Element 5: Supervisory Responsibility.¹⁰ Agency Ex. 2; Jt. Ex. 1.

Finally, performance evaluations are used to determine whether individuals qualify for performance awards. Tr. 79, 197-98, 200. Specifically, Captain Raymond Closs testified that, in the past, when the Chief's Office determined there were funds for performance awards, individuals who were issued Level 4 or 5 ratings received time-off awards and, in some instances, monetary awards. Tr. 79. Similarly, Lieutenant Mark Adamchik explained that, if an individual received a Level 5 rating, he/she received a cash award and that the Deputy Chief had to review such ratings across the force regardless of rank. Tr. 197, 200. Lieutenant Adamchik further testified that, if an individual achieved a Level 4 rating during the last performance cycle, he/she received a time-off award; Lieutenant Adamchik indicated that, because Sergeants were able to issue a Level 4 rating without review during that cycle, those Sergeants who did so had the full discretion to award paid time off. Tr. 198.

¹⁰ During the hearing, Sergeant Anthony Lordo testified that, after being promoted, Sergeants are evaluated by Lieutenants on this fifth element. Tr. 184. Retired Deputy Chief Victor Chapman testified that Sergeants are rated on a supervisory component, namely how well they monitor the activities of the Officers under their command; however, he maintained that, during Executive Staff meetings, he raised the fact that he had an issue with Sergeants being rated under that component because, ultimately, a Lieutenant can overrule a Sergeant. Tr. 323-25.

Performance evaluations are used by management in making promotion/advancement decisions. Tr. 79-81. Captain Closs explained that performance evaluations are considered during ad-hoc committee meetings to assign Officers to special assignments, such as assignments in the the Canine, SWAT, or Marine-Patrol Units, and that an individual is required to attach a copy of his/her most recent performance evaluation to an application for promotion. *Id.* And, according to Captain Closs, an individual's performance evaluation has to be taken into account in making promotion/advancement decisions because those decisions usually resulted in a pay raise and, in some cases, use of an agency vehicle. Tr. 81.

C. Detective Sergeants

At the time of the hearing, three Detective Sergeants worked in the Criminal Investigations Branch, and each Detective Sergeant is assigned to a squad of Detectives. Tr. 332, 342. Detective Sergeants do not normally handle the investigations of criminal cases themselves. Investigations are assigned to Detectives who are of a lower rank. Detective Sergeants act as facilitators by coordinating and assisting Detectives with managing their caseloads to ensure that the investigations run smoothly. Tr. 342. In addition, a Detective Sergeant oversee the work of the Detectives on their squad and conducts performance evaluations for the those Detectives. Tr. 342-43.

Detective Sergeant Robert Steinheimer – who previously worked as a Patrol Sergeant in DC and has served as a SWAT Sergeant there for almost ten years – testified that Detective Sergeants conduct performance evaluations in the same way that other supervisors evaluate Officers' performance, except that, whereas Officers are only rated based on the above-cited four elements, Detectives are also rated on a fifth element that relates to handling investigations. *Id.* Detective Sergeant Steinheimer explained that he documents, throughout the year, what Detectives on his squad do well and what deficiencies they have in order to evaluate their performance. Tr. 343. According to Steinheimer, he can usually remember what work the Detectives on his squad do on their cases, but he keeps notes on significant points so that they can stand out in the Detectives' performance appraisals. Tr. 355-56. Detective Sergeant Steinheimer further testified that he generally bases what he writes in the narrative summaries for the Detectives' performance evaluations upon his day-to-day interactions with them. Tr. 343. And Detective Sergeant Steinheimer explained that, after completing a performance appraisal for a Detective, appraisal is forwarded to the Lieutenant and that the rating level of the appraisal dictates how high the approval for that appraisal has to come from. *Id.*

Steinheimer's testimony was the only direct testimony about the work of Detective Sergeants, and neither party offered testimony or other evidence to rebut or corroborate his testimony.

D. Communications Sergeants

Currently, there are three Sergeants working in Communications. Tr. 294. Sergeant Alice Wilson who began working in Communications in 2013 testified that, while working twelve hours on the day shift, she answers telephone calls to the Agency or 911 transfers, works on the master detail for the following day, and contributes to updating the Computer Aided Dispatch during major events. Tr. 293-95, 298. And, in addition to the Communications Sergeants, Officers and civilian employees work in Communications. Tr. 294. Communications Sergeants conduct performance evaluations for the Officers and/or civilian employees. Tr. 303-04, 136-37.

Sergeant Richard Steward testified that, when he had worked as a Communications Sergeant, he had handled about fifteen performance evaluations for civilian employees in his squad. Tr. 108-09, 136. He explained that, in the eight years that he has been a Sergeant, he has conducted between two to fifteen performance appraisals per year, and only one appraisal was overridden by a Lieutenant, Tr. 109, 137-38. Similarly, Sergeant Wilson explained that, during the last performance cycle, the Communications Lieutenant directed her to complete performance appraisals for three employees. Tr. 303-04. Sergeant Wilson indicated that, at the end of that cycle, she assigned the three employees a rating for each element based upon the performance standards for those elements. Tr. 304. According to Sergeant Wilson, because she was there to observe the employees, she was able to determine whether they had met all of the requirements for each element. Tr. 313-14. After she spoke to the Communications Lieutenant about the ratings, he agreed with them. Tr. 304. Additionally, while Sergeant Wilson testified that she could not issue an individual a rating that the Lieutenant disapproved of, and that he may have questioned how she arrived at a particular rating, she acknowledged that the Lieutenant was unlikely to overturn her appraisals because, unlike her, he did not work with the employees on a daily basis. Tr. 304, 314.

The testimony of Wilson and Steward was the only testimony about the duties of Communications Sergeants. The parties did not offer testimony or other evidence to rebut or corroborate their testimony.

E. Patrol Sergeants and Sergeants in Specialized Units

Patrol Sergeants are assigned to the various stations in DC and to both the NY and SF Field Offices. *E.g.*, Tr. 26, 69, 108, 189, 357. Patrol Sergeants are in charge of a squad, and Officers are assigned to the squad. Tr. 189, 240, 333, 339, 358. As leaders of the squad, Patrol Sergeants are responsible for, among other things, holding roll call with Officers in order to share information with them, going over Officers' beat assignments for the day that are listed in the master detail, and, after roll call, reporting back to the Shift Commander about what happened during roll call. Tr. 69, 219, 241, 290, 334, 371-72. Similarly, Sergeants assigned to specialized units, including the Horse-Mounted, Motorcycle, Canine, Marine-Patrol, and SWAT Units, not only work in DC but also are assigned to the SF and NY Field Offices. *E.g.*, Tr. 26-27, 160, 190, 332-33. And, like Patrol Sergeants, Sergeants assigned to these specialized units are in charge of a squad or team to which Officers are assigned. Tr. 26-27, 34, 160, 336.

Both Patrol Sergeants and Sergeants in the above-cited specialized units evaluate Officers' performance under EPAP. Tr. 77-78, 106. At the beginning of the performance year, they meet with the Officers to go over the performance standards; no one else is present during this meeting. Tr. 187, 196, 362. Also, Sergeants sit down with Officers and discuss their IDPs; no one else is present during these discussions, and both the Sergeants and Officers are required to sign off at the bottom of the IDPs before they are sent to the Training Branch. Tr. 145-46, 183, 201. Then, those Sergeants conduct Officers' mid-term evaluations within six months of the start of the performance cycle; again, only the Sergeant and Officer are present during these interim reviews. Tr. 78, 142, 169, 187, 197, 363. According to Captain Closs who previously worked in the NY Field Office as a Sergeant, during interim-performance evaluations, he would explain the performance standards to Officers assigned to his squad, go over his records of what they had done well and what that they needed improvement on, and provide suggestions on how they could improve. Tr. 78. Similarly, Lieutenant Mark Adamchik – who worked as a Patrol Sergeant, and as a SWAT Sergeant, in DC from March 2009 to May 2012 – testified that, during mid-year evaluations, Sergeants tell Officers, among other things, whether they are performing at a Level 3 or what they need to do to continue to perform above that level. Tr. 197.

In addition, at the end of the performance period, those Sergeants serve as Rating Officials. Tr. 116, 365. In doing so, such Sergeants are required to follow the EPAP instructions and to compare the Officers' performance throughout the period to the performance standards contained in the EPAP. *E.g.*, Tr. 124, 168-69, 320. However, those Sergeants exercise discretion in evaluating the Officers' performance during a performance cycle and, based upon those evaluations, assign Officers not only ratings for each element but also overall ratings. *E.g.*, Tr. 79, 169, 170-71, 197-98, 363. For instance, Sergeant Steward who works as a Patrol Sergeant in DC testified that, during the last performance cycle, he assigned two Officers Level 4 ratings and that he signed off on those ratings as the Rating Official. Tr. 116-17; Agency Ex. 5. Also, those Sergeants currently have discretion to issue Officers Level 3 and 4 ratings without review and only have to have Level 0 and 5 appraisals signed off on by a Reviewing Official. *E.g.*, Tr. 169, 197, 199, 377. And, in addition to assigning a rating for each element and an overall rating, the Sergeants draft a narrative for each element; in cases where Officers' ratings have to be signed off on by a Reviewing Official, some Sergeants will draft the narratives before discussing the rating with that Official, and others will wait to draft the narratives until after doing so. *E.g.*, Tr. 135, 293, 319, 363.

Although it is possible for a Lieutenant to overturn a Sergeant's performance appraisal of an Officer due to the command structure, *e.g.*, Tr. 253, 255, 363-64, Lieutenants, when serving as Reviewing Officials, by and large have upheld Sergeants' initial ratings of Officers.¹¹ Specifically, Captain Pamela Smith who works at the SF Field Office explained that, when she acts as the Reviewing Official, she defers to the Sergeants' ratings of Officers because the Sergeants interact with Officers on a regular basis.¹² Tr. 225-26. Assistant Chief of Police Patrick Smith – who previously worked in DC as a Patrol Sergeant and as a Sergeant for the Motorcycle and SWAT Units – testified that a Sergeant's performance appraisal of an Officer is rarely changed and that no

performance evaluations that he conducted as a Sergeant, Lieutenant, or Captain were challenged. Tr. 26-27, 49. Also, SWAT Sergeant Anthony Lordo who works in the NY Field Office indicated that he conducted ten performance appraisals of Officers during the last performance cycle and that none of the ratings that he assigned to Officers were overturned. Tr. 170. Similarly, Lieutenant Adamchik explained that, as a Patrol Sergeant, he administered twenty-five appraisals, and no supervisor interfered with any of the ratings; and he indicated that, as a Lieutenant, he has reviewed his Sergeants' appraisals of roughly eighty-five to ninety-five Officers and has never overturned any of those appraisals. Tr. 198. Moreover, Patrol Sergeant Lawrence Morales who works in the SF Field Office testified that a Lieutenant only rarely disagrees with a Sergeant's rating of an Officer. Tr. 365.

However, although the Aviation Unit is considered to be another specialized unit, the Aviation Unit is distinguishable from the other units cited above. David Tolson who currently serves as the Chairman of USPPSA testified that, as a Rescue Technician Sergeant with the Aviation Unit, he: (1) is a nationally-registered paramedic; (2) is the subject-matter expert in high-angle rescue, swift-water rescue, and woods rescue; (3) performs rescues, medivacs, and police missions; and (4) is in charge of maintaining the Aviation Station's avionics as a collateral duty. Tr. 256. Sergeant Tolson explained that, currently, there are fifteen personnel assigned to the Aviation Unit, namely 1 Lieutenant, ten Sergeants, including a Chief Pilot and a Chief Medic, and four Officers, namely a Pilot and three Rescue Technicians. Tr. 257-58. Also, Sergeant Tolson indicated that only the Chief Medic prepares the performance evaluations for the three Rescue Technicians and that the Chief Pilot conducts the performance evaluation for the Pilot. Tr. 258-59. And Sergeant Tolson testified that the remaining eight Sergeants, including himself, do not supervise any of the four Officers under either the Webster's, or the Authority's, definition of the term "supervisor."¹³ Tr. 257-58.

F. Remaining Sergeants

Court Liaison Sergeants. In addition to the above-cited assignments, Sergeants also work as Court Liaisons. Tr. 240. Sergeant Tolson testified that he worked as a Court Liaison Sergeant from June 2005 to the fall of 2010. *Id.* He explained that Officers are promoted to the Court Liaison Sergeant position because they have demonstrated that they are knowledgeable

¹¹ Although Sergeant David Tolson recalled that, when he worked as a Patrol Sergeant, namely from 2004 to 2005, the Lieutenant requested that a number of the performance evaluations that he conducted for about twelve Officers be modified, he admitted that he did not remember how often the appraisals were changed by the Lieutenant as it was a long time ago. Tr. 265. Only when pressed to provide a percentage, did Sergeant Tolson maintain that roughly fifty percent of the information he provided to the Lieutenant concerning the performance evaluations was accepted without comment. Tr. 265-66. And Sergeant Tolson conceded that he became a Patrol Sergeant at the tail end of one performance cycle and left that position before the end of the next cycle. Tr. 267.

¹² Even though Captain Smith is not a Lieutenant, she has had to serve as a Reviewing Official because the Lieutenant position is currently vacant at the SF Field Office. Tr. 219, 225-26.

¹³ Sergeant Tolson testified that, although he has received a rating for the fifth element, he could not remember how his duties related to that element. He testified that he does not perform any supervisory duties. Tr. 270.

about the General Orders and other procedures and that they know how to handle a scene. Tr. 249-50. Also, Sergeant Tolson indicated that a Court Liaison Sergeant acts as a liaison between the Agency and the Office of the Attorney General, the U.S. District Court, the DC Superior Court, and the Bureau of Traffic Adjudication by, among other things, getting reports for a given prosecutorial entity, facilitating subpoenas being served on Officers or Officials, attending hearings/trials on behalf of the Agency, and preparing reports, such as about inter-agency meetings. Tr. 250. Sergeant Tolson further testified that, although, as a Court Liaison Sergeant, he notified Officers about court dates and hearings, he did not oversee the work of any Officers. Tr. 251. Moreover, Sergeant Tolson explained that no Officers are assigned under Court Liaison Sergeants. *Id.*

There was no evidence that Court Liaison Sergeants perform supervisory duties.

Sergeants in the Audit and Planning Units. Sergeant Tolson testified that, in his capacity as Chairman, he is aware of Sergeants being assigned to the Audit and Planning Units in the Services Division; currently, two Sergeants work in the Audit Unit, and one Sergeant is assigned to the Planning Unit. Tr. 251-52, 259, 261. Sergeant Tolson explained that the Sergeants in the Audit Unit are essentially data crunchers; rather than auditing people, the Audit Unit Sergeants audit reports and gather data about numerous issues, including firearms and cruiser accountability and the number of breaking and entering incidents in particular places. Tr. 259-60. Similarly, Sergeant Tolson indicated that the Sergeant in the Planning Unit assists in developing departmental and guideline manuals, such as the General Orders. Tr. 261-62. Additionally, Sergeant Tolson testified that, although Officers may be transiently assigned to the Planning Unit if they are in a restricted-duty/limited-duty status, Officers are not permanently assigned to the Audit and Planning Units and that he was unaware of any Officers being currently assigned to those Units. Tr. 259-60, 262.

There is no evidence that Sergeants in the Audit and Planning Units supervise anyone.

Moreover, Karlyn Payton who has worked as an Employee and Labor Relations Specialist (Specialist) for eleven years, Tr. 15, explained that there are Sergeants working in three additional assignments, namely as Administrative Sergeants, Training Instructor Sergeants, and Recruiting Sergeants, Tr. 331. Specialist Payton testified that, because Administrative Sergeants perform administrative duties, there are no Officers reporting to them. Tr. 331. Similarly, Specialist Payton indicated that the Recruiting Sergeant is assigned to the Human Resources Office and does not have anyone

reporting to him. *Id.* And, although Specialist Payton maintained that the Training Sergeant assigned to the Federal Law Enforcement Training Center is responsible for recruits, she testified that no one reports to the Sergeant while in that assignment.¹⁴ *Id.* There was no evidence to contradict Payton's testimony or to suggest that these three groups of Sergeants may be supervisors.

III. Analysis and Conclusions

A. Applicable Law

Section 7112(b)(1) of the Statute provides that a bargaining unit may not include supervisors. The Authority has held that an individual who consistently exercises *one* of the supervisory functions listed in § 7103(a)(10) is a supervisor within the meaning of the Statute. *E.g., SSA*, 60 FLRA 590, 592 (2005). Section 7103(a)(10) of the Statute defines a supervisor as an individual employed by an agency with the authority "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." 5 U.S.C. § 7103(a)(10). Although conducting performance evaluations is not specifically mentioned in the Statute, an individual may be a supervisor if that he or she "exercises independent judgment in evaluating employee performance, and . . . that evaluation is relied [upon] by upper-level management in taking an action listed among the indicia of supervisory authority specified in [§] 7103(a)(10), thereby constituting an effective recommendation of that action." *U.S. Dep't of the Interior, Bureau of Indian Affairs, Navajo Area Office, Gallup, N.M.*, 45 FLRA 646, 651 (1992) (*Interior*).

¹⁴ While Sergeant Tolson and Sergeant Steward claimed that, sometimes, Sergeants are transiently assigned to the Agency's Brentwood Facility and manage evidence while in that assignment, Sergeant Tolson testified that, currently, there are no Sergeants assigned to the Brentwood Facility. Tr. 108, 262-63, 279-80. *Dep't of the Treasury, Bureau of the Mint, U.S. Mint, Denver, CO*, 6 FLRA 52, 53 (1981); *see also U.S. Dep't of HUD Headquarters*, 41 FLRA 1226, 1235 n.4 (1991). Because there is no evidence in the record about the duties of the Sergeants who work at Brentwood Facility, I will not make a determination as to their inclusion or exclusion.

B. The vast majority of the Sergeants are excluded from the petitioned-for unit under § 7112(b)(1) of the Statute.

Here, the testimony shows that most of the Sergeants conduct performance appraisals of employees who work under them. Those Sergeants include: (1) Detective Sergeants; (2) Communications Sergeants; (3) Patrol Sergeants; (4) the Chief Medic and Chief Pilot in the Aviation Unit; and (5) Sergeants in the remaining specialized units, namely the SWAT, Motorcycle, Horse-Mounted, Canine, and Marine-Patrol Units. *E.g.*, Tr. 77-78, 106, 136-37, 258-59, 303-04, 342.

In addition, the testimony and other evidence demonstrate that these Sergeants exercise independent judgment when they evaluate employee performance. Specifically, testimony demonstrates that the Sergeants meet with employees individually at the beginning of the year to discuss the performance elements and their IDPs and meet with them again, in March, to conduct mid-term reviews. Tr. 78, 142, 145-46, 169, 183, 187, 196-97, 201, 362-63. Sergeants serve as Rating Officials at the end of the performance cycle by rating employees on certain elements, calculating their overall ratings, and drafting narratives for each element to support those ratings. *E.g.*, Tr. 79, 169, 258-59, 304, 313-14, 342-43, 363. Although Sergeants must follow instructions, and take into account performance standards, included in the EPAP, *e.g.*, Tr. 122, 124, 168-69, 181, 320, they exercise independent discretion as they must apply those standards to evaluate their daily interactions with employees. Tr. 79, 170-71, 197-98, 225-26, 343, 356. Further, although testimony and other evidence demonstrate that a Reviewing Official, namely a Lieutenant, reviews certain ratings issued by Sergeants, such as Level 0 and 5 ratings, Tr. 169, 197, 199, 377, the testimony also shows that a vast majority of the ratings issued by Sergeants are upheld upon review, Tr. 49, 137-38, 170, 198, 314, 365. Similarly, while a Lieutenant can theoretically overturn a Sergeant's rating of an Officer, *e.g.*, Tr. 253, 255, 363-64, the Lieutenant, under the EPAP Instructions, must do so in writing, Agency Ex. 5; Jt. Ex. 1; Tr. 139. Whenever a Sergeant issues an Officer either a Level 3 or a Level 4 rating, a Reviewing Official does not have to sign off on the rating. Tr. 80, 180, 213, 377.

Moreover, the testimony demonstrates that Sergeants' performance evaluations are used to determine whether employees qualify for performance awards and for promotion or advancement. Tr. 79-81, 197-98, 200. As a result, management relies upon these evaluations in deciding whether to promote or reward employees. Ultimately, as discussed above, rewarding and promoting employees are indicia of supervisory status. *See* 5 U.S.C. § 7103(a)(10).

Based on the testimony and other evidence, I find that Sergeants in the above-listed assignments are supervisors and, thus, should be excluded from any unit otherwise found to be appropriate. *See SSA, Office of Disability Adjudication & Review, Balt., Md.*, 64 FLRA 896, 896-97, 903 (2010) (judges were excluded as supervisors where management relied on their evaluations in making retention, promotion and award-eligibility decisions); *Interior*, 45 FLRA at 656-57 (individual at issue was a supervisor because the individual exercised independent judgment in evaluating contract personnel, and his evaluations were routinely accepted by the principal and forwarded to the school board); *cf. See Dep't of Agric., Rural Hous. Serv.*, 67 FLRA 207, 209 (2014) (determining that certain individuals were not supervisors because, in conducting "quality reviews," the individuals did not appraise performance, and managers did not rely upon those reviews in exercising supervisory authority); *U.S. DOL, Wash., D.C.*, 59 FLRA 853, 856 (2004) (finding that an individual was not a supervisor because, even though he drafted performance appraisals, the evidence did not show that his recommendations were accepted, or relied upon, by management).

C. The remaining Sergeants may be included in a unit that is otherwise appropriate under § 7112(a) of the Statute.

In contrast, the testimony and other evidence failed to demonstrate that the remaining Sergeants -- namely the other eight Sergeants in the Aviation Unit; Recruiting Sergeants; Training Instructor Sergeants; Administrative Sergeants; Court Liaison Sergeants; and Sergeants serving in the Audit and Planning Units -- consistently exercise independent judgment with respect to any of the supervisory indicia listed in § 7103(a)(10) of the Statute. Specifically, the un rebutted testimony showed that the remaining eight Sergeants in the Aviation Unit simply serve as Specialists and that, unlike the Chief Pilot and Chief Medic, do not perform performance evaluations for employees and do not have anyone reporting to them. Tr. 257-59. Unrebutted testimony also establishes that, although Court Liaison Sergeants notify Officers about court dates and hearings, they do not have any subordinates reporting to them. Tr. 251. Similarly, unrebutted testimony shows that Sergeants in the Audit and Planning Units do not have anyone reporting to them because, currently, there are no Officers permanently assigned to those Units. Tr. 259-60, 262. And unrebutted testimony demonstrates that no employees report to Administrative Sergeants, Training Instructor Sergeants, and Recruiting Sergeants. Tr. 331. As a result, there is insufficient evidence to show that Sergeants in these

remaining assignments perform any of the supervisory functions listed in § 7103(a)(10).¹⁵

Because there is no evidence that these Sergeants are supervisors, I conclude that the Agency has failed to meet its burden of establishing that the Sergeants in those assignments should be excluded. *See U.S. Dep't of the Air Force, Offutt Air Force Base, Neb.*, 66 FLRA 616, 619, 623 (2012) (upholding the regional director's decision that the activity had failed to meet its burden of establishing that the positions should be excluded from the bargaining unit); *SSA, Balt., Md.*, 58 FLRA 170, 174 (2002) (upholding the regional director's determination that incumbents in a certain position were not excluded from the bargaining unit, under § 7112(b)(1) of the Statute, when there was insufficient evidence indicating that they consistently exercised independent judgment with respect to any of the supervisory indicia).

D. The Agency's contention that the non-supervisory Sergeants should be included in the FOP Officers' unit is without merit.

The Agency argues (Brief at 17-18) that non-supervisory Sergeants should be included in the existing FOP unit of Officers, and that creating a separate unit for non-supervisory Sergeants would not promote effective dealings and would impede efficient Agency operations. The Agency is, in essence, suggesting that the non-supervisory Sergeants be accreted to the FOP unit without an election. The Authority applies accretion narrowly, however, because accretion precludes employee self-determination: in other words, it deprives the affected employees of the right to vote on whether they want union representation and whether they want to be included in an already existing unit. *See, Dep't of the Interior, Bur. of Reclamation, Pacific NW Region, Grand Coulee Power Off.*, 62 FLRA 522, 524 (2008). Here, moreover, there is no evidence that the FOP seeks, or is willing to, represent non-supervisory Sergeants in its unit of Officers.

IV. Order

The record supports the conclusion that almost all the Sergeants are supervisors under section 7103(a)(10) the Statute: thus, their inclusion in a unit would render it inappropriate under section 7112(b)(1). The evidence also demonstrates, however, that the Sergeants described below are *not* supervisors, and that they are employees within the meaning of section 7103(a)(2) who are entitled to union representation. Moreover, the evidence shows that the Sergeants described below share a community of interest in that they are within the same chain of command, perform similar work, and are subject to the same performance and personnel procedures and rules. Notwithstanding the Agency's argument to the contrary, there is no evidence that a unit of these Sergeants would not promote effective dealings between the newly-formed USPPSA and the Agency, nor is there evidence this USPPSA-represented unit would compromise the efficiency of Agency operations. Therefore, it is ORDERED, that an election be conducted among the following employees to determine whether they wish to be represented by USPPSA:

U. S. Park Police Sergeants assigned as Aviation Unit Sergeants,¹⁶ Recruiting Sergeants; Training Instructor Sergeants; Administrative Sergeants; Court Liaison Sergeants; and Sergeants serving in the Audit and Planning Units.

¹⁵ Despite the fact that the Agency submitted position descriptions for, among others, Court Liaison Sergeants, Administrative Sergeants, Training Instructor Sergeants, and Police Recruiting Supervisors, Agency Ex. 1, the Agency did not challenge the above-cited testimony on the record and did not establish, through testimony, that Sergeants performed the duties listed in the position descriptions. Based upon Authority precedent, a bargaining unit eligibility determination is not based upon position descriptions, "because such evidence might not reflect the actual duties performed by the incumbent employee." *E.g., Veterans Admin. Med. Ctr., Prescott, Ariz.*, 29 FLRA 1313, 1315 (1987); *see also U.S. Dep't of the Interior, Bureau of Reclamation Yuma Projects Office, Yuma, Ariz.*, 37 FLRA 239, 245 (1990).

¹⁶ As noted above, the Chief Mate and Chief Pilot in the Aviation Unit are Sergeants who are supervisors under the Statute.

V. Right to Seek Review

Under § 7105(f) of the Statute and § 2422.31(a) of the Authority's Regulations, a party may file an application for review with the Authority within sixty days of this Decision. The application for review must be filed with the Authority by **August 31, 2015**, and addressed to the Chief, Office of Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 201, 1400 K Street, NW, Washington, DC 20424-0001. The parties are encouraged to file an application for review electronically through the Authority's website, www.fla.gov.¹⁷

Barbara Kraft
Regional Director, Washington Region
Federal Labor Relations Authority

Dated: June 30, 2015

¹⁷ To file an application for review electronically, go to the Authority's website at www.fla.gov, select **eFile** under the **Filing a Case** tab and follow the instructions.