69 FLRA No. 68

UNITED STATES
DEPARTMENT OF THE AIR FORCE
AIR FORCE LIFE CYCLE MANAGEMENT CENTER
HANSCOM AIR FORCE BASE
MASSACHUSETTS
(Agency)

and

NATIONAL FEDERATION
OF FEDERAL EMPLOYEES
LOCAL 1384
(Union/Petitioner)

BN-RP-16-0003

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ORDER DENYING
APPLICATION FOR REVIEW

July 22, 2016

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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 Federal Labor Relations Authority (FLRA) Regional Director (RD) Philip T. Roberts. The Union petitioned the RD to clarify whether the professional employees assigned to the Air Force Life Cycle Management Center's (Management Center) directorate organizations – the Battle Management Directorate (Battle Directorate) and the Command, Control, Communications, Intelligence, and Networks Directorate (Networks Directorate) – who are not physically located at Hanscom Air Force Base (Hanscom), should be included in the existing certification for the bargaining unit that the Union represents. The RD found that the employees at issue (the directorate employees) did not fall within the express terms of the certification. The RD also concluded that there had been no change in the Agency's operations or organization that warranted accreting the directorate employees into the unit. There are four substantive questions before us.

The first question is whether the RD committed a clear and prejudicial error concerning a substantial factual matter. Because the Union's arguments either fail to demonstrate that the RD's findings are erroneous or challenge the weight that the RD attributed to the evidence, the answer is no.

The second question is whether established law or policy warrants reconsideration. Because the Union does not identify an established law or policy and argue that reconsideration of that law or policy is warranted, the answer is no.

The third question is whether the RD failed to apply established law in finding that the directorate employees did not fall within the express terms of the certification. Because the Union has not demonstrated that, as a matter of law, the RD was required to interpret the certification's wording in a particular manner, the answer is no.

The fourth question is whether the RD failed to apply established law in concluding that the directorate employees did not accrete into the bargaining unit. Because there had not been a change in the Agency's operations or organization since the unit was last amended in 2015, accretion principles did not apply. Therefore, the answer is no.

II. Background and RD's Decision

A. Background

In 2012, the Department of the Air Force conducted a reorganization that, among other things, created the Management Center. The Management Center has thirteen directorate organizations, including the Battle Directorate and the Networks Directorate. The Battle Directorate and the Networks Directorate are headed by Program Executive Officers (program officers) located at Hanscom. The directorate employees, however, are not physically located at Hanscom and, instead, work at operating locations across the country.

The Union has been the certified exclusive representative of a group of employees located at Hanscom since 1991. In 2012, before the reorganization, the then-existing certification included in the unit all professional employees "employed by the Electronic Systems Center . . . and . . . duty-stationed at Hanscom."[1] After the reorganization, employees who had reported to the Electronic Systems Center reported directly to the Management Center. Consequently, the Union filed a petition to amend the certification in 2014. The Agency also filed a petition to amend the certification to reflect that the Management Center was the successor employer of the employees in the unit. In 2015, the RD consolidated the two cases (2015 proceedings), and, based on the parties' stipulation,

[1] RD's Decision at 2.

issued a decision amending the certification to include in the unit all professional "employees employed by the . . . Management Center . . . and duty-stationed at Hanscom."[2]

Several months after the RD's decision, the Union petitioned the RD to clarify whether the directorate employees should be included in the existing unit.

B. RD's Decision

Before the RD, the Union argued that the directorate employees: (1) fell within the express terms of the certification; or (2) should be accreted into the unit based on the Agency's 2012 reorganization.

With regard to the Union's first argument, the RD noted that under the Authority's decision in *Department of the Army, Headquarters, Fort Dix, Fort Dix, New Jersey* (*Fort Dix*),[3] "new employees are [automatically] included in an existing unit when their positions fall within the express terms" of an existing bargaining-unit certificate.[4] Addressing the certification, the RD determined that the term "duty-stationed at Hanscom" requires an employee's "physical presence" at Hanscom for inclusion in the unit.[5] The RD further rejected the Union's contention that the directorate employees should be considered "duty-stationed at Hanscom" simply because the Battle Directorate and the Networks Directorate report to program officers located at Hanscom.[6] In this regard, the RD stated that the Union "failed to offer any precedent" establishing that the term "duty-stationed at" means "organizationally assigned to."[7] Because the directorate employees are not physically located at Hanscom, the RD concluded that they do not fall within the express terms of the existing certification.

In support of its second argument, the Union claimed that the Agency had failed to reveal the full effect of the 2012 reorganization during the 2015 proceedings, and, therefore, the RD should consider that reorganization the "'triggering event' needed to support . . . accretion."[8] The RD – noting that the Authority does not apply accretion principles "absent a change in agency operations"[9] – observed that the parties had already amended the certification during the 2015 proceedings as a result of the 2012 reorganization. The RD also found that during the 2015 proceedings, the Agency submitted to the Union "extensive information concerning the creation of the [Management Center] and its directorates."[10] The RD concluded that accretion did not occur because "the Agency ha[d] not undergone an operational change since the [certification] was [amended] in . . . 2015."[11]

Based on the above findings, the RD determined that it was unnecessary to address whether the petitioned-for unit would be appropriate, and the RD dismissed the Union's petition.

The Union filed an application for review of the RD's decision (application), and the Agency filed an opposition to the Union's application.

III. Preliminary Matter: Sections 2422.31(b) and 2429.5 of the Authority's Regulations bar one of the Union's arguments.

In its application, the Union contends that the RD committed a prejudicial procedural error.[12] Specifically, the Union claims that it filed its petition with the wrong FLRA regional office, and the RD "failed to forward" the petition to the proper regional office as allegedly required by § 2422.5(a) of the Authority's Regulations.[13]

Under § 2422.31(b) of the Authority's Regulations, "[a]n application may not raise any issue or rely on any facts not timely presented to the . . . [RD]."[14] Similarly, § 2429.5 of the Authority's Regulations precludes a party from raising, to the Authority, "arguments . . . that could have been, but were not, presented in the proceedings before the [RD]."[15] Here, the record does not reflect that the Union presented its allegation regarding § 2422.5(a) to the RD. Because the Union could have done so, but did not, §§ 2422.31(b) and 2429.5 preclude it from doing so now.[16] Accordingly, we do not consider this argument.

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[2] *Id.* at 3.
[3] 53 FLRA 287 (1997).
[4] RD's Decision at 6 (citing *Fort Dix*, 53 FLRA at 294).
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.* at 5.
[9] *Id.* at 6 (citing *NAGE/SEIU, Local 5000, AFL-CIO-CLC*, 52 FLRA 1068 (1997) (*Local 5000*)).
[10] *Id.* at 8.
[11] *Id.*
[12] Application at 7-8.
[13] *Id.* at 7 (conceding that it failed to file its petition with the correct regional office, but asserting that "two wrongs do not make a right").
[14] 5 C.F.R. § 2422.31(b).
[15] *Id.* § 2429.5.
[16] *E.g.*, *U.S. Dep't of the Navy, Navy Undersea Warfare Ctr., Keyport, Wash.*, 68 FLRA 416, 418 (2015).

IV. Analysis and Conclusions

A. The Union has not demonstrated that the RD committed a clear and prejudicial error concerning a substantial factual matter.

The Union alleges that the RD committed a clear and prejudicial error concerning a substantial factual matter by finding that: (1) "no . . . change in [the A]gency['s] operations ha[d] occurred since [the] 2015 [proceedings]";[17] and (2) the Agency submitted "extensive information concerning the creation of the [Management Center]."[18] The Authority may grant an application for review if the application demonstrates that the RD committed a clear and prejudicial error concerning a substantial factual matter.[19] However, mere disagreement with the weight that the RD accorded to certain evidence is not sufficient to find that the RD committed a clear and prejudicial error concerning a substantial factual matter.[20]

First, with respect to the RD's finding that the Agency had not undergone an operational change since the 2015 proceedings, the Union offers no evidence demonstrating that the RD's finding is erroneous. Rather, the Union merely contends that the Agency failed to provide it with sufficient information regarding the 2012 reorganization.[21] Because the Union has failed to provide a basis to conclude that the RD's finding is incorrect, we find that the RD did not commit a clear and prejudicial factual error in this regard.[22]

Second, in concluding that the Agency submitted to the Union "extensive information" about the 2012 reorganization,[23] the RD relied on the evidence submitted by the Agency during the 2015 proceedings. In particular, the RD observed that the Agency provided the Union with: a description of the Management Center and its function within the organizational structure; the location of the Battle Directorate's and Networks Directorate's operating locations; and the number of personnel working for those directorates.[24] The Union does not dispute any of these specific factual findings; rather, it alleges that such evidence was not "relevant" to the RD's determination.[25] Because this argument challenges the weight that the RD accorded to the evidence, it does not provide a basis for finding that the RD committed a clear and prejudicial factual error.[26]

B. The Union has not demonstrated that established law or policy warrants reconsideration or that the RD failed to apply established law.

1. The Union fails to demonstrate that established law or policy warrants reconsideration within the meaning of § 2422.31(c)(2) of the Authority's Regulations.

Citing § 2422.31(c)(2) of the Authority's Regulations,[27] the Union argues that "established law or policy warrants reconsideration" of the RD's decision.[28] An assertion that established law or policy warrants reconsideration states a ground on which the Authority may grant an application for review.[29] However, for review to be granted, the application must identify an established law or policy and contend that reconsideration of the established law or policy is warranted.[30] Here, the Union contends that established law or policy warrants reconsideration of two of the RD's findings.[31] But the Union does not identify an established law or policy and argue that reconsideration of that law or policy is warranted. Consequently, the Union fails to demonstrate that review is warranted under § 2422.31(c)(2).[32]

However, in this section of its application, the Union makes arguments that the RD failed to apply certain Authority decisions.[33] In such situations, the Authority has construed an application as asserting that the RD failed to apply established law under § 2422.31(c)(3)(i).[34] Accordingly, we construe the Union's arguments in this regard as contending that the RD failed to apply established law.[35]

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[17] Application at 8.
[18] *Id.* (quoting RD's Decision at 8).
[19] 5 C.F.R. § 2422.31(c)(3)(iii).
[20] *E.g.*, *U.S. Dep't of the Interior, Nat'l Park Serv., NE Region*, 69 FLRA 89, 91 (2015) (*Interior*) (citations omitted).
[21] Application at 8.
[22] *See Army & A.F. Exch. Serv., Dall., Tex.*, 55 FLRA 1239, 1241 (2000).
[23] RD's Decision at 8.
[24] *Id.* at 7-8.
[25] Application at 8.
[26] *See Interior*, 69 FLRA at 93-94 (finding a party's argument that the RD overstated the importance of certain evidence a challenge to the weight that the RD accorded to that evidence).
[27] 5 C.F.R. § 2422.31(c)(2).
[28] Application at 1; *see also id.* at 5.
[29] 5 C.F.R. § 2422.31(c)(2); *U.S. Dep't of Transp., FAA*, 63 FLRA 356, 360 (2009) (*DOT*) (citation omitted).
[30] *DOT*, 63 FLRA at 360 (citation omitted).
[31] Application at 5-7.
[32] *See, e.g.*, *USDA, Off. of the Chief Info. Officer, Info. Tech. Servs.*, 61 FLRA 879, 883 (2006).
[33] Application at 5-7 (citations omitted).
[34] *See SSA, Kissimmee Dist. Off., Kissimmee, Fla.*, 62 FLRA 18, 22 (2007) (*Kissimmee*); *U.S. Dep't of VA*, 60 FLRA 887, 888 (2005) (*VA*).
[35] *See Kissimmee*, 62 FLRA at 22; *VA*, 60 FLRA at 888.

Under § 2422.31(c)(3)(i) of the Authority's Regulations, the Authority may grant an application for review when an application demonstrates that the RD has failed to apply established law.[36] The Union claims that the RD failed to apply established law in two respects,[37] which we discuss separately below.

2. The RD did not fail to apply established law in concluding that the directorate employees did not fall within the express terms of the certification.

The Union alleges that the RD failed to apply *SSA, Office of Disability Adjudication & Review, Dallas Region, Dallas, Texas (SSA Dallas)*[38] and *U.S. Department of the Navy, Naval Facilities, Engineering Command Southeast, Jacksonville, Florida* (*Navy*)[39] in finding that the directorate employees did not fall within the express terms of the certification.[40] Specifically, the Union alleges that the RD erred by concluding that the term "duty-stationed at" requires an employee to be "physical[ly] presen[t]" at Hanscom to be included in the unit.[41] According to the Union, the term "assigned to," under both *SSA Dallas* and *Navy*, "mean[s] an organizational assignment rather than a geographic one."[42]

In both *SSA Dallas* and *Navy*, the certifications at issue included the term "assigned to."[43] In *SSA Dallas*, the Authority determined that the employees fell within the express terms of the certification based on their placement within the agency's organizational structure.[44] And, in *Navy*, the Authority upheld a regional director's reliance on *SSA Dallas* to interpret the word "assigned" as referring to an organizational assignment, rather than a geographic one.[45] However, the Authority did not find, in either case, that "assigned to" means, as a matter of law, an organizational assignment and not a geographic assignment. Moreover, here, the certification provides that the unit includes employees "duty-stationed at Hanscom"[46] – not "assigned to." And the Union cites no authority for the proposition that the term "duty-stationed at" denotes, as a matter of law, an organizational assignment, rather than a geographic one. Accordingly, we find that the Union has not demonstrated that the RD failed to apply established law in this regard.

3. The RD did not fail to apply established law when he found that the directorate employees did not accrete into the unit.

The Union claims that the RD failed to apply *Defense Contract Administration Services Region, St. Louis, Missouri* (*Defense*)[47] in finding that the directorate employees did not accrete into the unit.[48] According to the Union, the outcome of its petition "should . . . be[] the same" as the outcome in *Defense*.[49] However, the Union's reliance on *Defense* is misplaced. In *Defense*, the Authority upheld a hearing officer's determination that employees physically located at offices in Missouri had accreted into a bargaining unit of employees located in Kansas because – after an agency reorganization – the Missouri employees were "organizationally and operationally" integrated into the Kansas office.[50] In other words, the Authority upheld the hearing officer's application of the accretion doctrine because the agency had undergone an "organizational[] and operational[]" change.[51]

Here, however, the RD specifically found that, since 2012, "the Agency ha[d] *not* undergone an operational change" warranting accretion.[52] As the RD correctly stated, under Authority precedent, accretion principles do not apply "absent a change in agency operations."[53] And the Authority has declined to apply accretion principles where the alleged change in agency operations occurred before the bargaining unit was last certified.[54] In this connection, the RD recognized that although the Department of the Air Force had reorganized in 2012, the parties amended the

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[36] 5 C.F.R. § 2422.31(c)(3)(i).
[37] Application at 5, 6.
[38] 66 FLRA 1 (2011).
[39] 68 FLRA 244 (2015).
[40] Application at 5.
[41] *Id.* (quoting RD's Decision at 6).
[42] *Id.* (citing *Navy*, 68 FLRA at 246; *SSA, Dall.*, 66 FLRA at 1-2).
[43] *Navy*, 68 FLRA at 244; *SSA, Dall.*, 66 FLRA at 1.
[44] 66 FLRA at 2-3.
[45] *Navy*, 68 FLRA at 246-47.
[46] RD's Decision at 3.

[47] 5 FLRA 281 (1981).
[48] Application at 6-7.
[49] *Id.* at 6.
[50] *Def.*, 5 FLRA at 283.
[51] *Id.*
[52] RD's Decision at 8 (emphasis added).
[53] *Id.* at 6 (citing *Local 5000*, 52 FLRA at 1080).
[54] *U.S. Dep't of the Interior, Bureau of Reclamation, Pac. NW Region, Grand Coulee Power Off., Wash. & Hungry Horse Field Off., Mont.*, 62 FLRA 522, 524 (2008) (*Hungry Horse*) (finding that "no organizational or operational changes had occurred to alter the appropriateness of the existing unit because the [agency's] realignment took place prior to the . . . certification of the unit and the [a]gency's organization and operation had not changed since"); *see also Fed. Trade Comm'n*, 15 FLRA 247, 249 (1984) (finding that there had been "no showing that the duties and functions of the positions at issue ha[d] changed in the time between [the union's] certification as exclusive representative and its filing of the . . . [clarification] petition").

then-existing certification in 2015 as a result of that reorganization.[55] Since the 2015 proceedings, the Agency has not changed its operations or organization.[56] Accordingly, the RD properly found that accretion principles did not apply.[57]

Citing *Fraternal Order of Police*,[58] the Union claims that accretion would "eliminate [the] unit fragmentation" that it alleges exists due to the 2012 reorganization.[59] However, as established above, the RD properly determined that accretion principles did not apply because no change in the Agency's operations or organization had occurred.[60] Thus, it was unnecessary for the RD to address whether the alleged accretion would have "eliminate[d]" unit fragmentation.[61]

Finally, the Union contends that the RD failed to "address the appropriateness of the existing bargaining unit after accretion."[62] However, where no accretion occurred, it is unnecessary to address whether the petitioned-for unit would be appropriate.[63] Because the RD found that no accretion took place, he did not fail to apply established law by not addressing the appropriateness of the unit.[64]

For the foregoing reasons, we deny the Union's application. The Union asks that, if we grant its application, we "order the [Department of] the Air Force to refrain from including the [directorate] employees . . . in[] the Acquisition Demonstration Project."[65] However, because we deny the application, we find no basis for granting the Union's request.

V. Order

We deny the Union's application for review.

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[55] RD's Decision at 3, 7-8.
[56] *Id.* at 8.
[57] *See Hungry Horse*, 62 FLRA at 524.
[58] 66 FLRA 285 (2011).
[59] Application at 6.
[60] RD's Decision at 8.
[61] Application at 6.
[62] *Id.* at 7.
[63] *See Hungry Horse*, 62 FLRA at 524-25.
[64] *See id.*
[65] Application at 9.

FEDERAL LABOR RELATIONS AUTHORITY
BOSTON REGION

Department of the Air Force
Air Force Life Cycle Management Center
Hanscom Air Force Base
Massachusetts
(Activity)

and

National Federation of Federal Employees,
Local 1384
(Labor Organization/Petitioner)

Case No BN-RP-16-0003

DECISION AND ORDER ON PETITION

April 5, 2016

I. Statement of the Case

On December 7, 2015, the National Federation of Federal Employees, Local 1384 (Petitioner) filed a petition with the Boston Regional Office of the Federal Labor Relations Authority (FLRA) under section 7111 of the Federal Service Labor-Management Relations Statute (the Statute)[1] and section 2422.5 of the Authority's Rules and Regulations (the Regulations).[2] The Petitioner is seeking to amend the unit description for the professional employees who are employed by the Air Force Life Cycle Management Center (AFLCMC or Activity) and duty-stationed at Hanscom Air Force Base, Massachusetts (Hanscom AFB). According to the petition, the unit description should be clarified to include the professional employees who are assigned to two of the AFLCMC's directorate organizations, the Battle Management Directorate (HB) and the Command, Control, Communications, Intelligence and Networks Directorate (HN) but who are not physically located at Hanscom AFB.

On March 9, 2016, I issued an Order to Show Cause why the petition in this proceeding should not be dismissed as the employees at issue are not duty-stationed at Hanscom AFB as per the express terms in the current unit description which was certified by the FLRA in Case Nos. BN-RP-14-0015 and BN-RP-15-0005 on April 23, 2015. The Order to Show Cause also asked the Petitioner to show why its assertion that the employees at issue have accreted into its unit should not be dismissed as there was no evidence demonstrating a change to the composition of the bargaining unit or of a change in circumstances since the certification was last amended on April 23, 2015.

I directed that the Petitioner or any other party to this proceeding could respond to the Order to Show Cause by close of business March 23, 2016. On March 23, 2016, the Petitioner submitted a brief in response to the Order to Show Cause which was timely received and fully considered.

Pursuant to the provisions of section 7105(e)(1) of the Statute,[3] the Authority has delegated its powers in connection with the subject case to me in my role as Regional Director. Based on my investigation, as set forth below, I conclude that the facts and Authority precedent do not support the Petitioner's request to amend the bargaining unit as petitioned for, and the petition is dismissed.

II. Facts

A. History

The FLRA Boston Region's investigation revealed that on April 3, 1991, the Union was certified in FLRA Case No. 1-AC-10002 as the exclusive representative of the following unit:

INCLUDED: All non-supervisory professional General Schedule employees serviced by the Central Civilian Personnel Office, L.G. Hanscom Field, Bedford, Mass.

EXCLUDED: All non-professional employees, supervisory and managerial personnel, guards, firefighters, employees engaged in Federal personnel work other than in a purely clerical capacity, and all General Schedule employees of the Air Force Cambridge Research Laboratories.

On February 9, 2012, the Union filed Case No. BN-RP-12-0023, seeking an amendment to the wording of the certification issued in 1991. In support of the petition, the Union and the Activity stipulated that the proposed language did not alter the composition of the unit of approximately 182 employees and that the

[1] 5 U.S.C. § 7111
[2] 5 C.F.R. § 2422.5
[3] 5 U.S.C. § 7105(e)(1)

revision was solely a nominal or technical change. In light of the parties' stipulation, the FLRA's Boston Region issued a Decision and Order on March 5, 2012, granting the petition. Through the Decision and Order, the Union was certified as the exclusive representative of the following unit:

INCLUDED: All professional General Schedule employees employed by the Electronic Systems Center (ESC) and the 66 Air Base Group (ABG) duty-stationed at Hanscom Air Force Base, Massachusetts.

EXCLUDED: All professional employees, management officials, supervisors, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7).

In 2012, the Department of the Air Force implemented an Organization Change Request (OCR) to reorganize the Air Force Materiel Command (AFMC) into what it described as a mission-based integrated life cycle structure. This reorganization involved reducing the AFMC's twelve centers into the following five centers mirroring its core mission areas: acquisition, logistics, test, research and nuclear. These five new centers include the Air Force Life Cycle Management Center (AFLCMC), the Air Force Sustainment Center (AFSC), the Air Force Test Center (AFTC), the Air Force Research Laboratory (AFRL) and the Air Force Nuclear Weapons Center (AFNWC).

The AFLCMC was activated on July 9, 2012, and is responsible for the AFMC's acquisition mission. AFLCMC was designed to provide a single face and voice to customers, holistic management of weapon systems across their life cycles and to consolidate staff functions and processes to curtail redundancy and enhance efficiencies. It is headquartered at Wright-Patterson Air Force Base, Ohio, and reports directly to the AFMC.

Per Special Order GA-12, dated July 26, 2012, the Electronic Systems Center (ESC) at Hanscom AFB was attached to the AFLCMC, effective July 16, 2012. ESC was inactivated effective October 1, 2012 and the newly created AFLCMC now commands all subordinate organizations of the ESC, including 66 ABG. Accordingly, all personnel who physically remained at Hanscom AFB were realigned to the AFLCMC.

In response to the Air Force's realignment of the ESC and the 66 ABG to the AFLCMC, on June 17, 2014, the Petitioner filed Case No. BN-RP-14-0015 seeking to amend its unit description. Specifically, the Petitioner asserted that the bargaining unit should include all non-supervisory professional General Schedule employees serviced by the Central Civilian Personnel Office at the Hanscom AFB. On January 12, 2015 the Department of Air Force, 66 Air Base Group, Hanscom Air Force Base, Massachusetts filed Case No. BN-RP-15-0005 seeking to amend the existing unit of professional General Schedule employees to reflect that the AFLCMC is the successor employer of the employees in the unit. I issued an Order Consolidating the two cases on February 24, 2015. In lieu of a hearing, on April 1, 2015, the parties stipulated that the unit description at issue in this case should be amended to reflect that the AFLCMC at Hanscom AFB is a successor employer for the ESC professional General Schedule employees at Hansom AFB.[4] As supported by the facts and the parties' stipulation, I issued a Decision and Order and Amendment of Certification in Case Nos. BN-RP-14-0015 and BN-RP-15-0005 on April 23, 2015, which amended the unit description to read as follows:

INCLUDED: All professional General Schedule employees employed by the Air Force Life Cycle Management Center (AFLCMC) and duty-stationed at Hanscom Air Force Base, Massachusetts.

EXCLUDED: All non-professional employees, management officials, supervisors, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7).

The investigation of this petition failed to reveal any evidence of any further reorganizations or realignments occurring since the certification was amended in April 2015 or since the activation of AFLCMC in July 2012.

[4] The Stipulation of Facts included the parties' agreement concerning the realignment of the ESC's 66 ABG employees physically remaining at Hanscom AFB into AFLCMC, the effect of the realignment, a description of both the included and the excluded employees and a waiver of their right to a hearing and to file an application for review pursuant to section 2422.31 of the Authority's Rules and Regulations.

B. The Battle Management Directorate and the Command, Control, Communications, Intelligence, and Networks Directorate

The Air Force Life Cycle Management Center has thirteen directorates including the Battle Management Directorate (HB) and the Command, Control, Communications, Intelligence and Networks Directorate (HN). While the HB and HN Directorates are headed by Program Executive Officers (PEO) who are located at the Hanscom AFB, the employees whom the Petitioner seeks to add to its unit, without an election, are not now nor have ever been duty-stationed at Hanscom AFB or a part of the Petitioner's bargaining unit.

While the HB and HN Directorates' PEOs and many of its employees are physically located at the Hanscom AFB, many of their divisions and bargaining unit eligible employees are located across the country. These multiple operating locations include the following Air Force Bases: Hill AFB in Utah, Tinker AFB in Oklahoma, Robins AFB in Georgia, Wright-Patterson AFB in Ohio, Eglin AFB in Florida, Langley AFB in Virginia, Vandenberg AFB and Beale AFB in California, Offutt AFB in Nebraska, Maxwell AFB and the Gunter Annex in Alabama, and Peterson AFB in Colorado. There are also operating locations at Air Force facilities in Melbourne, Florida, Palmdale, California, Seattle, Washington and in Naval Facilities located in Pax River, Maryland, and Dalgren, Virginia.

III. Petitioner's Position

As described above, the petition seeks to include the HB and the HN Directorates' professional General Schedule employees who are not currently and who have never been physically located at the Hanscom AFB, in the professional employee unit for AFLCMC at Hanscom.[5] First, the Petitioner asserts that the employees at issue fall within the existing unit description. Specifically, even though the HB and HN Directorate employees at issue are not physically located at the Hanscom AFB, their PEO's are duty stationed there. The Petitioner asserts that because the employees are considered a part of the PEOs' assets, that Hanscom AFB is effectively the employees' duty station. In support of this assertion the Petitioner noted that before these remotely located employees' functions were transferred to AFLCMC in 2012, their operating locations were considered to part of the host base or location. Since the reorganization, however, the operating locations are now considered to be tenant organizations.

In response to the Order to Show Cause the Petitioner expanded on this argument by noting that even though the unit description requires that the AFLCMC professional employees be duty stationed at the Hanscom AFB, in its view the term "duty stationed" has the same meaning as the term "assigned to" as both apply to geographic and organizational assignments. In support of this rationale the Petitioner cited to *Social Security Administration*, *Dallas, Texas*, 66 FLRA 1 (2011) (*SSA, Dallas*) in which the Authority upheld a Regional Director's decision that employees who were physically located at an agency's district office but organizationally assigned to a different, regional office were actually assigned to the regional office within the meaning of the certified unit description. The Petitioner also cited *Department of the Navy, Jacksonville, Florida*, 68 FLRA 246 (2015) in which the Authority upheld a Regional Director's reliance on *SSA, Dallas* to support a decision that the word "assigned" refers to an organizational assignment and not geography. In this case the Petitioner reasons that the employees at the other locations have been organizationally and operationally integrated into the same directorates as the employees who are currently in the bargaining unit. Thus, according to the Petitioner, the employees' assignment to the HB and the HN Directorates at the Hanscom AFB is tantamount to their being duty stationed at the Hanscom AFB.

Second, the Petitioner asserts that pursuant to the reorganization of the AFMC and the realignment of the employees from ESC to AFLCMC in 2012, the employees at issue accreted into its bargaining unit. To that end, the Petitioner asserts that the resulting unit is appropriate as the employees share a community of interest and it would support effective dealings and the efficiency of the AFLCMC's operations. In fact, the Petitioner asserts that the FLRA's refusal to accrete the employees into its unit actually promotes unit fragmentation and will undermine the efficiency and effectiveness of the Agency's dealings.

The Petitioner now also asserts that the Air Force withheld information from it and the FLRA during the processing of Case Nos. BN-RP-14-0015 and BN-RP-15-0005 when the parties stipulated to the current unit description on April 1, 2015. According to the Petitioner it was not until one of the AFLCMC employees duty stationed at Hill AFB made an inquiry about representation that it understood there were remotely located HB and HN Directorate employees.

[5] In response to the Order To Show Cause, the Petitioner clarified that the employees at issue are those unrepresented, unit-eligible HB and HN Directorate professional employees who are not physically located at the Hanscom AFB, as it already represents the HB and HN Directorate's professional employees who are physically located at Hanscom AFB. As noted by the Petitioner, its bargaining unit already includes the HB and HN Directorate unit-eligible professional employees who are physically located at the Hanscom AFB.

The Petitioner asserts that "the Agency engaged in purposeful duplicity" during their meeting on April 1, 2015 by avoiding discussions about the transfer of function and that had it known about this aspect of the realignment it would have sought to include these remotely located HB and HN employees at that time. Thus, the Petitioner asserts that the FLRA should view the 2012 reorganization as the type "triggering event" needed to support its accretion theory.

IV. Activity's Position

The Activity asserts that the unit sought in the petition would be inappropriate as, in its view, there is no clear and identifiable community of interest amongst the employees and it would not promote effective dealings or efficiency of operations. It argues that the employees are geographically separated, have different working conditions, support different missions and are subject to different personnel policies than those employees duty stationed at Hanscom AFB. *See U.S. Department of the Navy, Fleet and Industrial Supply Center, Norfolk, Virginia*, 52 FLRA 950, 959 (1997). The Activity further notes that the employees who are duty stationed at the Eglin Air Force Base in Florida are already part of a bargaining unit represented by the American Federation of Government Employees.

IV. Analysis and Conclusions

A. The Certified Unit Description

The Authority has long held that new employees are included in an existing unit when their positions fall within the express terms of a certified unit description.[6] For example, the Authority upheld the Regional Director's decision to exclude a group of employees who, while co-located with the bargaining unit's employees, were not assigned to the same organization as expressly required in the certified unit description.[7] The Authority noted that Section 2422.30 of its Rules and Regulations gives Regional Directors broad discretion to investigate a representation petition as they deem necessary and that a Regional Director "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."[8]

In regard to whether the HB and HN Directorate employees should be included in the bargaining unit at issue, according to the unit description language, an employee's inclusion requires that he or she not only be employed by the Air Force Life Cycle Management Center, but that they also be duty-stationed at Hanscom AFB. Here the investigation failed to reveal that any of the AFLCMC unit eligible employees are duty stationed at Hanscom AFB. On the contrary, all evidence indicates that the HB and HN Directorate employees are duty stationed in sixteen other operating locations around the country. While the Petitioner reasons that for all intents and purposes an employee organizationally assigned to a particular organization is tantamount to being duty-stationed at a particular location, it failed to offer any precedent in support of its position. On the contrary, the Authority decisions relied on by the Petitioner support a Regional Director's authority to make unit determinations based on the express terms in a unit description which has been certified by the FLRA. Here, a plain reading of the certification supports the conclusion that to be "duty stationed at" requires a physical presence which is absent for the employees are issue. Accordingly the Petitioner's argument in this regard is without merit.

B. Accretion

In regard to the Petitioner's assertion that the HB and HN Directorate employees have accreted into its bargaining unit, an accretion involves the addition of a group of employees to an existing bargaining unit without an election based on a change in agency operations or organization.[9] As noted in the Order to Show Cause, because an accretion precludes employee self-determination, the accretion doctrine is narrowly applied.[10] In *Department of Veterans Affairs, Washington, D.C.*, the Authority held that it does not apply accretion principles absent a change in agency operations affecting the application of the section 7112(a) criteria within an existing unit.[11] Thus, a claimed accretion is denied where there is no triggering change in agency operations. In particular, when there has been no change in agency operations, the inclusion of additional employees in an existing unit is permitted only through a petition seeking an election.[12] The Authority noted that this long-established policy serves to promote stability

[6] *Dep't of the Army, Fort Dix, Fort Dix, N.J.,* 53 FLRA 287, 294 (1997).

[7] *Soc. Sec. Admin.,* 68 FLRA 710, 711 (2015) (*SSA*).

[8] *SSA at 712, citing U.S. Dep't of VA, VA Conn. Healthcare Sys. W. Haven*, *Conn.*, 61 FLRA 864, 870 (2006).

[9] *U.S. Dep't of the Army, U.S. Army Reserve Command, Fort McPherson, Ga. and the U.S. Dep't of the Army, First U.S. Army, Fort Gillem, Ga.*, 57 FLRA 95 (2001).

[10] *DLA, Defense Supply Ctr. Columbus, Columbus, Ohio*, 53 FLRA 1114, 1125 (1998) (citing *Local 144, Hotel, Hospital, Nursing Home & Allied Services Union, SEIU v. NLRB*, 9 F.3d 218, 223 (2d. Cir. 1993)).

[11] *Dep't of Veterans Affairs, Wash. D.C.,* 52 FLRA 1068 (1997).

[12] *See Fed. Trade Comm.*, 35 FLRA 576 (1990).

and to discourage distortions in shaping the parameters of petitioned-for units.[13]

As applied to the instant case, the Petitioner asserts that the 2012 reorganization resulting in the creation of AFLCMC and its directorates is the type of operational change which would support an accretion of the remotely-located HB and HN employees into its unit. Although this reorganization occurred years before the Petitioner filed the instant petition and the bargaining unit has since been amended to reflect the parties' agreement that AFLCMC is a successor employer, the Petitioner asserts that this same operational change should also be considered as the basis for an accretion because the Air Force allegedly failed to reveal the full impact of the reorganization. The evidence presented, however, fails to support this claim.

Specifically, at the time the AFLCMC was created in July of 2012, the Petitioner's unit description included "All professional General Schedule employees employed by the Electronic Systems Center (ESC) and the 66 Air Base Group (ABG) duty-stationed at Hanscom Air Force Base, Massachusetts." The newly created AFLCMC began commanding all subordinate organizations of the ESC, including 66 ABG and all personnel who physically remained at Hanscom AFB were realigned to the AFLCMC as planned. In response to the Air Force's realignment of the ESC and the 66 ABG to the AFLCMC, the Petitioner filed Case No. BN-RP-14-0015 on June 17, 2014, seeking another amendment. In this case the Petitioner asserted that the unit should include all non-supervisory professional General Schedule employees serviced by the Central Civilian Personnel Office at the Hanscom AFB. The Region issued an Order To Show Cause to which the Petitioner submitted a response on October 1, 2014. The Petitioner wrote among other things that:

> *Ownership of employee positions shifted from the Electronic Systems Center, including those of the 66th ABG, to AFLCMC at WPAFB. Ownership of positions from eleven other bases shifted to AFLCMC. AFLCMC has now centralized ownership of all of its positions regardless of former duty station location.*[14]

On June 12, 2015 the Department of Air Force, 66 Air Base Group, Hanscom Air Force Base, Massachusetts filed Case No. BN-RP-15-0005 seeking to amend the existing unit of professional General Schedule employees to reflect that the AFLCMC was the successor employer of the employees in the unit. Before the parties stipulated to the unit description upon which I based the Decision and Order describing the current certified unit, I scheduled a hearing in that case and Case No. BN-RP-14-0015.[15] The Air Force's prehearing submission included a description of the AFLCMC, which for example, noted that its workforce is located in over seventy-five locations world-wide and that the HN Directorate has 2,200 personnel and that HB Directorate has 3,500 Airmen, government civilians and support contractors. The Air Force submitted extensive information concerning the creation of the AFLCMC and its directorates and it was based on this extensive information that the parties stipulated that it was a successor employer. Consequently, the evidence fails to establish that the Air Force was duplicitous as asserted by the Petitioner or that there is any other legal basis upon which to reject the Authority's narrow application of the accretion doctrine in favor of setting aside the employees' right to an election.

C. Whether the Petitioned for Unit Would be Appropriate

Having found that the employees at issue do not fall within the express terms of the certified bargaining unit and that the Agency has not undergone an operational change since the unit was certified in April of 2015, it is not necessary to address the Petitioner's assertion that the petitioned-for unit would be appropriate. Should a petition for an election for these employees be filed at some future date, any issues regarding the appropriateness of the resulting unit will be addressed and resolved in the normal processing of the election petition at that time.

V. Order

IT IS ORDERED that the petition in this case be dismissed.

Pursuant to section 2422.31 of the Authority's Rules and Regulations, a party may file an application for review of this Decision and Order within sixty (60) days of the date of this Decision and Order. This sixty (60) day time limit may not be extended or waived. Copies of the application for review must be served on the undersigned Regional Director and on all other parties. A statement of such service must be filed with the application for review. The application for review must be a self-contained document enabling the Authority to rule on the basis of its contents without the necessity of

[13] *See, e.g., Fed. Trade Comm.*, 15 FLRA 247 (1984) (accretion denied in the absence of evidence of meaningful changes following certification where union agreed to exclude employees during certification process and then claimed the same employees had accreted to certified unit).

[14] Union's Show Cause Response, October 1, 2014, p:3.

[15] The Notice of Hearing which issued on February 24, 2015 included Case No. BN-RP-14-0008, the petition for which was withdrawn by the same Petitioner in this case, on March 27, 2015.

recourse to the record. The Authority will grant review only upon one or more of the grounds set forth in section 2422.31(c) of the Rules and Regulations. Any application filed must contain a summary of all evidence or rulings relating to the issues raised together with page citations from the transcript, if applicable, and supporting arguments. An application may not raise any issue or allege any facts not timely presented to the Regional Director.

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 by the close of business, June 6, 2016. Pursuant to section 2429.21(b) of the Regulations, the date of mailing will determine the date of filing indicated by postmark date. If no postmark date is evident, it will be presumed to have been mailed five days before the date of receipt by the Authority. If the filing is deposited with a commercial delivery service that will provide a record showing the date the document was tendered to the delivery service, it shall be considered filed on the date when the matter served is deposited with the commercial delivery service.

An application for review filed by personal delivery will be considered filed on the date that the Authority received it. In accordance with section 2429.25 of the Rules and Regulations, an original and four copies must be submitted.

Pursuant to section 2422.31(3)(f) of the Regulations, neither filing nor granting an application for review shall stay any action ordered by the Regional Director unless specifically ordered by the Authority. Pursuant to section 2422.31(e) of the Regulations, if no application for review is filed with the Authority, or if one is filed and denied, or if the Authority does not undertake to grant review of the Decision and Order within sixty (60) days after the filing of the application for review, the Regional Director's decision becomes the decision of the Authority.

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