70 FLRA No. 197

DEPARTMENT OF THE NAVY
PORTSMOUTH NAVAL SHIPYARD
PORTSMOUTH, NEW HAMPSHIRE
(Agency)

and

NEW ENGLAND
REGIONAL COUNCIL OF CARPENTERS
LOCAL 3072
(Petitioner/Labor Organization)

and

PORTSMOUTH FEDERAL EMPLOYEES
METAL TRADES COUNCIL, AFL-CIO
(Incumbent/Labor Organization)

BN-RP-16-0020

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DECISION AND ORDER
ON REVIEW

December 20, 2018

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Before the Authority: Colleen Duffy Kiko, Chairman, and Ernest DuBester and James T. Abbott, Members
(Member DuBester dissenting)

Decision by Member Abbott for the Authority

I. Statement of the Case

In this case, we find that when considering petitions for severance elections, employees' right to self-determination is a factor which should be given equal consideration with all other factors.

The New England Regional Council of Carpenters, Local 3072 (Petitioner-Union) filed an application for review of Federal Labor Relations Authority (FLRA) Regional Director Philip T. Roberts' (RD) decision, which dismissed the Petitioner-Union's election petition to "sever" a group of employees from an established bargaining unit at the Agency (or Shipyard). The Petitioner seeks to represent a group of employees composed of wage-grade plastic fabricators and shipwrights who work at the Shipyard and are currently represented by the Portsmouth Federal Employees Metal Trades Council, AFL-CIO (Incumbent-Union).[1]

In its petition, the Petitioner-Union argued that the plastic fabricators and shipwrights should be severed from the Incumbent-Union's unit and permitted to vote on whether they should be represented by the Petitioner-Union or the Incumbent-Union. The Petitioner-Union claimed that "unusual circumstances" warranting severance existed because the Incumbent-Union has consistently refused to fairly and effectively represent the plastic fabricators and shipwrights.

The Incumbent-Union objected and argued that the existing bargaining unit remained appropriate. The RD found no basis for severance, and dismissed the petition. The Petitioner-Union filed an application for review of the RD's decision. The Authority granted the application, but deferred action on the merits.

We agree with the Petitioner-Union that the RD erred. The RD committed clear and prejudicial errors concerning substantial factual matters. This case also presents us with a unique opportunity to emphasize that the concerns of potential bargaining-unit employees should be given equal weight as a factor when considering whether unusual circumstances warranting severance exist. And in this case, it is the determinative factor.

We remand the case to the Regional Director of the Washington Regional Office to conduct an election.

II. Background and RD's Decision

A. Background

1. The Incumbent-Union at the Shipyard.

The Incumbent-Union's bargaining unit includes approximately 2400 civilian wage-grade production employees. These employees, including plastic fabricators and shipwrights, are responsible for the repair and overhaul of U.S. Navy nuclear submarines.

Historically, plastic fabricators' and shipwrights' duties both arose out of carpentry. But today, plastic fabricators' duties include the handling of special hull treatment, installation of epoxy deckings, and the manufacture and installation of various high-quality

[1] The Incumbent-Union is the exclusive representative of other craftspeople in addition to the plastic fabricators and shipwrights.

rubber products for the Navy, whereas shipwrights' duties include building scaffolding and woodworking.

The Incumbent-Union is the exclusive representative of the bargaining unit,[2] which is made up of eight local unions that represent one or multiple trades.[3]

The Incumbent-Union and the Shipyard are parties to a collective-bargaining agreement which applies to all of the affiliated local unions. The Incumbent-Union has a negotiations committee with representatives from each affiliated local union who pay fees to the Incumbent-Union to support the Incumbent-Union's role as the exclusive representative. Most day-to-day representation matters are handled by the Incumbent-Union-affiliated local trade unions through their own stewards and officers. The local unions also appoint their own delegates to represent them at monthly meetings of the Incumbent-Union.[4]

The Incumbent-Union's parent organization, the Metal Trades Department (MTD), is affiliated with the American Federation of Labor and Congress of Industrial Organization (AFL-CIO). Per the MTD's bylaws, a local union must be affiliated with the AFL-CIO as a condition of membership in a trade council.

2. The Disaffiliation Dispute

The dispute over the representation of the plastic fabricators and shipwrights arose from the United Brotherhood of Carpenters and Joiners of America (UBC)'s disaffiliation from the AFL-CIO in 2001. The UBC complained that the AFL-CIO was not sufficiently focused on organizing, and the parties were unable to resolve the dispute.

In 2005, AFL-CIO leadership notified the MTD that if the UBC (of which the Petitioner-Union was a part) failed to re-affiliate with the AFL-CIO, it would be expelled from the MTD. As a compromise, the MTD and the UBC entered into a solidarity agreement under which UBC locals, including the Petitioner-Union, would continue to represent its members through the appropriate trade councils (in this case, the Incumbent-Union).

That agreement, however, expired in 2011, and the Petitioner-Union was expelled from the Incumbent-Union. The Petitioner-Union's members who were elected Incumbent-Union officers served out their terms, but the Petitioner-Union's stewards were immediately removed. Attempts were made to salvage the relationship. For example, the Incumbent-Union's president appointed the Petitioner-Union's chief steward to serve as the Incumbent-Union's executive secretary, which permitted the Petitioner-Union's members to be represented by a steward of the Petitioner-Union and to keep its office space at the Shipyard.

But in December 2015, the Incumbent-Union elected a new president, who effectively terminated this arrangement. Without any input from the Petitioner-Union or its members, the Incumbent-Union unilaterally divided the plastic fabricators and shipwrights into other Incumbent-Union-affiliated trade unions,[5] ordered the Petitioner -Union to vacate its offices, and advised the Shipyard to communicate only with the Incumbent-Union.

Consequently, in March 2016, the Petitioner-Union filed this petition requesting to sever the plastic fabricators and shipwrights from the Incumbent-Union and permit them to vote to be represented by the Petitioner-Union or the Incumbent-Union.[6] The Petitioner-Union demonstrated the requisite 30% showing of interest under the Federal Service Labor-Management Relations Statute (Statute).[7]

In support of its petition to sever, the Petitioner-Union argued that unusual circumstances exist because the Incumbent-Union has refused to fairly and effectively represent the plastic fabricators and shipwrights when it failed to communicate with employees about meetings, votes, and pending grievances. The Petitioner-Union also claimed that a separate bargaining unit composed of only plastic fabricators and shipwrights would be appropriate under § 7112(a) of the Statute.[8]

The Incumbent-Union argues in opposition that: (1) the current bargaining unit remains appropriate; (2) there are no "unusual circumstances" that have

[2] The Shipyard has been in operation since 1800, and the Incumbent-Union and Petitioner-Union have represented workers there, predating the Civil Service Reform Act.

[3] Including the Petitioner-Union, there were nine unions. The Incumbent-Union also argues that it includes two other local unions. RD's Decision at 9 n.5.

[4] The Petitioner-Union has carried out these functions in representing the Shipyard's plastic fabricators and shipwrights. Currently, approximately ninety plastic fabricators and seventy shipwrights work at the Shipyard. The Petitioner-Union conducts its own monthly meetings, elects or appoints its own officers and stewards, and maintains its own treasury, website, and seniority lists for overtime and reduction-in-force purposes. RD's Decision at 3, 7, 12.

[5] The plastic fabricators were assigned to the Insulators and the shipwrights to the Sheet Metal Workers.

[6] Pet. at 1 (stating that it was filed Mar. 31, 2016).

[7] 5 U.S.C. § 7111.

[8] For support, the Petitioner-Union cited the NLRB decision *Electric Boat Corp.*, No. 01-RC-124746, 2015 WL 1956208 (April 30, 2015) (*Electric Boat*).

damaged the adequacy of its representation of the plastic fabricators and shipwrights; and (3) the proposed unit would not be appropriate under the Statute.[9]

B. RD's Decision

In his decision, the RD considered a number of factors[10] and determined that the existing bargaining unit at the Shipyard remained appropriate because the unit employees continue to share a community of interest, and the unit promotes effective dealings with, and efficiency of, the operations of the Shipyard.[11] According to the RD, the situation amounted to nothing more than a "temporary problem" and there was no evidence that the Incumbent-Union failed to adequately represent, or treated unfairly, ineffectively or differently, the plastic fabricators and shipwrights.[12] Thus, he concluded that the Petitioner-Union did not establish unusual circumstances supporting severance.[13] As the RD did not find any basis for severance, he did not reach the question of the appropriateness of the petitioned-for unit.

The Petitioner-Union filed an application for review on June 27, 2017, and the Incumbent-Union filed an opposition on July 20, 2017. On August 22, 2017, the Authority granted review and deferred action on the merits.

III. Analysis and Conclusions: We reverse the RD's decision and remand for an election.

A. The RD committed clear and prejudicial errors concerning substantial factual matters.

The Petitioner-Union claims that the RD committed clear and prejudicial errors concerning substantial factual matters.[14] According to the Petitioner-Union, the RD "overlooked overwhelming, credible evidence" when he determined that the plastic fabricators and shipwrights "were not treated unfairly, ineffectively, or differently" from other bargaining-unit

[9] The Incumbent-Union argued that *Electric Boat* is not controlling and that the RD should instead follow *Battelle Memorial Inst.*, 363 NLRB No. 119 (2016) (*Battelle*) (Member Miscimarra dissenting).

[10] He considered evidence including that: (1) the Shipyard's security officer told the Petitioner-Union's chief steward (and the terminated executive secretary) that he was no longer allowed to post anything at the Shipyard and warned him he would be disciplined if he did so in the future; (2) the Incumbent-Union asked the Shipyard to advise the plastic fabricators and shipwrights of the changes, and the Incumbent-Union urged them to join other trade unions affiliated with the Incumbent-Union; (3) employees were unsure who was representing them and where to address grievances and other concerns; (4) employees were turned away from the Incumbent-Union meetings; and (5) in June 2016, the Petitioner-Union's membership unanimously voted to sever its ties with the Incumbent-Union and to pursue recognition as their own separate bargaining unit.

[11] RD's Decision at 34 (citing 5 U.S.C. § 7112(a)) (finding as support that (1) all employees are subject to the same personnel policies and practices, pay system, health insurance, geographical conditions, and Shipyard instructions; (2) all employees are serviced by the same human resources and payroll office; (3) all employees support the Shipyard's mission of repairing and overhauling submarines; (4) employees from different trades combine to form project teams, though the employees themselves are not interchangeable; (5) there are some common break areas, locker rooms, and tool cribs; (6) different chains of command intersect (albeit at higher levels); (7) employees are all sourced through the same hiring practices and they are trained in the craft-specific apprentice programs; (8) the Shipyard and the Incumbent-Union have a longstanding collective-bargaining agreement, multiple supplemental agreements, and they have been able to effectively resolve grievances and unfair-labor-practice (ULP) charges; and (9) the existing unit encompasses all of the employees in the production resources department and does not require the creation of an additional organization).

[12] *Id.* at 36.

[13] He also found that the case was distinguishable from *Electric Boat* and more closely resembled *Battelle*.

[14] The Petitioner-Union also argues that there is an absence of precedent (Application at 43-44), that the RD failed to apply established law (Application at 38-43), and that the RD committed a prejudicial procedural error (Application at 46-47). Contrary to the Petitioner-Union's argument, there is established precedent on this issue. *See* RD's Decision at 29. *See also* n.26. As we reverse the RD's decision due to his committing clear and prejudicial errors concerning substantial factual matters, we do not discuss the Petitioner-Union's remaining arguments further.

employees.[15] It also argues that the Incumbent-Union's actions attack "the tenets of self-organization and self-representation."[16]

We find that the RD committed clear and prejudicial errors concerning substantial factual matters.[17]

First and foremost, the RD failed to account in any respect for the wishes of the plastic fabricators and shipwrights themselves—who first voted to withdraw and then established that 30% wanted to vote on who their exclusive representative, if any, should be.

Contrary to the RD's findings, the ongoing incidents were not a "temporary problem." The record is replete with examples of bargaining-unit plastic fabricators and shipwrights being ignored and forgotten. The incidents were numerous and well-cataloged in both the RD's decision and in the Petitioner-Union's application.

In particular, once the Incumbent-Union determined to remove the Petitioner-Union's chief steward as executive secretary, the plastic fabricators and shipwrights had little, if any, input into their representation by the Incumbent-Union. The plastic fabricators and shipwrights were not told how to become members of the Incumbent-Union-affiliated unions.[18] For months, plastic fabricators and shipwrights had no clear idea what labor organization their dues were being paid to or to whom to approach to change dues allotments.[19] A dues-paying member of Petitioner-Union was turned away from a meeting that he tried to attend—a meeting at which conditions of employment significant to plastic fabricators and shipwrights were discussed.[20] Shipwrights did not hear from their "new" representatives about the status of their pending grievances and when the Incumbent-Union decided not to advance those grievances to Step 3, the shipwrights were not informed until several months later.[21] The Incumbent-Union does not contest most of these points.[22]

These incidents were not a temporary problem. Rather, due to their membership in the Petitioner-Union

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[15] Application at 36-37; *see also id.* at 39-40 (arguing that the Incumbent-Union: unilaterally and haphazardly assigned plastic fabricators and shipwrights to two different local unions affiliated with the Incumbent-Union; refused to notify plastic fabricators and shipwrights that representatives from their local union would no longer be allowed to represent them or that they had been assigned to other local unions; waited almost three months before assigning stewards to represent plastic fabricators and shipwrights; refused to take any steps to notify several shipwrights of its decision to drop their grievances; refused to notify plastic fabricators and shipwrights of a vote concerning a potential resolution involving roving tank watch; refused to allow a plastic fabricator to vote or attend the meeting concerning the roving tank watch based on his membership in the Petitioner-Union; chose not to participate in a safety tour of a building in which plastic fabricators worked; directed Shipyard security to prohibit communications from the Petitioner-Union within the Shipyard; directed Shipyard security to discipline Petitioner-Union's former chief steward if he continued posting material within the Shipyard; attempted to locate and take Petitioner-Union's property following Petitioner-Union's eviction from its union office; appointed representatives who knew little about the plastic fabricator or shipwright trades as stewards to represent them; demonstrated a willingness to provide superior representation to the plastic fabricators and shipwrights that agreed to join the Sheet Metal Worker or Insulator local unions).

[16] *Id.* at 37.

[17] 5 C.F.R. § 2422.31(c)(3)(iii); *see U.S. Dep't of the Treasury, BEP, Wash., D.C.*, 70 FLRA 359, 361-62 (2018) (*Treasury*) (Member DuBester dissenting); *U.S. Dep't of Transp., FAA, Wash., D.C.*, 62 FLRA 207, 210-12, (2007) (*FAA*) (finding that conflicts among bargaining unit descriptions was clear from record); *Nat'l Aeronautics & Space Admin., Glenn Research Ctr., Cleveland, Ohio*, 57 FLRA 571, 573-74 (2001) (*Glenn*) (review of record found evidence that two positions in question received confidential information); *Dep't of the Army Headquarters, Fort Dix, Fort Dix, N.J.*, 53 FLRA 287, 294-96 (1997) (*Army*); *U.S. Dep't of Transp., U.S. Coast Guard Fin. Ctr., Chesapeake, Va.*, 34 FLRA 946, 955 (1990) (*Coast Guard*).

[18] Tr. at 485, 503-10, 539.

[19] RD's Decision at 18-19, 35, 37. At one time, such mismanagement of dues would have been prosecuted as violations of the Statute. *AFGE, Local 2192, AFL-CIO*, 68 FLRA 481, 483-85 (2015) (union committed a ULP in failing to timely process employee dues deduction cancellation form); *Morale, Welfare & Recreation Directorate, Marine Corps Air Station, Cherry Point, N.C.*, 48 FLRA 686, 691 (1993); *Army & Air Force Exch. Serv., Dall., Tex.*, 35 FLRA 835, 837-38 (1990) (5 U.S.C. § 7115 imposes "an absolute duty on agencies to honor the current assignments of unit employees by remitting regular and periodic dues deducted from their accrued salaries to their exclusive representatives.") (citing *Lowry Air Force Base, Denver, Colo.*, 31 FLRA 793, 797 (1988); *see also AFGE, Council 214 v. FLRA*, 835 F.2d 1458 (D.C. Cir. 1987)).

[20] Tr. at 507-08, 513, 712-14. In its opposition, the Incumbent-Union states that "[i]t is not unlawful to tell a non-member that he or she does not have the rights of membership, such as the right to vote on the direction of the organization." Opp'n at 23 n.6 (citing *Prof'l Air Traffic Controllers Org., MEBA, AFL-CIO, Local 301*, A/SLMR No. 918, 7 A/SLMR 896 (1977)). We are not overruling this precedent.

[21] Tr. at 535-36 (employee grievant unable to reach Incumbent-Union representative about case where Incumbent-Union decided not to pursue the case past Step 3); *id.* at 640 (Incumbent-Union president testifying that how it went about notifying employees was "not" "perfect"); *id.* at 765-66, 770-71 (Incumbent-Union representative acknowledging that he had different options to contact grievants, which he did not use); RD's Decision at 21.

[22] Tr. at 640 (Incumbent-Union president testifying that how it went about notifying employees was "not" "perfect").

instead of an Incumbent-selected local, the plastic fabricators and the shipwrights were unable to participate in most union affairs and received little to no communication from the Incumbent-Union for an extended period.

The plastic fabricators and shipwrights have relied on the Petitioner-Union to advocate for their interests for decades.[23] In direct response to the Incumbent-Union's failure to adequately and fairly represent the employees, the plastic fabricators and shipwrights voted to withdraw from the larger unit and to be represented by the Petitioner-Union.[24] But the RD failed to adequately account for their interests and concerns.

Our Statute is premised on the notion that "[e]ach *employee* shall have the right to form, join, or assist *any* labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right."[25]

Once the Incumbent-Union "removed" the Petitioner-Union from the Incumbent's trade council, the plastic fabricators and shipwrights had almost no voice. In past severance cases,[26] the Authority has focused almost entirely on preventing unit fragmentation rather than giving even the slightest consideration to the interests, concerns, or wishes of affected employees. Preventing unit fragmentation is an important consideration, but employee interests, concerns, and self-determination are of equal importance when determining whether severance is warranted.

Consistent with Authority caselaw, when employees are treated unfairly, ineffectively, or differently, unusual circumstances warranting severance exist.[27] In the unique circumstances of this case, we find that unusual circumstances exist and that the RD erred in reaching a contrary result.[28]

B. The petitioned-for unit is appropriate.

Having found that severance is warranted, we now consider whether the petitioned-for unit is appropriate.[29] Bargaining units are appropriate if: (1) the employees at issue share a clear and identifiable community of interest; (2) the unit promotes effective dealings with the agency involved; and (3) the unit

[23] RD's Decision at 12, 14-15.

[24] The Petitioner-Union filed its petition for a severance election in March 2016. *See* Pet. at 1. Suggesting that problems persisted, the Petitioner-Union's membership voted on the issue in June 2016. RD's Decision at 19 n.13, 37; Tr. at 418 (membership unanimously voted to sever its ties with the Incumbent-Union, and in June 2016, "they voted unanimously to pursue recognition as their own, separate bargaining unit"); Application at 34.

[25] 5 U.S.C. § 7102 (emphasis added); *see FDIC*, 67 FLRA 430, 434 (2014) (Dissenting Opinion of Member Pizzella) ("[T]he employees, who will be directly impacted by the outcome, are effectively excluded from all phases of the process and are provided no opportunity whatsoever to vote for, or against, representation, regardless of whether all, or a majority, of the employees would rather not have representation. Typically, their concerns are not sought or even considered."); *see also Nat'l Aeronautics & Space Admin., Goddard Space Flight Ctr., Wallops Island, Va.*, 67 FLRA 670, 681 (2014) (Concurring Opinion of Member Pizzella) ("In that respect, I am concerned whether the Authority's precedent properly balances our Statute's 'guarantee[ ][that] federal employees [retain] the right to organize, bargain collectively, and participate through labor organizations *of their own choosing*' with the rights of federal unions that are also enumerated therein. Far too frequently, the Authority has considered only the interests of the union, or unions, without considering 'the concomitant right [of federal employees] *not to associate* and *to refrain from any such activity* that assist[s] a labor organization.'" (citing *NFFE, FD-1, IAMAW, AFL-CIO*, 67 FLRA 643, 647 (2014) (Dissenting Opinion of Member Pizzella); 5 U.S.C. §§ 7101(a)(1), 7102; *Mulhall v. Unite Here Local 355*, 618 F.3d 1279, 1287 (11th Cir. 2010))); *see also Exp.-Imp. Bank of the U.S.*, 70 FLRA 907, 909 n.22 (2018) (Member DuBester concurring); Application at 44 (citing Tr. at 344-45; *Buddy L. Corp.*, 167 NLRB 808, 809-10 (1967)) (Petitioner-Union's concern that it is "grossly unfair" to employees that the MTD—parent of the Incumbent-Union—is dictating what happens when the MTD is not their representative).

[26] *Fraternal Order of Police*, 66 FLRA 285, 287 (2011); *but see Commodity Futures Trading Comm'n, E. Reg'l Office, N.Y.C., N.Y.*, 70 FLRA 291, 295 (2017) ("the Authority found that § 7112(d) of the Statute 'was intended to facilitate larger bargaining units, *not* to shackle employees in the selection of a bargaining representative in those larger units'" (quoting *Dep't of Transp., FAA*, 4 FLRA 722, 729 n.8 (1980))); *U.S. Dep't of VA, Neb./W. Iowa, VA Healthcare Sys., Omaha, Neb.*, 65 FLRA 713, 718 n.7 (2011).

[27] *U.S. Dep't of the Navy, Naval Air Station Jacksonville, Jacksonville, Fla.*, 61 FLRA 139, 142-43 (2010); *U.S. Dep't of the Treasury, BEP*, 49 FLRA 100, 107-08 (1994) (*BEP*); *U.S. Dep't of the Air Force, Carswell Air Force Base, Tex.*, 40 FLRA 221, 231-32 (1991).

[28] *Treasury*, 70 FLRA at 361-62; *FAA*, 62 FLRA at 210-12; *Glenn*, 57 FLRA at 573-74; *Army*, 53 FLRA at 294-96; *Coast Guard*, 34 FLRA at 955.

[29] *U.S. Dep't of the Army, Def. Language Inst., Foreign Language Ctr.*, 64 FLRA 497, 499 (2010) (citing *BEP*, 49 FLRA at 108).

promotes efficiency of operations of the agency involved.[30]

The RD found that the employees represented by the Incumbent-Union are subject to the same personnel policies and practices, pay system, health insurance, geographical conditions, and Agency instructions, which are administered by the same human resources and payroll office.[31] All the employees support the same mission of repairing and overhauling U.S. Navy submarines.[32] Employees are sourced through the same hiring practices and trained through the same apprentice programs.[33] Further, as the RD found that a broader group of employees (those represented by the Incumbent-Union) shared a community of interest, it stands to reason that the narrower unit made up of plastic fabricators and shipwrights would also share a community of interest.

In determining whether the proposed unit's employees share a clear and identifiable community of interest, as noted above, the interests and concerns of the employees should not be ignored. The plastic fabricators and shipwrights have distinct needs, such as craft-specific seniority lists for overtime priority and reductions in force.[34] When it comes to which crafts have jurisdiction over new work entering the Shipyard, their interests diverge from those of other craftspeople when it comes to certain environmental hazards and workplace safety.[35] The trades of the plastic fabricators and shipwrights both arose out of carpentry work, and they differ from those of the other wage-grade craftspeople.[36] And they are subject to the same general conditions of employment.[37] Accordingly, the plastic fabricators and shipwrights share a community of interest.

Examining whether the unit will promote effective dealings with, and efficiency of the operations of the Shipyard, it is important to note that the Agency currently interacts with different unions who represent other employees at this facility with no apparent negative impact on the Agency's labor and employee relations office.[38] That office regularly negotiates with the different unions collectively, or individually, as the circumstances warrant.[39] Furthermore, resolving once and for all this ongoing contentious relationship will promote effective dealings and ensure a clear and identifiable community of interest.[40] Accordingly, the petitioned-for unit is appropriate.

Because we have found that severance is warranted, and that the petitioned-for unit is appropriate,

[30] 5 U.S.C. § 7112(a); *U.S. Dep't of the Navy, Fleet and Indus. Supply Ctr., Norfolk, Va.*, 52 FLRA 950, 959 (1997) (*Norfolk*); *see U.S. DOD, Def. Info. Sys. Agency*, 70 FLRA 482, 485-486 (2018) (Member DuBester dissenting) ("The Authority has set out factors for assessing whether a clear identifiable community of interest exists, but has not specified the weight of individual factors or a particular number of factors necessary to establish an appropriate unit. The Authority examines such factors as geographic proximity, unique conditions of employment, distinct local concerns, degree of interchange between organizational components, and functional or operational separation. In addition, the Authority considers factors such as whether the employees in the proposed unit are a part of the same organizational component of the agency; support the same mission; are subject to the same chain of command; have similar or related duties, job titles, and work assignments; and are subject to the same general working conditions. Historically, the Authority has also considered factors such as common supervision, the distribution and proportion of employees to be represented, the locus and scope of the personnel and labor-relations authority and functions, areas of consideration with regard to merit promotion or reduction-in-force actions, delegation to local management, and integration of mission and function." (citing *U.S. Dep't of the Interior, Bureau of Ocean Energy Mgmt. & U.S. Dep't of the Interior, Bureau of Safety & Envtl. Enforcement, New Orleans, La.*, 67 FLRA 98, 99 (2012); *U.S. Dep't of the Air Force, Dover Air Force Base, Del.*, 66 FLRA 916, 919 (2012); *Norfolk*, 52 FLRA at 961; *Dep't of Agric., Farmers Home Admin*., 20 FLRA 216, 221 (1985); *U.S. Dep't of HUD*, 15 FLRA 497, 500 (1984); *Dep't of HHS*, 13 FLRA 39, 41-42 (1983); *U.S. Army Training & Doctrine Command*, 11 FLRA 105, 109 (1983)). In evaluating whether the unit will promote effective dealings with, and efficiency of the operations of the agency involved, the Authority examines such factors as: the parties' past collective-bargaining experience; the locus and scope of authority of the personnel office responsible for employees in the proposed unit; the limitations, if any, on the negotiation of matters of critical concern to employees in the proposed unit; the level at which labor-relations policy is set in the agency; and the impact on cost, productivity, and resources. *U.S. Dep't of the Air Force, 82nd Training Wing, 361st Training Squadron, Aberdeen Proving Ground, Md.*, 57 FLRA 154, 156-57 (2001) (citing *Def. Logistics Agency, Def. Supply Ctr. Columbus, Columbus, Ohio*, 53 FLRA 1114, 1131-32 (1998); *Norfolk*, 52 FLRA at 961). The Authority does not rely on individual factors, but rather examines the totality of the circumstances in each case. *U.S. Dep't of the Army, US. Army Reserve Command, Fort McPherson, Ga.*, 57 FLRA 95, 96 (2001); *U.S. DOJ, Exec. Office for Immigration Review, Office of the Chief Immigration Judge, Chi., Ill.*, 48 FLRA 620, 635 (1993).

[31] RD's Decision at 34.
[32] *Id.*
[33] *Id.*
[34] Tr. at 456-57; *see also* RD's Decision at 7.
[35] Tr. at 835; *see also* RD's Decision at 4 ("While the plastic fabricators' working conditions often qualify them for environmental pay, that hasn't always been the case for the other trades."), 20 (roving tank watch vote).
[36] RD's Decision at 2-4, 5 n.3.
[37] *Id.* at 7.
[38] Tr. at 46-47, 94-97, 100-109, 119-22, 564-65, 570-79; RD's Decision at 8.
[39] RD's Decision at 8.
[40] Tr. at 215-18.

we reverse the RD's decision and remand the case to the Washington Regional Office to conduct an election.[41]

IV. Order

We reverse the RD's decision. We remand to the Regional Director of the Washington Regional Office to conduct an election.

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[41] *See NLRB v. Gissel Packing Co.*, 395 U.S. 575, 602 (1969) ("The [National Labor Relations] Board itself has recognized, and continues to do so here, that secret elections are generally the most satisfactory—indeed the preferred—method of ascertaining whether a union has majority support."); *see also Battelle*, 363 NLRB No. 119 at 2-6 (2016) (Dissenting Opinion of Member Miscimarra) (finding that the "case presents a substantial question of public policy, which is whether the [National Labor Relations] Board should dismiss a petition filed by a local unit that was the petitioned-for employees' bargaining representative for decades, where those employees, without the opportunity to vote in an election or otherwise express their consent or opposition, have been directed to accept representation by different local unions that, in the past, have opposed their jurisdictional interests"); *Electric Boat*, NLRB Case 01-RC-124746 (2015).

Member DuBester, dissenting:

I disagree with the majority's decision to reverse the Regional Director's (RD's) dismissal of the severance petition in this case, and to order the RD to conduct an election. As the RD found, the Petitioner does not demonstrate that unusual circumstances exist that would support severance of the petitioned-for employees from the established, appropriate bargaining unit.

The RD correctly applies the Authority's "well established"[1] analytical framework to determine whether the petition presents a basis for severance. As the RD explains, "[w]here an existing unit continues to be appropriate under § 7112(a) of the Statute and there are no unusual circumstances to justify severing the petitioned-for employees from that unit, the petition will be dismissed."[2] And the RD accurately identifies "the adequacy of representation afforded by the incumbent union" as "one of the most common claims about the existence of unusual circumstances [supporting a severance petition]."[3] Further, as the RD recognizes, "the Authority has held that the failure of an incumbent to fairly represent the employees sought [to be severed] gives rise to a question of representation concerning the petitioned-for unit and could justify severance."[4]

Contrary to the majority, the RD did not commit clear and prejudicial errors concerning substantial factual matters. Specifically, the RD did not "overlook" what the Petitioner characterizes as "overwhelming, credible evidence" that the plastic fabricators and shipwrights were treated unfairly, ineffectively, or differently from other bargaining-unit employees.[5]

Rather, the RD expressly addresses the Petitioner's claim, and rejects it.[6] The RD bases his rejection on detailed factual findings, most of which the majority does not dispute. Reviewing "the totality of the facts,"[7] the RD finds that:

(1) the employees' reassignment to units represented by other union locals does not, alone, demonstrate a lack of adequate representation;

(2) the employees are not carpenters who could be best represented by a [United Brotherhood of Carpenters] local;

(3) there is no evidence of any trade-specific working conditions necessitating that only other plastic fabricators and shipwrights represent those employees;

(4) other affiliated locals have historically represented more than one trade without issues;

(5) the employees were assigned to affiliated unions that are most closely aligned to their trades;

(6) the employees do not share a different community of interest that is distinct from the bargaining unit;

(7) the employees are free to participate in the unions assigned to represent them and there is no barrier to their voice being heard at the [Metal Trades Council] level through the delegates of those unions, or to becoming stewards; and

(8) although not every steward fully understands the work performed by plastic fabricators and shipwrights, this is a temporary issue.[8]

And the RD also considers:

(9) "employees['] opportunities to participate in union affairs;"

(10) "the existence of [CBA] provisions addressing the specific concerns of the employees at issue;" and

(11) "the union's formal and informal efforts to resolve issues of concern to the employees at issue."[9]

Moreover, as the majority acknowledges, the incidents that assertedly demonstrate unfair treatment of the plastic fabricators and the shipwrights are "well-catalogued" in the RD's decision.[10]

Considering the RD's extensive and detailed factual findings, the majority's and the Petitioner's selective factual claims constitute "[m]ere disagreement

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[1] RD's Decision at 29 (citing *U.S. Dep't of the Army, Def. Language Inst., Foreign Language Ctr. and Presidio of Monterey, Presidio of Monterey, Cal.*, 64 FLRA 497, 498-99 (2010) (*Presidio*).

[2] *Id.* (citing *Presidio*, 64 FLRA at 498-99).

[3] *Id.* at 30.

[4] *Id.* at 29-30 (citing *U.S. Dep't of VA, Westside Med. Ctr., Chicago, Ill.*, 35 LFRA 172, 180 (1990)).

[5] Majority at 5 (citing Application at 36-37); *see id.* at 8.

[6] RD's Decision at 34-36.

[7] *Id.* at 36.

[8] *Id.* at 35-36.

[9] *Id.* at 30.

[10] Majority at 6; *see* RD's decision at 20-28.

with the weight the RD ascribe[s] to certain evidence."[11] Such disagreement "does not provide a basis for finding that the RD committed clear and prejudicial errors in making factual findings." That should be the end of the case.[12]

But that is not the end of the majority's dissatisfaction with the RD's decision. Instead, as a secondary point (although "[f]irst and foremost" in the majority's words), the majority faults the RD for "fail[ing] to account in any respect for the wishes" of the plastic fabricators and shipwrights[13] when they voted to withdraw from the incumbent's unit, and then submitted a 30 percent showing of interest to the RD in connection with the severance petition.

I agree with the majority that employees' right to self-determination is important. Employee self-determination is one of the fundamental principles supporting effective collective bargaining between employers and employees' representatives selected by employees in appropriate bargaining units. However, the majority's suggestion that the principle of employee self-determination should be a factor supporting severance, erodes rather than reinforces the principle.

The Authority's severance framework is designed to protect employees' right to self-determination. Most significantly, employees exercise this right when they decide whether to be represented, exclusively, by a particular labor organization in an "appropriate" bargaining unit. Thereafter, employees and their exclusive representative, following the Statute's requirements, work collectively to resolve issues, including representational issues, within the bargaining unit, thereby ensuring that the employees' chosen representative effectively represents unit employees in dealings with the agency.

Severance presents challenges to the collective-bargaining process, and to the choices employees have made in determining to be represented and in choosing an exclusive representative. Specifically, severance, and the resulting unit fragmentation, diminishes "the bargaining strength inherent in the historic unfractured larger unit,"[14] and disturbs effective dealings with the employer-agency.[15]

Consequently, as the RD recognized, the Authority has long held that severance is only granted in rare circumstances.[16] Where the question is whether an incumbent union's representation has been inadequate, the "[t]he Authority has held that . . . [an incumbent] must have essentially abandoned or otherwise treated the petitioned-for employees unfairly, ineffectively, or differently."[17] Preventing the fragmentation of established bargaining units that *remain appropriate*—in this case, a bargaining unit of approximately 2400 civilian wage grade production employees who have been represented by the Incumbent-union for almost a century— promotes "an effective bargaining[-]unit structure,"[18] protects employee self-determination, and respects an agency's organizational and labor-relations structure.[19] The Authority's severance framework balances these interests. The majority's suggestion that this framework should be modified disrupts this balance.

Accordingly, I would adopt the RD's findings and conclusions, and deny the Petitioner's application for review.

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[11] *U.S. Dep't of the Navy, Naval Facilities Eng'g Command, Mid-Atlantic, Norfolk, Va.*, 70 FLRA 263, 267 (2017); *see also U.S. Dep't of the Army, U.S. Army Corps of Eng'rs, Logistics Activity Ctr., Millington, Tenn.*, 69 FLRA 431, 433 (2016) (holding that challenging "the weight the RD accorded to . . . evidence" does not demonstrate that the RD committed a clear and prejudicial error concerning a substantial factual matter.).

[12] Because I would uphold the RD's finding that extraordinary circumstances do not exist, I would not reach the issue of whether the petition-for unit is appropriate. *Presidio*, 64 FLRA at 499.

[13] Majority at 6.

[14] *Battelle Mem'l Inst.*, 363 NLRB No. 119 at 2 (2016) (Member Miscimarra dissenting).

[15] *Library of Cong.*, 16 FLRA 429, 431 (1984).

[16] *Id.*

[17] RD's Decision at 30 (quoting *U.S. Dep't of the Navy, Naval Air Station Jacksonville, Jacksonville, Fla.*, 61 FLRA 139, 143 (2005).

[18] *U.S. Dep't of the Interior, Nat'l Park Serv., Ne. Region*, 69 FLRA 89, 97 (2015).

[19] The majority disregards the Agency's opposition to the severance petition. RD's Decision at 25. The Agency asserted that the "creation of an additional unit would unduly fragment the bargaining unit. This fragmentation would create a burden on the Shipyard's labor relations function as it already negotiates and administers collective[-]bargaining agreements for its existing three bargaining units. The addition of a fourth unit, whose employees' working conditions and issues are very close to those of the Incumbent's unit, would be redundant and an inefficient use of its resources." *Id.*

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

____

DEPARTMENT OF THE NAVY
PORTSMOUTH NAVAL SHIPYARD
PORTSMOUTH, NEW HAMPSHIRE
(Activity)

and

NEW ENGLAND
REGIONAL COUNCILOF CARPENTERS
LOCAL 3073
(Labor Organization/Petitioner)

and

PORTSMOUTH FEDERAL EMPLOYEES
METAL TRADES COUNCIL
AFL-CIO
(Incumbent)

____

Case No. BN-RP-16-0020

____

DECISION AND ORDER
[Corrected Copy]

I. Statement of the Case

This case is before the undersigned Regional Director of the Federal Labor Relations Authority (the Authority) based on an election petition filed by the New England Regional Council of Carpenters, Local 3073, (the Petitioner) pursuant to section 7111(b)(2) of the Federal Service Labor-Management Relations Statute (the Statute) and section 2422.5 of the Authority's Rules and Regulations (the Regulations).[42] The petition concerns the representation of all wage-grade plastic fabricators and shipwrights including leaders, shop planners, helpers, apprentices and trainees within the plastic fabricator and shipwright classifications working for the Department of Navy, Portsmouth Naval Shipyard, Portsmouth New Hampshire (the Shipyard) who are currently assigned to a bargaining unit that is represented by Portsmouth Federal Employees Metal Trades Council, AFL-CIO (the Incumbent). The Petitioner argues that the employees in question should be severed from the Incumbent's unit and allowed to vote on whether they want to be represented by the Petitioner or remain with the Incumbent. The petition was accompanied by the requisite 30% showing of interest by the employees in the petitioned-for unit.

Pursuant to section 7111(b) of the Statute and Section 2422.8 of the Regulations, a hearing was held in this matter August 30, 2016, through September 2, 2016. Pursuant to the provisions of section 7105(e)(1) of the Statute, the Authority has delegated its powers in connection with the subject petition to me in my role as Regional Director. I have reviewed the rulings made by the hearing officer at the hearing and find that they are free from prejudicial error. Accordingly, these rulings are affirmed.

On the basis of the record, the timely briefs and the reply briefs submitted by the parties, I make the following findings and conclusions.

II. Findings of Fact

A. The Portsmouth Naval Shipyard

The Shipyard was established in 1800 and is one of four remaining naval shipyards in the nation. It is responsible for the repair and overhaul of U.S. Navy nuclear submarines and, with three dry docks, is capable of docking all active classes of submarines including the *Los Angeles* and *Trident* classes. The Shipyard is located at the southernmost tip of Maine, and fully encompasses the federally owned Seavey Island sitting at the mouth of the Piscataqua River. The Shipyard encompasses over 297 acres including the main base and a family housing site located off base in Kittery, Maine. At the time of hearing the Shipyard employed approximately 5,400 civilian employees.

(i) The Mission

The Shipyard's mission is "To Ensure our Shipyard is recognized as a dedicated, world-class team of highly skilled maintenance experts meeting America's needs and exceeding our Customer's expectations." To that end, its Vision Statement reads: "Our Shipyard will continue to improve the planning execution, and delivery of our Customer's assets through innovation, personnel development and uncompromising quality and value."

(ii) Management and Organizational Structure

The Shipyard is organized into departments, each of which is assigned a code. The Shipyard's leadership component is identified as Code 100. The bargaining unit employees at issue are part of the Production Resources Department which is identified as Code 900.

[42] 5 U.S.C. § 7111; 5 C.F.R. § 2422.5.

There are approximately 2,700 civilian employees in Code 900. Code 900 includes the "wrench-turning trades" whose responsibility is to plan for, train, and provide the resources to execute the repair and overhaul work on board of submarines in support of the Shipyard's primary mission.

The Production Resources Department is organized into six codes, namely Code 920 which is the "Structural Group", Code 930 which is the "Mechanical Group", Code 950 which is the "Electrical Group", Code 960 which is the "Piping Group", Code 970 which is the "Coatings and Covering Group" and Code 990 which is the "Temporary Services Group." Each of these codes is headed by a shop head/superintendent who reports to the two Production Resources Managers.

Each of these six codes is comprised of shops. Each shop basically represents a trade as the composition of each one is limited to a single trade. The 70 shipwrights at issue are organizationally assigned to Shop 64 and 90 plastic fabricators are assigned to Shop 76.

Each shop is supervised by one or more first-line supervisors. Shop 76, for example, divides the plastic fabricators into crews, each of which is headed by one of the shop's six or seven first-line supervisors. The supervisors' desks are all located together in Building 174, as opposed to being physically in the shop itself. The crews also have unit employees who are designated as a "work leader" to assist the supervisor. The composition of the crews is fluid as the number of plastic fabricators needed depends on their particular project at hand. The supervisors report to a general foreman, who like the other employees in the shop, is specifically trained in that shop's trade.

In regard to the employees' next level of supervision, each shop reports to one of the GS-14 superintendents who oversee each of Code 900's six codes. The shipwrights in Shop 64 are organizationally assigned to Code 990's Temporary Service Group. Code 990 also includes Shop 75 (Fabric Workers), Shop 99E (Temporary Electrical), Shop 99P (Temporary Piping), and Shop 99E (Dry Dock). The plastic fabricators in Shop 76 are assigned to Code 970's Coatings and Coverings Group along with Shop 71 which includes the Painters and Blasters.

The superintendents have management teams. For example, the Code 970 superintendent has a GS-13 operations manager and a GS-13 nuclear director. The management teams may also have GS-12 general foremen, resource managers, training coordinators, administrative assistants, production planners, process managers and quality assistants. The codes generally have multiple general foremen and a single resource manager. While the bargaining unit employees do not share first-line supervisors across shops, they do share the same general foremen with other employees in their code. The chains of command within Code 900 ultimately intersect at the level of Code 901 (Production Resources Operations Manager) and 900B (Production Resources & Planning Manager).

(iii) Duties, Hiring and Training

(a) The Working Environment

The employees in the Incumbent's bargaining unit, including the shipwrights and the plastic fabricators are all involved in the repair and overhaul of submarines. Much of this work is performed through project teams that are created to address specific work that needs to be completed. The project teams have GS-12 zone managers who determine the priority of the work needed to be done and who coordinate with the various trades that are needed to execute the work.[43] The zone managers send what is referred to as a "demand signal" to the shops to arrange for the crews from the trades that they need. Some projects may call for the zone manager to coordinate with multiple shops or trades at the same time. After a shop crew is assigned, the zone manager gives directions to their supervisor, who in turn meets with the crew at the start of each day to provide a "pre-job brief." This briefing outlines the tasks and specific assignments and describes the expectations for the day. This is the protocol followed in all of the shops, regardless of the trade.

Depending on the particular project, a shop crew may also attend a "lead shop briefing" at the beginning of the day with other shops in connection with how the work will be coordinated. While it may not involve the same shops every day, these lead shop briefings or morning team meetings can occur on a daily basis over the life of a project. According to witness testimony the plastic fabricators never attend briefings led by other shops because their work cannot be done by other trades.

As the Incumbent's bargaining unit employees are all involved in submarine repair and overhaul and serve on the same project teams, they frequently share similar physical working conditions. Given that the tradesmen on a project team are working on the same vessel they are often in close proximity of one another. Code 900 also

[43] Code 900 works closely with the Operations Department, Code 300, which is the project management group for the Shipyard's operations with respect to overhauls. Code 300 has zone managers who are responsible for executing specific overhauls. This includes scheduling and planning the infrastructure with the resources available from Code 900. The zone managers are not in the Incumbent's bargaining unit.

has a practice of lending tradesmen to different shops to act as "helping hands." For example, Code 920 sometimes has high welding demands which require additional people to perform fire watch duties. Employees are sometime loaned across trades to watch for fires as this frees the welders to do the work they were trained to do. Some work, however, such as that performed by the plastic fabricators inside submarines, requires that all other trades clear out of the area to avoid exposure to hazardous toxins. Thus, the plastic fabricators do not usually work side-by-side with other trades, however, there are occasions when they are working adjacent to members of another trade.

There are other trades in the Incumbent's unit that work in some of the same hazardous conditions as the plastic fabricators. All of these employees, regardless of which local trade union they belong to, qualify for extra earning categories such as environmental pay, height pay and dirty pay. Environmental pay is described in federal regulations and in a Shipyard instruction which outlines the qualifying conditions. Entitlement to such pay turns specifically on the working conditions as opposed to membership in a particular trade. While the plastic fabricators' working conditions often qualify them for environmental pay, that hasn't always been the case for the other trades.

(b) The Skills

Where the employees in the Incumbent's bargaining unit differ from one another is in the particular type of skilled work that they contribute towards the repair or overhaul of a submarine. The shipwrights, for example, have two main areas of expertise. One area involves traditional carpentry work that can be performed in the back shop where the equipment is located or shipboard in connection with a range of projects such as installing temporary decking, putting caps on keel blocks, or building stairways, cradles, temporary buildings or platforms. The shipwrights other area of expertise involves the construction of staging for other projects. The shipwrights are expert in building pipe staging (scaffolding) and erecting platforms or bases needed to perform other work. Similar to the work performed by some of the other trades, this is a support function as it is done to provide access for other tradesmen. These projects are coordinated between the zone managers and the employees' supervisors from whatever shops are in need. The shipwrights also speak with the employees who will be using the staging (e.g., mechanics, ship fitters, welders) to determine their specific needs and to ask questions about fall protection. If a shipwright needs to communicate with a different supervisor he or she would do so through his or her supervisor. When staging a work site, the shipwrights often work in close proximity with employees from other trades. However, unlike some other work (e.g. valve repair) that can be performed by employees in more than one trade, no other trades are approved to erect scaffolding.

The plastic fabricators perform a range of functions that are unique to their trade such as hull treatments, damping tile and rubber work. They work in submarines doing interior tile work (epoxy decking systems) or tank sound damping. Although some of their work is performed in a back shop, most of it is done on submarines. As they are applying adhesives and hull coating materials the work can be dirty and replete with strong chemical odors. The plastic fabricators also have a rubber manufacturing shop or mill where they make high-quality runner products for the Shipyard and for the Navy in general. The plastic fabricators all belong to Shop 76 regardless of which type of work they are engaged in.[44]

(c) Recruitment and Training

In regard to the Shipyard's staffing and hiring practices, when advertising to fill trade positions in Code 900 it uses a general announcement covering all of the trades, as opposed to recruiting for a specific position. Although the Shipyard may recruit an experienced tradesman from time to time, most new hires come in as helpers and are assigned to a particular trade by Code 900 during the interview process. While applicants may have experience or schooling in a specific trade, Code 900 does not require any specific certifications and makes assignments based on the candidate's experience and aptitudes. The Shipyard hires multiple candidates at the same time who are considered to be part of a class, regardless of their trade. A trade apprentice class averages about 130 people. The Shipyard trains its tradesmen through two Department of Labor-certified apprentice programs. In both programs candidates are hired at the WG-5 level as helpers assigned to a particular trade and can advance to a "worker" and eventually to a journeyman WG-9 or -10 level. Upon reaching journeyman status the employees are considered to be masters of their respective trades.

The first apprentice program is the Trades Apprentice Program. Qualifying for this program requires passing an exam administered by the Office of Personnel Management. The same test is administered regardless of trade. This is a four-year academic-based apprentice program that combines college-taught academic courses, such as math and English, with shop-specific classes and hands-on training. The general academic courses are usually completed in the first two years and may have a mix of apprentices from multiple trades. Although there are general courses, most of the apprentices' schooling is

[44] At one time some of the duties that are now performed by the plastic fabricators were performed by the shipwrights and those two trades, along with the insulators, were organizationally grouped together at the Shipyard.

trade-specific and done with other apprentices in their specific trade. For example, the shipwrights take carpentry and scaffold-building courses while the welders take classes in metallurgy.

The second apprentice program is the Worker Skills Progression Program which is skills based. This is a five-year program which utilizes more on-the-job training that is directly related to the trade for which the apprentice was hired to work.

All of the shops hire new people through both the Trades Apprentice and the Worker Skills Progression programs. Upon joining a particular shop, the codes' training coordinators plan assignments and assign mentors to educate and assimilate the new recruits. This protocol is used in all six codes. Each shop also has its own budget which, in part, dictates its staffing levels.[45]

Beyond the apprentices' initial certification, they have ongoing training requirements as well. Some of these continuing certification requirements are trade-specific, while others, such as respiratory or fall protection education requirements, reach across trade lines. In the interest of economy these training sessions may have attendees from multiple trades.

(iv) Working Conditions

(a) Locations

As described above, the Production Resources employees are organized into shops, each of which has its own "home shop" or "back shop" area. The home shop for the plastic fabricators (Shop 76) is located in Building 60 and that for the shipwrights (Shop 64) is in Building 42. Building 42 is also used by some dry dock personnel but the plastic fabricators are the only trade in Building 60. Buildings 42 and 60 are both located outside of the Controlled Industrial Area (CIA). With the exception of Shop 06, Machinery Maintenance, most of the other shops' home shops are located inside the CIA. The employees usually begin their day by reporting to their home shop unless they are working on a project inside of the CIA. The employees have access to lockers which tend to be located near break areas inside of the CIA, as opposed to in their home shops. An employee might change his or her locker depending on where his or her crew is assigned.

Although the trades are assigned to a home shop, most of the employees are assigned to project teams for a particular overhaul or repair and the majority of their work is performed on or around submarines. The submarines are dry docked or located pier side within the CIA. Employees from several trades also work in two primary dry dock production facilities. One is located in Building 174, which is next to dry dock #3, and a second in Building 343, which is located next to dry dock #2. Building 174 houses various shop areas which are used by different trades. Although their home shop is located in Building 60, a crew of the plastic fabricators doing hull treatment would likely be working out of a production shop area in Building 174. This building also has tool cribs and common lunch and break areas that are used by all of the trades. There are break areas located in Buildings 60, 306, 343 and 174 that are used primarily but not exclusively by the plastic fabricators. The shipwrights use the facilities in Building 174 but do not work there.

(b) Tools and Equipment

Although the plastic fabricators work on or near a submarine, most of their equipment, such as that used for their fiberglass operation or for manufacturing rubber components, is housed in Buildings 60 or 306. With respect to the shipwrights, in addition to their home shop they have three "ready shacks," each of which is located at one of the dry docks or berths. Most of their time is spent at the dry docks building safe work platforms both in and on the outside of vessels. The ready shacks contain lockers and a small break area.

In regard to the employees' tools and equipment, there are some that are trade specific. Apprentices are given a list of those tools that they are expected to own personally. The tradesmen can leave their tools in lockers that are located near their work sites and break areas. Others tools, depending on their size, are stored at the Shipyard and checked out as needed. The tradesmen wear helmets and each trade has its own color.

(c) Personnel Policies and Practices

The employees in the Incumbent's bargaining unit are subject to the same personnel policies and practices. Specifically, the employees are covered by the same health insurance plans, retirement plans and pay system (wage-grade). They are also subject to the Navy and the Shipyard's instructions concerning matters such as inclement weather, Equal Employment Opportunities (EEO), reduction-in-force, merit promotions and the Joint Travel Regulations. The Incumbent's employees are likewise measured by the same rating system and according to the same performance management cycles. Like all employees at the Shipyard, their payroll is administered by the Shipyard's Code 600 department. Dues revocation forms are handled by an individual in the Shipyard's Human Resources Office (HRO)

[45] In contrast, items such as overtime are part of a common budget or pool available to Code 900.

regardless of which union is involved. The trades or shops are subject to their own seniority lists in some circumstances. For example, the shops have their own seniority lists regarding issues such as force reductions and overtime.

In regard to work schedules, all of the shops have both day and evening shifts and none of the employees' time is recorded through a time clock. All of the employees, regardless of trade, are required to travel as needed. This need, however, is greater for some trades than for others. For example, while the Marine Machine Mechanics in Shop 38 are working off-site 20 to 25% of the time, the plastic fabricators rarely travel unless the Shipyard is doing an overhaul off-yard. In one recent project involving some three hundred employees working off the yard, only nine of them were shipwrights.

(v) Labor-Management Relations

The labor and employee relations function at the Shipyard is performed by the Fleet Forces Command HRO (Code 40) which is located on site. The HRO is subject to the labor relations policies set by the Department of Navy's Office of Civilian Human Resources (OCHR). The OCHR Norfolk, located in Norfolk, Virginia, provides services including recruitment and hiring, processing SF-50s, and representing the Shipyard in matters before the Federal Labor Relations Authority. Although OCHR Norfolk provides guidance in connection with contract negotiations it does not provide staffing for the actual negotiations.

The HRO has a Labor and Employee Relations (LER) Division that is overseen by a Director of Labor and Employee Relations. The HRO has thirty people on staff, nine of whom are Human Resources Specialists assigned to the LER Division. Three of these specialists primarily handle employee relations matters. The LER Division provides advice and guidance regarding disciplinary actions and labor relations matters. It also provides representation during labor negotiations and for third party matters. For example, the LER Division advises and assists management in connection with bargaining obligations arising from statutes, regulations, the Shipyard's local instructions, and the collective bargaining agreements (CBA).

In addition to the Incumbent, which represents Code 900's wage-grade employees, there are two other bargaining units at the Shipyard, represented by the American Federation of Government Employees and International Federation of Professional and Technical Engineers, Local 4, respectively. Although both unions represent employees organizationally assigned to other codes, their bargaining units also include employees within Code 900.

The Shipyard has a labor-management forum and the HRO is involved in this as well. The forum, which is comprised of the Shipyard's upper management and representatives from all three unions, meets every two weeks. The Shipyard also recently implemented an "alternate labor-management forum" in which a representative from the HRO and the Code 1100 Executive Support Office meet with the unions collectively on a weekly basis. The Incumbent's representative at both meetings is usually its president and either the vice-president or the secretary. The HRO staff also attends various committee meetings of which the Shipyard's unions are also members.

The LER Division also represents the Shipyard at arbitration hearings and in disciplinary actions in addition to assisting with unfair labor practice (ULP), Equal Employment Opportunity and Merit System Protection Board hearings and various negotiations. The HRO does not represent the Shipyard at formal hearings before the FLRA or the EEOC.

While some of the LER Division's HR Specialists routinely handle matters concerning certain codes, they are all able to service each bargaining unit and its corresponding CBA. There are two HR Specialists specifically assigned to Code 900.

With respect to changing working conditions that impact employees from all of the Shipyard's bargaining units, the LER Division's practice is to provide notice and an opportunity to bargain to all three unions. The ensuing negotiations are sometimes done collectively with all three unions. In other cases the change might affect the bargaining units differently and require separate negotiations. For example, the Shipyard currently has two Award instructions, one applying to the Incumbent, and the other applying to the other two unions.

B. The Incumbent and its Bargaining Unit

For nearly one hundred years the Incumbent has represented a bargaining unit at the Shipyard comprised of the skilled wage-grade Production Resources Department employees. At the time of the hearing, the Incumbent's unit included approximately 2,400 employees. The Incumbent's parent organization is the Metal Trades Department (MTD) which is affiliated with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). As described in Article 2 of the CBA, the Incumbent's unit is as follows:

Included: All Microform Equipment Operators, GS-4; Copier/Duplicating Equipment Operators (Photocopying), GS-4; Copier/Duplicating Equipment Operators (Xerox), GS-3; Copier/Duplicating Equipment Operators (Blue-Print), GS-3 and Copier/Duplicating Equipment Operators, GS-2, assigned to the Planning Department. Administrative Support Branch, Microphotography Section and Reproduction Section; and all Wage Grade Employees, including apprentices and trainees, planners and estimators, progressmen, ship schedulers, shop planners and inspectors of the Portsmouth Naval Shipyard, Portsmouth, New Hampshire.

Excluded: All professional employees, all other General Schedule employees, management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, guards, and supervisors as defined in the Statute.

(i) The Affiliated Trade Locals at the Shipyard

The MTD represents employees through its metal trades councils. According to the MTD, metal trades councils are umbrella organizations that service large employers where there are multiple unions each representing individual crafts. Employees hold membership in one of the craft unions that make up the council, but it is the council that is the bargaining unit's exclusive representative. According to Appendix II of the CBA, the following local unions make up the Incumbent: International Association of Heat and Frost Insulators and Asbestos Workers, Local 134; Sheet Metal Workers, Local 546; International Association of Bridge, Structural and Ornamental Iron Workers, Local 745; International Union of Operating Engineers, Local 877; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 920; Laborer's International Union of North America, Local 976; International Brotherhood of Painters and Allied Trades of the United States and Canada, Local 1915; International Brotherhood of Electrical Workers, Local 2071; and until the events at issue in this petition, the United Brotherhood of Carpenters and Joiners of America, Local 3073.[46] All wage-grade employees in Code 900 are currently part of the Incumbent's bargaining unit.

In the past there have been disputes between the trades and/or their locals, as their interests are at times at odds with each other. For example, the plastic fabricators and the inside machinists from Shop 31 were in a long-term jurisdictional dispute concerning which trade would perform valve repairs. The locals eventually reached an agreement outlining which of the duties at issue belonged to which trade.

The Incumbent and most of its affiliated locals have union offices and bulletin boards throughout the Shipyard. Rather than being co-located in the same building with the Incumbent's office, the offices of the locals are located closer to the worksites of their respective trades. For example, while the Incumbent's officers are in Building M1, the Petitioner's office was located in Building 60. With respect to communications, the Incumbent and the locals have bulletin boards and the Incumbent has access to the Shipyard's electronic mail.

(ii) Leadership

The Incumbent's leadership includes the following officers: president; first, second and third vice-presidents; treasurer; recording secretary; three trustees; and an executive secretary who is appointed by the president. Three of the Incumbent's officers are on 100% official time. There is also an executive board which is composed of a representative and one alternate from each of the affiliated locals, which until early 2016 included a representative from the Petitioner. The executive board makes recommendations to the president.

The Incumbent also has seventeen chief stewards pursuant to Article 7, Section 3 of the CBA which provides for one chief steward for every seventy-five employees, not to exceed seventeen. The local unions elect or appoint their respective chief stewards and stewards.[47] The Incumbent does, however, have approval authority and, pursuant to its bylaws, a chief steward must be a member of an affiliated local. There is no evidence, however, of the Incumbent having ever rejected a local's chief steward selection.

Fifteen of the chief stewards work on the first shift and two work on the second. As there are only two chief stewards on the second shift, they work with the second shift employees from all of the affiliated locals. Their representational work, however, is largely focused on emergencies, such as investigatory interviews;

[46] According to the Incumbent, this list is inaccurate as it fails to include the United Association of Plumbers and Pipefitters, Local 788 and the International Association of Machinists and Aerospace Workers, Local 836.

[47] The Petitioner's chief steward was an appointed position.

representation matters such as grievances are left to the day shift stewards. The chief stewards' and the stewards' official time is drawn from a negotiated bank of hours controlled by the Incumbent.

The Incumbent is supposed to regularly provide the Shipyard with a list of its current representatives, including the chief stewards and stewards. This list designates which chief steward is assigned to which shop in Code 900, and while the Shipyard recognizes these stewards as representatives of the Incumbent, their assignment largely tracks trade and local affiliation. There are, however, some stewards who represent more than one shop. In addition, the Incumbent's president has the authority to assign them work that may cross trade lines.

The Incumbent also has a voting body whose members are called "delegates." The delegates vote on matters that are raised during the Incumbent's monthly business meeting. The delegates are selected by the affiliated locals, each of which chooses six delegates and six alternates.

(iii) The Collective Bargaining Agreement

The Incumbent and the Shipyard are parties to a CBA which became effective on July 30, 1999. At the time, the Incumbent had a bargaining committee composed of a representative from each of the affiliated locals, including the Petitioner. The CBA was scheduled to expire in 2002 but it has since been rolled over and is currently in effect.

Article 33 of the CBA includes a four-step grievance procedure that applies regardless of which trade the grieving employee belongs to. According to the Production Resources Department, most of its grievances have been resolved either before or at Step 3. The Incumbent's stewards have the authority to resolve grievances at Step 1 and 2 without necessarily having to obtain approval from one of the Incumbent's higher ranking representatives. The deciding official at Step 4 is the Shipyard's Commander or his designee.

In most cases, an employee seeking to file a grievance will approach a steward or the chief steward connected with his or her local affiliated union. Grievances are filed on the PNS/MTC Grievance Form and then assigned a serial number by the Incumbent's executive secretary. The Incumbent's practice is to have one of its officers review it before filing. Advancing a grievance to Steps 2 and/or 3 requires the approval and signature of one of the Incumbent's officers. Advancing a grievance to arbitration involves convening the Incumbent's grievance committee, which votes on whether to recommend funding for arbitration. The Incumbent's grievance committee is composed of a representative from each of the affiliated locals. If the request is approved, the request advances to a vote by the Incumbent's delegates at its next monthly business meeting. When a case goes to arbitration the affiliated local puts down a $200 deposit and pays for one third of the arbitration's costs while the Incumbent pays the other two thirds. If the grievance committee decides against funding the request, the local affiliate has the option to proceed to arbitration at its own expense. Further, the Incumbent's by-laws provide that it can block a grievance from going to arbitration under certain circumstances, such as when it might harm the rest of the bargaining unit. This process applies regardless of which of the affiliated locals is involved. And while the CBA allows for anyone in the bargaining unit to file a grievance, only the Incumbent can advance it to arbitration.

The CBA includes no appendices that only apply to a single craft. Likewise, per the Incumbent's bylaws, the local affiliates cannot enter into contracts, memoranda of understanding, or other binding agreements with the Shipyard on their own that might conflict with those of the Incumbent.

(iv) Negotiations & Representation of the Entire Unit

The Incumbent has a negotiations committee which is made up of representatives from each of the affiliated locals. It is the practice of Code 900 to notify the Incumbent at the council level of any negotiable change in working conditions, without regard to whether it involves employees in a single trade or multiple trades.

(v) Dues Withholding

With respect to the collection of union dues, the Shipyard collects the respective withholdings and deposits the money into separate bank accounts held by each of the Incumbent's affiliated locals, including the Petitioner. Thus dues withholdings are remitted to the locals and not directly to the Incumbent. The amount of dues to be withheld is determined by the affiliated locals, not the Incumbent. The SF-1187 dues withholding authorization form includes each local's class code. The forms are submitted to the Incumbent's recording secretary. Every two weeks the Defense Finance and Accounting System sends the Incumbent a remittance report describing the number of dues payers for each local.

The Incumbent collects funds through a per capita fee charged to the locals. For example, until the Incumbent disaffiliated the Petitioner in 2011, it billed the Petitioner on a monthly basis. The Petitioner's treasurer in turn would send the payment to the Incumbent.

C. The Petitioner's Representational Role at the Shipyard

The Petitioner was chartered by the United Brotherhood of Carpenters and Joiners of America (UBC) in 1954. It is also part of the New England Regional Council of Carpenters. The Petitioner has its own bylaws and elects its own officers (e.g. president, recording secretary, trustee) and executive board, apart from those of the Incumbent.[48] Its president is responsible for appointing stewards and chief stewards and assigning members to various committees. When the Petitioner was still affiliated with the Incumbent it would notify the Incumbent of its steward and chief steward selections. The Incumbent in turn would notify the Shipyard. There is no evidence of the Incumbent having ever rejected the Petitioner's selection. The Petitioner's entitlement to a chief steward under the Incumbent was negotiated and is memorialized in the Incumbent's CBA.

Most of the representational work done by the Petitioner's stewards was handled through the Petitioner, as opposed to the Incumbent. The chief stewards, however, worked more closely with the Incumbent. In that regard, the Petitioner's chief stewards have historically played an active role in the grievance process, often serving as a point of contact with management and with the Incumbent. For example, when the Petitioner wanted to advance a grievance to Step 2 or 3, it was usually the chief steward who secured an approval signature to do so from the Incumbent. The Petitioner's chief steward served as the grievant's representative, as opposed to a chief steward from one of the Incumbent's other affiliate unions. Questions concerning whether to advance a grievance to arbitration began with a vote by the Petitioner's membership and upon securing their approval, the Petitioner would take the grievance to the Incumbent to secure its approval, as described above.

The Petitioner conducts its own monthly membership meetings and maintains its own treasury and website. Prior to separating with the Incumbent, the Petitioner had use of a union office and a bulletin board at the Shipyard as well. Similar to the executive board of any union, the Petitioner's board voted on items such as expenditures and representational issues such as grievances. As a local of the UBC, the Petitioner's members also enjoy separate benefit programs such as funeral expenses.

[48] As is the case for all of the Incumbent's affiliated locals, the Petitioner's officers are not entitled to official time in the capacity as a representative of a local.

D. United Brotherhood of Carpenters & Joiners of America and the AFL-CIO

Prior to 2001, the Petitioner's parent organization, the UBC, and the Incumbent's parent organization, the MTD, were both affiliated with the AFL-CIO. Sometime before 2001 the UBC expressed concerns that the AFL-CIO lacked sufficient focus with respect to organizing. At the time the UBC was allocating 50% of its budget towards that initiative and had hired more than six hundred organizers. The issue was discussed during a meeting between the AFL-CIO's president at the time, John Sweeney, and the UBC's leadership but the parties were unable reach an agreement.

Consequently, through a letter dated March 29, 2001, the UBC's General President at the time, Doug McCarron, notified Sweeney that the UBC was disaffiliating with the AFL-CIO.

Through a letter dated August 4, 2003, Sweeney notified the MTD that it was to disaffiliate with the UBC by September 15, 2003. Through a letter dated August 21, 2003, the MTD's president at the time, Ronald Ault, responded that his understanding was that the September 15 deadline was subject to an indefinite extension and that the MTD would not be taking any action that the present time. Ault also wrote that there would be "enormous difficulties, practical and legal that possibly could flow from disaffiliation with the Carpenters from the MTD and its Councils." According to Ault there were unique circumstances for the MTD's Councils as the UBC's local unions were "actively involved in all aspects of the affairs of the Councils" and in some locations UBC officials were officers in the Councils and signatories to the collective bargaining agreements.

Through a letter dated May 4, 2005, McCarron wrote the UBC locals that although the UBC had re-affiliated with the Building and Construction Trades Department (BCTD) of the AFL-CIO in 2003, Sweeney advised that if the UBC failed to re-affiliate with the AFL-CIO by its July 2005 convention it would be expelled from the BCTD and presumably any other departments within the AFL-CIO such as the MTD. Thus, in anticipation of its expulsion from the BCTD and the MTD, McCarron advised that any affiliates that participate in AFL-CIO departments and councils at the sub-national level may likewise be expelled and should begin preparations accordingly. He suggested that the affiliates prepare to secure their own bargaining rights by, among other things, pursuing election petitions. Through a second letter, dated July 22, 2005, McCarron advised the affiliates of his understanding that the MTD was taking

steps to disaffiliate the Carpenters should it be directed to do so by the AFL-CIO.

Through a memo dated July 27, 2005, from Ault to, among others, "All Metal Trades Councils," he advised that the longstanding disaffiliation issue with the UBC had "caused much confusion and internal dissent within the ranks of organized labor." As the UBC failed to re-affiliate with the AFL-CIO before the end of the grace period outlined by Sweeney, Ault noted that the UBC was no longer in compliance with the MTD's constitution and bylaws and therefore could no longer be affiliated with the MTD. To be affiliated with the MTD, a labor organization must be affiliated with the AFL-CIO.[49] He directed the Councils to contact the employers with whom their councils have recognition to advise them to terminate withholding dues for the UBC and its local unions and district councils. He added that effective August 1, 2005, these employees would be eligible to join the MTD and to begin dues withholding, the collected money for which would be deposited in an MTD escrow account before being dispersed to the local unions.

In a memorandum dated July 28, 2005, Sweeney wrote the principal officers of the AFL-CIO's Trades and Industrial Departments that two major unions had disaffiliated and that the AFL-CIO would not enter into partnership with them nor would it provide them support. He also provided instructions concerning disaffiliations.

Through a letter to all UBC Council affiliates, dated July 29, 2005, McCarron advised that the AFL-CIO and the MTD followed through on its "threats" against the UBC and its affiliates following its disaffiliation by attempting to interfere with the rights and livelihood of the UBC's membership. He suggested, for example, that some UBC members might be threatened by other unions to sign dues checkoff authorizations to avoid losing their jobs and that as this was illegal they should file unfair labor practice charges.

In a letter from McCarron to Ault dated August 4, 2005, he wrote that he had seen a copy of Ault's July 27, 2005 memo and that it should be immediately withdrawn. McCarron asserted that Ault's directive would disrupt existing bargaining relationships and would lead employers to question the ongoing representation of both the UBC and MTD. In his view, the councils affiliated with MTD jointly represent employees with their affiliated unions and that the UBC planned to continue this arrangement. It was also on August 4, 2005, that McCarron officially announced to the UBC Council affiliates that it had been expelled from the AFL-CIO, the BCTD and the MTD.

E. The Petitioner's Continued Representation at the Shipyard

On December 14, 2005, the MTD entered into a solidarity agreement with the UBC to address the impact of the latter's disaffiliation with the AFL-CIO. Through the agreement, the UBC and the MTD acknowledged that some of the MTD's councils included UBC locals that would have to be disaffiliated from those councils and that there would be disputes regarding which organization represented the employees. Thus in accordance with the AFL-CIO's Solidarity Charter Program and the Protocol agreed to between the Change to Win Federation[50] and the AFL-CIO, the UBC and the MTD created an arrangement that provided as follows: (1) the UBC's affiliates would pay a quarterly fee to the appropriate Metal Trades Council for representational services; (2) the UBC affiliates would be allowed to appoint stewards in accordance with the applicable CBA and Metal Trades Council constitution and bylaws and that these stewards would be Metal Trades Council representatives who cannot be removed during the term of the solidarity agreement; (3) the UBC affiliates would have a right to dues check-off according to the applicable CBA; (4) the MTD would remit any current dues owed to the UBC affiliates to those affiliates; (5) the UBC affiliates would have the right to participate in Metal Trades Council affairs and to vote, hold office, and elect voting delegates in the same manner as it did before the disaffiliation; and (6) the UBC locals would withdraw any legal and unfair labor practice charges filed against any Metal Trade Councils. According to the AFL-CIO's Solidarity Charter Program, the solidarity charters were to expire by December 31, 2006.

Through a letter to Ronald Ault dated January 9, 2006, McCarron asked that the MTD issue a Solidarity Charter for the Petitioner (among others). Ault approved the request and through a letter on February 24, 2006, provided the AFL-CIO Solidarity Agreement for the Petitioner to the Incumbent's president at the time, Paul O'Connor. O'Connor testified that he was relieved when the charter was signed as losing the Petitioner would have caused disruptions locally and he wanted to avoid that. He described the relationship between the Petitioner and the Incumbent during the tenure of their Solidarity Agreement as a good one.

In 2011 the local Solidarity Agreement expired. Through a letter dated June 1, 2011, Ault wrote Doug McCarron that the MTD's Executive Council voted to terminate the

[49] Affiliated locals of the Incumbent are subject to this same requirement in addition to paying its affiliation fee.

[50] At the time, UBC was affiliated with the Change to Win Federation.

Solidarity Agreement with the Carpenters and that it would terminate in sixty days, as outlined in the agreement. That meant any Metal Trades Solidarity Charters issued to local affiliates permitting them to affiliate or continue in affiliation with any local metal trades council was revoked. Further, any member of a UBC affiliate then holding an elected office within a local metal trades council was permitted to serve out the remainder of his or her term. Also, the councils were instructed to appoint stewards to represent the employees for whom the UBC representative had been appointed to represent. Upon providing this notification to the metal trades councils, Ault concluded that as he was sure there would be many questions over the next several months, his office would work closely with the councils and the affiliates to handle them.

Following the termination of the Solidarity Charter, the Incumbent explained its impact on the Petitioner during the Incumbent's monthly business meeting held on August 1, 2011, namely that the Petitioner was disaffiliated.[51] The Petitioner was informed that it would no longer have a chief steward, stewards or a vote in council matters. The Petitioner also lost its delegates and with that, its power to vote at the Incumbent's monthly business meeting. The chief steward for the Petitioner at the time was Larry Gould and the Incumbent removed him shortly after the meeting. At the time, Gould also served as the Petitioner's president. The Incumbent asked the representatives from the other locals in attendance at the meeting for volunteers to serve as stewards for the Petitioner's shops. The chief steward from the International Brotherhood of Painters and Allied Trades of the United States and Canada, Local 1915 at the time, Rick Smith, temporarily assumed representational duties for the shipwrights and plastic fabricators.

Although the parties lost the Solidarity Charter, O'Connor and an Industrial Representative for the New England Regional Council for Carpenters, Robert Burleigh, discussed how to continue the parties' relationship. To minimize the disruption, Burleigh and O'Connor decided to appoint Gould as the Incumbent's executive secretary. The executive secretary is the only one of the Incumbent's positions that is filled through an appointment as opposed to an election. O'Connor implemented Gould's appointment on November 10, 2011, and it was considered to be a full-time union position. The Petitioner was also allowed to keep its office space. As testified by O'Connor "…it was either cut the men and women off from what they were accustomed to or find a way to let Larry and then Nate continue. And the only way I could think of was by appointing them as executive secretary." O'Connor considered appointing chief stewards from the other locals to represent the shipwrights and the plastic fabricators but he didn't think it was an option because during his tenure there was no "clear direction as to which locals, which existing affiliates would take jurisdiction over the old local, the old Carpenters local."

According to O'Connor, in addition to attempting to minimize the impact on the bargaining unit employees, he wanted to avoid a rift between the parties. While the UBC separated from the AFL-CIO over philosophical differences concerning organizing, these philosophical differences didn't initially create a wedge between the employees at the Shipyard. Following the revocation of the Solidarity Charter there was still talk of a reconciliation at the national level. As a result, the Incumbent hoped to keep things at the Shipyard as stable as possible.

In his position as the executive secretary, Gould continued to represent the Petitioner and perform the same duties he had as a chief steward, in addition to other duties assigned to him by O'Connor. Notably, while Gould carried on the chief steward functions, he did not adopt the role of a delegate and Petitioner did not have the right to vote at the Incumbent's monthly business meeting. Also at that time, the Incumbent did not reassign the shipwrights, plastic fabricators or any of the employees at issue to one of the other affiliated locals. According to O'Connor, while there were some strains in connection with this relationship, the Incumbent and the Petitioner's relationship remained a good one and he wasn't aware of any confusion as to who represented the shipwrights and the plastic fabricators.

The parties discussed whether to terminate the Petitioner's dues withholding through payroll, but in the end, it continued as before with regard to current members. New members, however, were not allowed to participate in dues withholding. Consequently the Petitioner began handling the dues deductions of these members by having the Shipyard deposit them in a separate bank account. According to the Petitioner it stopped remitting the per capita payment to the Incumbent around August 2011.

Gould continued as the executive secretary until he retired in 2013. In this role he filed grievances on behalf of the Petitioner's members and was involved in negotiation of various issues. When Gould retired, he appointed a plastic fabricator, Nathan Proper, to finish his term as president. In doing so, Proper assumed the same duties that Gould performed on behalf of the Petitioner's unit employees when he was a chief steward and when he was the executive secretary. As the Petitioner's president, he appointed himself as its chief steward even

[51] While Article 5, Section 1 of the Incumbent's Constitution and Bylaws requires its locals to be affiliated with the MTD it does not require that they be affiliated with the AFL-CIO.

though the Incumbent no longer recognized that position as part of the council. Proper was subsequently elected as the Petitioner's president in 2014.

When Gould retired and Proper replaced him as president of the Petitioner, O'Connor named Proper as Gould's replacement in the Incumbent's executive secretary position. Similar to the arrangement with Gould, O'Connor instructed Proper to perform the duties of a chief steward for the plastic fabricators and the shipwrights. Proper's understanding was that the only reason he was made the executive secretary was to perform the functions that a chief steward appointed by the Petitioner would perform. As the executive secretary, Proper was a full-time union representative and the Incumbent did not have any other representatives specifically tasked with representing the Petitioner's portion of the bargaining unit. In keeping with the customary duties of a chief steward, Proper processed grievances and was involved in negotiations the scope of which was limited to that of the shipwrights and plastic fabricators. The Incumbent did not give Proper a seat on either its grievance or its negotiation committees.

The MTD eventually became aware of this arrangement after an international representative for one of the other local affiliated unions at the Shipyard complained. As noted, neither the UBC nor the Petitioner was in compliance with the MTD's constitution that requires membership to hold an office. Consequently O'Connor asked Proper to join the International Brotherhood of Electrical Workers (IBEW Local 2071). Proper joined the IBEW Local 2071 even though it does not represent employees in his trade. Proper continued to work from the Petitioner's union office in Building 60 as opposed to the Local 2071 or the Incumbent's office. Upon Proper joining the IBEW the Incumbent considered the matter resolved.

F. The Petitioner's Separation from the Incumbent at the Shipyard

O'Connor retired from the Shipyard on December 31, 2015. The Incumbent's current president, Mark Vigliotta, was elected by the delegates in December of 2015 and sworn into office on January 27, 2016. At that time, Vigliotta appointed Brittany Goodwin, who belongs to the Operating Engineers local, to replace Nathan Proper as the executive secretary.

During this time frame, the Incumbent was determining how to handle its representation of the shipwrights and the plastic fabricators. The Incumbent consulted with MTD President Ault, MTCs at other shipyards and its own affiliated locals regarding their willingness to represent the shipwrights and the plastic fabricators. In the end, the Sheet Metal Workers and the Insulators consented to represent the shipwrights and the plastic fabricators, respectively.

It was during an Executive Board meeting on January 19, 2016, and during the monthly business meeting on January 27, 2016, that the Incumbent voted to add the shipwrights to the Sheet Metal Workers, Local 546, and the plastic fabricators to the International Association of Heat and Frost Insulators and Asbestos Workers, Local 134. At the time of hearing in this case, Local 546 had fifty dues-paying members and thirty of the forty Insulators represented by Local 134 were dues-paying members. The Incumbent did not notify Proper of either meeting as he did not regularly attend Executive Board or the monthly business meeting. Vigliotta notified MTD president Ault of the Incumbent's decisions in writing and asked for its approval.

Meanwhile, the Incumbent was still in talks with the Petitioner. In early February 2016, it called a meeting with the Petitioner to discuss a possible re-affiliation. According to Robert Burleigh, one of the Incumbent's requirements was that the Petitioner pay $10,000 in per capita fees. The Petitioner was in arrears because following its disaffiliation and removal of its stewards in August of 2011, it stopped paying its per capita dues. As a counterproposal, in February 2016, the Petitioner offered to enter into a new local Solidarity Charter with the Incumbent and agreed to pay the back per capita dues. The offer was rejected at the local and the MTD level. On February 9, 2016, the Incumbent took steps to remove Local 3073 from Appendix II of the CBA.

The Incumbent held a meeting for the shipwrights and plastic fabricators on or about March 2, 2016. In connection with scheduling the meeting, the Incumbent contacted the two superintendents over the codes where these employees work, codes 970 and 990. The Incumbent's understanding from the superintendents was that they notified the supervisors who in turn would notify the employees about the meeting. Approximately fifteen employees attended this meeting. During the meeting the Incumbent announced that it was reassigning the shipwrights to the sheet metal workers' local and the plastic fabricators to the insulators' local. Brandon Clithero, who was later designated as the chief steward covering the shipwrights, fielded several questions from employees who approached him immediately after the meeting about his particular local's dues and benefits. The employees also had questions about their dues withholdings for the Petitioner.

Through an e-mail dated March 4, 2016, Mark Vigliotta notified Proper that the Petitioner was to vacate its office

by March 9, 2016.[52] He also wrote Proper that he was no longer entitled to official time. Although Proper and Vigliotta had previously discussed it, this was Proper's first written notification that he has been removed from office.

On March 4, 2016, the Incumbent's recording secretary, Chris Rogan, notified the Shipyard that Proper had been removed as the executive secretary and that he was no longer authorized to use union pool time. With respect to Code 900's management, Rogan e-mailed the superintendents of Code 970 and 990 that Proper was no longer authorized pool time and that all issues concerning the plastic fabricators and shipwrights should be dealt with by the Incumbent.

On or about March 17, 2016, the Incumbent held another meeting for the shipwrights and plastic fabricators concerning the change in their representation. While they remained in the Incumbent's bargaining unit, to be union members, they had to join either the Insulators or the Sheet Metal Workers. The meeting was advertised in a flyer with the heading "Get Your Voice Heard" which, according to the Incumbent, was hung in areas where it was likely to be seen by the plastic fabricators and shipwrights, such as on the door of the Petitioner's former office in Building 60 and in Buildings 174 and 343 and shipwright's shacks at the dry docks. In contrast, the Petitioner's witnesses who frequent these areas testified that they never saw the flyer and that prior to the hearing they were unaware that the meeting had even been held.

Nevertheless, as described in the flyer, the Incumbent invited employees to "join the affiliated unions" and to "Sign up for Local 134 or 546." The flyer also had contact information to the effect that the plastic fabricators should call the Local 134 Business Agent, Gary Guertin, and shipwrights should call a steward from Local 546, Brandon Clithero. The meeting was conducted by Guertin and Clithero and their stewards. Although Vigliotta wasn't able to attend the meeting, MTC First Vice President Dave Schofield was there. Only a handful of employees attended this meeting.[53]

According to Proper, every week or two since March of 2016 he has been approached by an employee inquiring as to who is representing them and what representation the Petitioner was still able to provide. There was witness testimony to the effect that in August of 2016, there was continuing confusion about the identity of the stewards as neither the Incumbent nor the Shipyard had provided written notification to the employees.

The Petitioner held its own union meeting on March 15, 2016.[54] Similar to the Incumbent, the Petitioner used a flyer to advertise the meeting. According to the flyer, the Incumbent had mounted a campaign against Local 3073 and was attempting to hijack members into different locals. The flyer further advised that employees should refrain from signing paperwork distributed by the Incumbent or any of the other locals. The flyer was posted by Proper in various places such as the bulletin boards in Buildings 42 and 60 and in the break rooms used by the shipwrights and plastic fabricators. Following this, he was contacted by the head investigator in the Shipyard's security office, Tim Collins. Collins called Proper to his office, mentioned that he had a copy of the flyer and stated that the Petitioner was no longer allowed to post anything on the Shipyard. Collins explained that doing so would result in a disciplinary action. Collins refused to answer Proper's questions about how the matter came to his attention or where the directive was coming from.

On May 27, 2016, the Incumbent provided an updated representative list to the Shipyard. Brandon Clithero was identified as the chief steward for Shops 17 and 64 and Robert deButts was named as their steward.[55] Gary Guertin was identified as the chief steward for Shops 57 and 76, and Ron Stroh and Shane Fontaine were named as their stewards. Clithero is a member the of the Sheet Metal Workers Union, and Guertin is a member of the Insulators Union. They both sit on the Incumbent's grievance and negotiation committees and Clithero is also its treasurer and is on 100% official time. Local 546's stewards are appointed while those for Local 134 are elected.

Since the removal of the Petitioner from the Incumbent's council, employees have contacted the HRO in regard to their dues withholding. The Incumbent asked the Shipyard to discontinue the processing of due deductions on behalf of the Petitioner. At the time of hearing in August of 2016, however, the Shipyard was continuing to process them.

[52] The Petitioner vacated the office and at the time of the hearing the office was still unoccupied.

[53] According to Clithero, when he's representing employees from his own local his typical method of communication is to hold a meeting with them at their workplace. His particular local also has a group e-mail list for dues-paying members which would include those shipwrights who have become dues-paying members of his local. At the time of the hearing none of the shipwrights had become dues-paying members of Sheet Metal Worker's local.

[54] During a meeting that the Petitioner held for its members in June of 2016 they voted unanimously to pursue recognition as their own, separate bargaining unit.

[55] Although he was not on the list of representatives provided to the HRO, Local 546's Vice-President, Josh Elliott, was also assigned to act as a steward for the Shipwrights.

After his removal as executive secretary, Proper successfully retrieved the Petitioner's financial records from the Incumbent's treasurer after repeated requests.

One of Code 900's operations managers, Andrew Roy, testified that while he did not directly observe how the Petitioner's separation from the Incumbent was affecting employees, there were reports from management that employees felt uncertainty and confusion about the change in representation. Managers were also asking questions such as whether it was business as usual and in one case, a superintendent expressed confusion as to who would be representing an employee in a grievance after Proper was removed from the Incumbent's list of designated representatives. Apparently there was some confusion because the designated steward for Shop 76 was someone whom management associated with the Shop 57 Insulators. Similarly the designated representative for the Shop 64 shipwrights was someone whom management associated with the Shop 17 sheet metal workers. Although the Incumbent discussed its separation from the Petitioner with Roy during one of their weekly meetings, there was confusion concerning the specific representatives named. The Executive Support Office, Code 1100, for example, didn't learn of Proper's removal until the hearing in this case was held in August of 2016.

G. The Incumbent's Representation of the Shipwrights and Plastic Fabricators Since the Petitioner was Disaffiliated

(i) Participation in Representation Activities

In April of 2016 the Incumbent was involved in an issue concerning roving tank watches described in a Shipyard instruction concerning confined spaces. As described earlier, some of the Code 900 employees perform work inside submarine ballast tanks and in other confined spaces. Historically, Code 900 has had a dedicated employee sit outside and serve as a watch in the event of an emergency as opposed the new Instruction, which merely required one watch person roving from tank to tank. The trades most greatly affected are the plastic fabricators and the painters. The Incumbent filed an unfair labor practice charge in connection with the instruction and the Shipyard agreed to negotiate. The Incumbent held a meeting, for its dues-paying members only, on April 6, 2016, to ascertain their views concerning the use of a roving watch. The meeting was advertised on a flyer that indicated the Incumbent would be conducting a vote. The vote was in the form of a written ballot with a yes or no question asking whether the employee felt safe with a roving watch. The flyer was posted in Buildings 174 and 343 but not in Buildings 60 or 42 where the home shops for the plastic fabricators and shipwrights are located.

Proper learned of the meeting around April 4, 2016, when it was brought to his attention by a plastic fabricator, Andrew Ward, who picked up a flyer. Written at the bottom of the flyer was "See your local union steward for more information." Soon after, several employees approached Proper with questions but as Proper hadn't been briefed, he didn't have any details. Ward testified that when he went to the meeting to vote he was turned away. Specifically, when he told one of the Incumbent's representatives that he was a member of Carpenter's Local 3037, the Incumbent responded that the local was not a member of the Metal Trades Council and that he wasn't allowed to vote. Although Ward, as a plastic fabricator, is now represented by the Insulator's local, he testified that the Insulators did not communicate with him about the meeting and has not reached out to him in any other capacity.

(ii) Grievances and Other Matters

During the same time frame that Nathan Proper was removed from the executive secretary position, three shipwrights on the second shift, Thomas Bernier, Randi Phillips, and Brian Meehan, wanted to file grievances concerning overtime. Bernier and Phillips approached Proper for help and he assisted with drafting grievances and filing them. The grievances were filed on the Incumbent's standard form for grievances and signed by both grievants and Proper. Phillips testified that at some point during the process a general foreman informed them that if they wanted to proceed they would have to do so through the Incumbent. There was some confusion amongst the grievants at this point concerning the status of Proper and of the Petitioner as their representative. According to Phillips, they were still operating based on hearsay in regard to their representation.

Consequently, all three grievants went to the Incumbent's office on or about March 4, 2016. They spoke with Vigliotta and then met with Clithero, the chief steward assigned to represent the shipwrights, who assisted them with the form. The Incumbent provided them with phone numbers to call if they had questions about the status of their grievances. Phillips testified that he tried the numbers, but one didn't work while the second went to voice mail.

On March 17, 2016, the Industrial Representative for the New England Regional Council of Carpenters, Robert Burleigh, e-mailed Vigliotta that since the Petitioner was intimately familiar with the issue raised in the grievances, he expected that Proper would be allowed to participate in their processing without interference

from the Incumbent. Vigliotta responded that as the Incumbent is the employees' exclusive representative he would assign a chief steward. He noted that Proper was not a steward and had no authority to process the grievance and that the Petitioner's interference would not be tolerated.

Clithero testified that he met with the shipwrights' general foremen, Sean Loughlin, on March 25, 2016, to have him sign off on the step 1 grievances. The Incumbent signed off on advancing them to Step 2 and Clithero brought them to the employees' superintendent, Richard Miles. Approximately ten days after Clithero dropped them off he was called back to Miles' office with another steward, Josh Elliot. Miles provided what Clithero and Vigliotta deemed to be a justifiable explanation for not paying the grievants the overtime at issue, and accordingly, the Incumbent decided not to pursue the matter to Step 3. Miles denied the grievance on April 14, 2016.

According to Clithero, he then attempted to reach Phillips, who he believed was acting as a liaison for the other two grievants, however, he was unsuccessful. A few weeks later, Phillips began an assignment working off-station at Point Loma in San Diego. According to Clithero, none of the grievants called him to check on the grievance during that time. According to Phillips, by late May or early June he had yet to hear anything more about his grievance. While in San Diego he had occasion to speak with one of the Incumbent's stewards and asked about the status of his grievance. The steward offered to look into it and a couple of days later showed Phillips an e-mail to the effect that the Incumbent considered the matter to be closed.

On August 22, 2016, the Incumbent, through one its stewards from Local 134, Shane Fontaine, filed a grievance on behalf of a plastic fabricator, Kelly Corbelle. Fontaine became involved in the grievance after being contacted by the Incumbent's current executive secretary. The grievance concerned disputed overtime on August 6, 2016. When it was denied at the first step, Fontaine obtained approval from the Incumbent to advance it to the second step. He then submitted it to Corbelle's superintendent who on August 31, 2016, agreed to pay her the disputed overtime. Corbelle is a dues-paying member of Local 134.

After Clithero began representing the shipwrights, he contacted their shop foremen to provide them with the Incumbent's points of contact. Since then he has only been contacted on one occasion by management. When shipwrights are sent off-site, the Incumbent is supposed to be available to ensure that the selection process is done correctly. Clithero testified that he assisted a shipwright regarding one such situation. In another example, Fontaine served as the union representative for a plastic fabricator who was questioned by management about his sick leave usage in mid-August of 2016. And on August 30, 2016, the day before the start of the hearing in this case, Fontaine also represented the Incumbent during a safety tour of the plastic fabricators' work area in Building 174 to make sure it was up to code. As described by Fontaine, the safety considerations in the Insulators' work areas differ from those of the plastic fabricators as the latter work in a more up-to-date buildings and with different machinery. That said, Fontaine also testified that he was unfamiliar with the work done by the plastic fabricators.

At the time of the hearing the MTD had not received any complaints from shipwrights or plastic fabricators at the Shipyard regarding the adequacy of the Incumbent's representation. It likewise was unaware of any confusion or unrest at the Shipyard arising out of the events between the Incumbent and the Petitioner during the January-March 2016 timeframe.

III. Positions of the Parties

A. The Petitioner

The Petitioner asserts that the shipwrights and plastic fabricators should be severed from the Incumbent's bargaining unit. The Petitioner asserts that (1) the Incumbent has consistently refused to fairly and effectively represent these employees, and (2) a break between the United Brotherhood of Carpenters and Joiners of America with the AFL-CIO at the national level constituted a schism. In addition to these unusual circumstances, the Petitioner further asserts that a unit of shipwrights and plastic fabricators at the Shipyard would constitute an appropriate unit under Section 7112(a) of the Statute.

The Petitioner points to several examples of the Incumbent's insufficient representation of the shipwrights and plastic fabricators. First, it objects to the Incumbent's failure to adequately notify the employees of Proper's removal as the executive secretary as this left them without a voice on the Executive Board. Second, the Petitioner asserts that rather than reaching out to these employees directly, it chose instead to advertise union meetings through management and to enlist the Shipyard to prevent Local 3072 from advertising on-site. Third, the Petitioner notes that the Incumbent went so far as to turn away union members who attempted to vote at a union meeting. Fourth, the Petitioner argues that when the Incumbent did represent shipwrights and plastic fabricators regarding a grievance, it assigned apprentice stewards who knew nothing of the these trades and who ultimately failed to even notify the grievants of the decision to withdraw it.

In regard to the schism issue, the Petitioner asserts that the UBC's decision to disaffiliate from the AFL-CIO was based upon fundamental differences in policy between the two. Specifically, the UBC sought greater emphasis on organizing and training and when its concerns went unaddressed, it decided to terminate its relationship. Although the AFL-CIO's Metal Trades Department formed solidarity charters with various UBC-affiliated local unions so as to continue the association between UBC locals and Metal Trades Councils, these were eventually terminated and the Petitioner was expelled from the Incumbent union at the Shipyard.

The Petitioner contends that the proposed unit would be appropriate, asserting that the employees at issue share a community of interest. The Petitioner notes that the shipwrights and plastic fabricators, like the other crafts at the Shipyard have their own shop number and their own supervision. While they perform work at various locations across the Shipyard, they each have a home shop. The shipwrights and plastic fabricators wear the same colored hardhats, in distinction to the other trades, which each have their own hardhat color. The Petitioner further notes that the organizational structure of the Metal Trades Council itself reflects the differences between the various trades or crafts working at the Shipyard. Each of the locals, including the Petitioner, represents a separate trade and has its own officers and stewards and conducts its own membership meetings. The Petitioner further asserts that its proposed unit would promote both effective dealings with the Shipyard and the efficiency of its operations as the existence of this trade local bears a rational relationship to the organization and because, in its view, the loss of this trade local has led to disruption, instability and confusion amongst a significant segment of the overall bargaining unit.

Finally, the Petitioner asserts that the FLRA should adopt the rationale used in a similar case which it recently litigated before the NLRB, *Electric Boat Corp*., Case 01-RC-124746 (2015) (*Electric Boat*) (not reported in Board volumes). In that case the Board adopted the Regional Director's Decision and Direction of Election finding that the employees in a petitioned-for unit could be severed in keeping with its decision in *Mallinckrodt Chemical Works*, 162 NLRB 387 (1967)(*Mallinckrodt*). In reaching his decision in *Electric Boat*, the Regional Director noted among other things that, as in the instant case, the question of effective representation arose because the Metal Trades Department terminated its affiliation with the United Brotherhood of Carpenters and Joiners of America.

B. The Incumbent

The Incumbent asserts that the petition should be dismissed as the facts and circumstances in this case are not aligned with those required by the Authority to warrant a severance. Specifically the Incumbent asserts that (1) its current bargaining unit at the Shipyard remains appropriate, (2) there are no unusual circumstances which have damaged the adequacy of its representation of the petitioned-for employees, and (3) the proposed unit is not an appropriate one under the Statute.

The Incumbent asserts that the Petitioner failed in its burden of proving that the existing bargaining unit is no longer appropriate. It argues that on the contrary, the production employees throughout its unit, including the shipwrights and plastic fabricators, share a community of interest as they frequently work and interact with each other and share a common mission, working conditions (e.g. salary structure, work locations, hours and leave policies etc.) supervision and have been part of a longstanding bargaining unit. With respect to whether a unit promotes both effective dealings and efficient operations, the Incumbent asserts that it has a long, successful labor-management relationship with the Shipyard and that management needs to be able to deal with a single, production-wide unit of all Wage Grade craft workers in connection with day-to-day production and workplace disputes.

The Incumbent also maintains that the record is lacking any unusual circumstances that warrant severing employees from their existing unit. Contrary to the Petitioner's argument, the Incumbent asserts that it, not the Petitioner, has represented the shipwrights and plastic fabricators for the last sixty years. The Incumbent notes that it, not the Petitioner, has been the sole signatory on the collective bargaining agreement and it asserts that any stewards serving these employees are serving on behalf of the Incumbent and not the Petitioner. The Incumbent further asserts that the Petitioner failed to prove that it abandoned the employees or that it subjected them to incompetent representation, as required by the Authority's severance test. In that regard, the Incumbent continues to negotiate instructions and agreements with the Shipyard that impact the working conditions of all production wage grade employees regardless of their craft or trade. Likewise from August of 2011 to March 2016, the Incumbent's executive secretary was assigned to handle grievances on behalf of the employees at issue. In March of 2016, these duties were reassigned to other stewards and chief stewards of the Incumbent who have since filed four grievances and pursued other actions on the employees' behalf. While the Petitioner may object that the assignment of stewards from different trades equates to ineffective representation, the Incumbent counters that the case law does not support this position. *See United Bhd. of Carpenters and Joiners of Am. v. Metal Trades Dep't*, 770 F3d. 846, 850-51 (9th Cir. 2014). Moreover the Incumbent's practice of assigning

stewards to represent employees from outside of their particular craft has not been exclusive to shipwrights and the plastic fabricators and there is no evidence that it has been a problem. Finally the Incumbent asserts that the employees at issue are free to join its local unions that are still affiliated with the Metal Trades Council at the Shipyard and can thereafter run for a Council office, be appointed as a steward or otherwise participate in its affairs.

The Incumbent likewise rejects the Petitioner's claim that the facts support the existence of a schism. Its position is based on four assertions. First, the Incumbent asserts that it has continued to have an unbroken relationship with the Shipyard since the UBC left the AFL-CIO in 2001 and the Metal Trades Department terminated the Solidarity Agreement in 2011. According to the Incumbent, the instant conflict arose out of a local disagreement concerning the appointment of stewards to its Council and the handling of a grievance, as opposed to a disagreement at the highest level of the Union. Second, the incumbent asserts that as the UBC left the AFL-CIO in 2001 and the Solidarity Agreement end in 2011, the Petitioner failed to take action within a reasonable period of time as described by the NLRB in *Hershey Chocolate Corp.*, 121 NLRB 901, 908-09 (1958) (*Hershey Chocolate*). Third, the number of employees at issue does not represent a "substantial number" of employees in the bargaining unit as required by the NLRB to find a schism. *St Louis Bakery Employers Labor Council*, 121 NLRB 1548, 1550-51 (1958) (*St. Louis Bakery*). Specifically, the disaffiliation only concerns the shipwrights and the plastic fabricators who comprise 160 positions in the Incumbent's 2,400 position unit. Fourth, the Incumbent argues that there is no evidence that either UBC's disaffiliation from the AFL-CIO or the subsequent termination of the Solidarity Agreement resulted in confusion that destabilized the collective bargaining relationship.

In regard to the Incumbent's third argument, that the proposed unit would be inappropriate, it asserts that because the shipwrights and plastic fabricators only comprise 6.7% of the existing unit, a unit of their own would result in fragmentation. It also raised questions in connection with whether the two crafts share a community of interest. The Incumbent asserts that all of the production crafts at the Shipyard share a community of interests; if the Regional Director were to adopt the Petitioner's position, namely, that the employees in the Incumbent's unit do not share a community of interest, those same arguments apply to the proposed unit of shipwrights and plastic fabricators. The Incumbent also asserts that the proposed unit would neither promote effective dealings with the Shipyard nor the efficiency of its operations as it would require negotiating and administering an additional collective bargaining agreement, which would result in increased costs and would unduly fragment the type of larger unit that is favored by the Authority. The Incumbent asserts that when employees of a proposed unit have a community of interest not only among themselves but with additional employees of their kind, as is the instant case, then those employees should be included in a larger unit. *Dep't of Health and Human Serv., Public Health Serv., Food and Drug Admin.*, 11 FLRA 687, 688 (1983).

Finally, in anticipation of the Petitioner's assertion that the Regional Director should apply the severance standard used by the NLRB in *Mallinckrodt*, the Incumbent asserts that NLRB decisions are not controlling in the Federal sector. For example while the Authority considers a proposed bargaining unit's impact on effective dealings with, and the efficiency of, an agency's operations, the NLRB does not. The Incumbent also asserts that even if the Regional Director were to apply the criteria described in *Mallinckrodt*, the Petitioner has not established that the shipwrights and plastic fabricators form a distinct and homogeneous group of skilled craftworks or a functionally distinct department. Rather, their work is functionally integrated with the rest of the Shipyard's production operation and they enjoy the same terms and conditions of employment as the rest of the Incumbent's bargaining unit.

C. The Shipyard

The Shipyard opposes the petition because, in its view, the proposed unit would not constitute an appropriate unit. It asserts that as the shipwrights and plastic fabricators are functionally integrated with the crafts at the Shipyard they do not share a community of interest that is separate and distinct from other employees in the Incumbent's unit. The Shipyard asserts that while the work performed by these employees is highly technical and specialized, the Authority has held that this factor alone is insufficient to demonstrate that they have a separate community of interest. *U.S. Dep't of the Army, Defense Artillery Ctr. and Fort Bliss, Fort Bliss, Tex.*, 31 FLRA 938 (1988) (*Fort Bliss*). The Shipyard further submits that all of the employees in the Incumbent's unit are part of Code 900, working side by side with each other, and are subject to the same service agreement, personnel policies, regulations, working conditions, and have the same labor relations representatives.

The Shipyard also contends that the creation of an additional unit would unduly fragment the bargaining unit. This fragmentation would create a burden on the Shipyard's labor relations function as it already negotiates and administers collective bargaining agreements for its existing three bargaining units. The addition of a fourth unit, whose employees' working conditions and issues are very close to those of the Incumbent's unit, would be redundant and an inefficient

use of its resources. For example, the Shipyard and the Incumbent have recently negotiated agreements concerning the joint travel regulations, parking and awards and the Shipyard reasons that having to negotiate separate agreements covering similarly situated employees would be duplicative, costly and a burden on its labor relations staff.

D. Reply Briefs

Pursuant to the Petitioner's requests to file reply briefs under Section 2422.20 of the Authority's Rules and Regulations, I issued an order allowing the parties to do so by November 28, 2016. Reply briefs were submitted by the Petitioner and the Incumbent.

(i) The Petitioner

In its Reply brief, the Petitioner again asserts that the FLRA should adopt the rationale used by the NLRB's Regional Director in *Electric Boat* as, in its view, the case is directly on point. Furthermore, the Petitioner claims that the Regional Director's reliance on *Mallinckrodt* to support severing the carpenters is applicable here just as it was in *Electric Boat*. According to the Petitioner, the Authority's single schism case, *Dep't of the Navy, Pearl Harbor Naval Shipyard Restaurant Systems, Pearl Harbor, Hawaii*, 28 FLRA 172 (1987) (*Pearl Harbor*) takes into account issues such as historical bargaining unit structure and the interests of the employer, just as the Board did in *Mallinckrodt*.

The Petitioner also asserts that the Incumbent's assertion that severance requires a finding that the incumbent union either abandoned the petitioned-for employees or that it subjected them to incompetent representation is incorrect. It asserts that the correct standard is actually whether the incumbent treated the employees "unfairly, ineffectively, or differently than any other unit employee." *U.S. Dep't of the Navy, Naval Air Station Jacksonville, Jacksonville, Fla.*, 61 FLRA 139, 142 (2005) (*NAS Jacksonville*). The Petitioner maintains that the Incumbent has already relegated the shipwrights and plastic fabricators to the status of second-class citizens. The Petitioner argues that not only has the Incumbent's representation been lacking but it has attempted to coerce these employees into joining the Sheet Metal Workers or the Insulator's locals by providing dues-paying members of those unions with superior representation. The Petitioner disputes the Incumbent's claim that these employees would be afforded the same opportunities to participate in representational activities once they join one of these locals. The Petitioner asserts that in fact, if shipwrights and plastic fabricators join these unions, they will likely be outnumbered by the sheet metal workers and insulators that belong to those unions.

With respect to the existence of a schism, the Petitioner disagrees with the Incumbent's characterization of the intra-union dispute as just one at the local level regarding the appointment of stewards. The Petitioner argues that what happened here is in keeping with the NLRB's description of what establishes a basic intra-union conflict warranting a finding of schism. A disaffiliation or expulsion of an international union from the federation from which it was affiliated supports a finding of a schism, and according to the Petitioner's reading of *Hershey Chocolate*, the conduct of the unions in reliance on that disaffiliation may be used to support a finding of a schism as well. The Petitioner notes that the Incumbent's president acknowledged that the only reason it no longer has Local 3073 stewards or delegates is because the UBC disaffiliated with the AFL-CIO. Moreover, contrary to Incumbent's assertion that it alone has represented the employees at issue, the Petitioner asserts that it has represented them as well in grievances and arbitrations. The Petitioner argues that similar to the decision in *Electric Boat*, the only way for it to maintain its participation in the representation of the employees is through a severance election. Absent that, the shipwrights and plastic fabricators will be divided into segments and represented by other unions and members.

As for the Incumbent's argument that too much time has passed since the intra-union conflict at issue, the Petitioner counters that the NLRB has not defined a "reasonable period of time." Rather, the NLRB has held that what constitutes a reasonable period of time following an intra-union conflict depends on the particular circumstances and the presence of intervening events. *See, e.g.*, *Oregon Macaroni Co*., 124 NLRB 1001, 1004 (1959). Here, the Petitioner and the Incumbent's former president, Paul O'Connor, actively worked to avoid interrupting the employees' representation including the creation of a local solidarity agreement. Likewise it was just three weeks before filing the petition that the Incumbent removed the Petitioner's representatives and reassigned its employees to different trade locals.

With respect to the Incumbent's arguments regarding the percentage of employees at issue in comparison to the current unit, the Petitioner counters that rather than setting a number or percentage of employees that would be necessary to demonstrate a requisite level of confusion, the Board actually stated in *St. Louis Bakery* that it would not attempt to anticipate all the factual situations which would lead to such a finding. For example, the NLRB determined that the facts supported a schism in *Electric Boat* even though the petitioned-for unit constituted less than 10% of the overall unit. Here, in contrast to the Incumbent's assertions, the Petitioner maintains that confusion ensued following the decision to remove Proper as executive secretary and to reassign the

shipwrights and plastic fabricators to the Sheet Metal Workers or the Insulator's locals.

Finally, in response to the Incumbent's argument that the petitioned-for unit does not satisfy the Authority's appropriate unit criteria, the Petitioner asserts that the Authority recognizes functional units. Applied here, while the crafts all serve a common mission and share working conditions, they are trained in and possess different skills and work in different areas and under different organizational codes. While the employees in the different crafts may work side-by-side on some projects, the NLRB recognizes that they are still performing the work of their own crafts and are not necessarily so functionally integrated as to render a severance election inappropriate. *Burns and Roe Services Corp*., 313 NLRB 1307, 1309 (1996). Recognizing the differences amongst the crafts at the Shipyard, the Petitioner had established a long-term relationship with the employees and the other parties, the absence of which will impede effective dealings with the Shipyard and the efficiency of its operation.

(ii) The Incumbent

In its reply brief, the Incumbent maintains its position that the Petitioner failed to establish the existence of unusual circumstances that merit severing the shipwrights and plastic fabricators. As asserted in its brief, the Incumbent contends that it has neither abandoned nor subjected these employees to incompetent representation. In regard to the alleged examples of poor representation described in the Petitioner's brief, the Incumbent asserts that the Petitioner misrepresented the facts. The Incumbent counters that (1) it conducted two meetings for the shipwrights and plastic fabricators to advise them of a change in their stewards in addition to posting flyers with the stewards' contact information, (2) neither the appointment of an inexperienced steward nor a steward's failure to notify an employee of a grievance resolution constitute inadequate representation, (3) the Incumbent lawfully excluded Andrew White from voting in a poll because he was not a member of one of the affiliated union locals. *AFGE Local 2000, AFL-CIO*, 14 FLRA 617, 631 (1984), (4) the Petitioner's objection to a supervisor conducting a safety tour is misplaced and it is the Shipyard and not the Incumbent that is responsible for workplace safety, and (5) its directing Proper not to post flyers is not an unusual circumstance upon which a severance can be based.

In regard to the Petitioner's assertion that a schism occurred, the Incumbent maintains that there hasn't been any confusion to such a degree that would it destabilize the bargaining relationship between it and the Shipyard because it has always been understood that the bargaining relationship is between the Shipyard and the Metal Trades Council, not with the affiliate locals. While some shipwrights and plastic fabricators may have been confused over the identity of their particular stewards, it has always been understood that their stewards are Council representatives, not Local 3073 representatives.
The Incumbent also asserts that the Petitioner's urging the FLRA to utilize the severance standard described in *Mallinckrodt* is an attempt to circumvent well-established Authority precedent and should be rejected. It argues that while private sector case law may serve as guidance in connection with a novel issue, in this case the Authority has already set forth its standards concerning severances and schisms. With respect to relying on *Mallinckrodt* specifically, the Incumbent again asserts that the severance standard described in that case is absent elements considered by the Authority such as how a unit impacts labor management relations and the efficiency of an agency's operations. Should the FLRA utilize the *Mallinckrodt* severance standard, the Incumbent asks that it also consider the NLRB's decision in *Battelle Memorial Institute*, 363 NLRB No. 119, 19-RC-135888 (Feb. 18, 2016) (*Battelle*). In *Battelle*, the Board decided against severing a proposed unit of carpenters and millwrights because the two crafts performed different job functions, they were not organizationally separated from other employees in the existing facility wide unit, and they worked on integrated teams composed of employees from other crafts.

The Incumbent also argues that the Petitioner failed to demonstrate that the Incumbent's bargaining unit is no longer appropriate and the petition should be dismissed on that basis. Similarly, the Incumbent also maintains that the Petitioner failed to demonstrate that its proposed unit is an appropriate one under the Statute. Specifically, the Incumbent challenges the Petitioner's argument that the shipwrights and plastic fabricators are uniquely and inextricably bound together. While the plastic fabricator trade developed out of the shipwrights' trade, today they perform different work, enjoy separate home shops, and report to different foremen and superintendents.

IV. Analysis and Conclusions

A. The Analytical Framework

(i) Sev erance

The issue of severance arises when a petitioner files an election petition seeking to sever or carve out a group of employees from an established bargaining unit. The petition must be accompanied by a 30% showing of interest of the employees in the petitioned-for bargaining unit. *Office of Hearing and Appeals, Soc. Sec. Admin.*, 16 FLRA 1175, 1176 (1984). Granting a severance results in a direction of election. *Dep't of Veterans Affairs, Wash.,D.C.,* 52 FLRA 1068, 1077 (1997).

The Authority's severance standard is well established. *U.S. Dep't of the Army, Defense Language Institute, Foreign Language Ctr. and Presidio of Monterey, Cal., Presidio of Monterey, Cal.*, 64 FLRA 497, 498-99 (2010) (*Presidio*). Where an existing bargaining unit continues to be appropriate under Section 7112(a) of the Statute and there are no unusual circumstances to justify severing the petitioned-for employees from that unit, the petition will be dismissed. *Id.* If the Authority determines that severance is justified, e.g., where unusual circumstances exist, the Authority will then consider whether the petitioned-for unit is appropriate. *Id.* at 499 citing *U.S. Dep't of the Treasury, Bureau of Engraving and Printing*, 49 FLRA 100, 108 (1994) (*BEP*).

As the Authority seeks to avoid unit fragmentation, severance is only granted in rare circumstances. The Authority first explained its rationale in *Library of Congress*, 16 FLRA 429, 431 (1984)(*Library of Congress*) holding that:

> *where…an established bargaining unit continues to be appropriate and no unusual circumstances are presented, a petition seeking to remove certain employees from the overall unit and to separately represent them must be dismissed, in the interest of reducing the potential for unit fragmentation and … promoting effective dealings and efficiency of agency operations.*

For example in *U.S. Dep't of the Army, White Sands Missile Range, White Sands Missile Range, N.M.,* 66 FLRA 285, 287 (2011) (*White Sands*) the Authority upheld a Regional Director's dismissal of a petition filed by the Fraternal Order of Police (FOP) to sever officers and guards from an existing unit. The Authority agreed with the Regional Director's conclusion that absent unusual circumstances, where an established bargaining unit continues to be appropriate, a petition seeking to sever employees from that unit will be dismissed in the interest of reducing unit fragmentation, and thereby promoting effective dealings and efficiency of operations. *Id.*

With respect to what constitutes an unusual circumstance, one example is when the character and degree of a reorganization results in the loss of a community of interest between some employees and the remainder of the unit. *See, e.g., U.S. Dep't of Labor*, 23 FLRA 464, 471 (1986) (reorganization caused Office of Pension and Welfare Benefit Programs employees to lose community of interest with unit employees represented by a union as they were realigned into a separate activity). In another example, the Authority held that an unusual circumstance warranting severance existed when the incumbent union expressly disclaimed any further interest in continuing to represent the petitioned-for employees. *BEP*, 49 FLRA at 106-07.

One of the most common claims concerning the existence of unusual circumstances involves the adequacy of representation afforded by the incumbent union. Specifically, the Authority has held that the failure of an incumbent to fairly represent the employees sought gives rise to a question of representation concerning the petitioned-for unit and could justify severance of those employees from an existing larger unit even if that larger unit remains appropriate. *U.S. Dep't of Veterans Affairs, Westside Medical Ctr., Chicago, Ill.,* 35 FLRA 172, 180 (1990) (*VA Westside*); *BEP*, 49 FLRA at 180; *White Sands*, 66 FLRA at 287. This claim cannot be asserted broadly and a petitioner bears the burden of presenting evidence that supports such a finding. *Id.* For example, in *White Sands* the Authority upheld the Regional Director's decision that the incumbent unit was appropriate as there was insufficient evidence supporting the petitioner's claim that its employees had conflicting interests with the other employees in the unit. *Id.*

The Authority has also held that with respect to whether an incumbent's representation has been inadequate, it must have essentially abandoned or otherwise treated the petitioned-for employees "unfairly, ineffectively, or differently." *U.S. Dep't of the Navy, Naval Air Station Jacksonville, Jacksonville, Fla.*, 61 FLRA 139, 143 (2005) (*NAS Jacksonville*) (The Authority denied a petition to sever police officers from a non-professional bargaining unit because there was no evidence that the incumbent union had abandoned or subjected the employees to incompetent representation.) Authority precedent does not, however, go so far as to require that the petitioning employees establish that the incumbent union breached its duty of fair representation in order for severance to be justified. *U.S. Dep't of the Air Force, Carswell Air Force Base, Tex.*, 40 FLRA 221, 231 (1991) (*Carswell*). *See also Dep't of the Army, Headquarters, Fort Carson and Headquarters, 4th Infantry Div., Fort Carson, Colo.*, 34 FLRA 30 (1989) (*Fort Carson*).

As the Authority summarized in *White Sands*, it will consider such factors as the following: employees' opportunities to participate in union affairs, *Carswell at* 231-32 (1991); the existence of collective bargaining agreement provisions addressing the specific concerns of the employees at issue, *Library of Congress*, 16 FLRA at 432; and the union's formal and informal efforts to resolve issues of concern to the employees at issue, *NAS Jacksonville*, 61 FLRA at 143. For example, in *VA Westside* the Authority held that the employees in a petitioned-for unit had been adequately represented as the incumbent union, had filed grievances and unfair labor practice charges on behalf of the employees, and had represented them in dealings with management at both the local and national levels. *VA Westside*, 35 FLRA at 180. In *Fort Carson*, the Authority rejected the petitioner's assertion that firefighters had been

inadequately represented as the incumbent union represented their interests on several occasions, including having solicited their input in connection with formulating collective bargaining policies. *Fort Carson*, 34 FLRA at 35. Specifically, the Authority agreed with the Acting Regional Director's finding that "[t]he weight of the evidence failed to demonstrate that the firefighters have been represented disparately by AFGE or that AFGE otherwise failed to meet its statutory obligation of representation to the firefighters." *Id*. And, in another example, *Dep't of the Navy, Naval Air Station, Point Mugu, Cal.*, 26 FLRA 620 (1987), the Authority upheld the Regional Director's finding that the incumbent union's failure to renegotiate a collective bargaining agreement did not constitute inadequate representation or disparate treatment of the petitioned-for firefighters as they were no more impacted by the absence of an agreement than anyone else in the incumbent unit.

(ii) Schism

The framework used by the Authority to determine whether a schism has occurred was set forth in *Pearl Harbor*. As this was a case of first impression for the Authority, it agreed with the Regional Director's use of National Labor Relations Board (NLRB) case law as guidance and adopted the framework he relied upon as described in *Hershey Chocolate Corp.*, 121 NLRB 901 (1958) (*Hershey Chocolate*), enforcement denied on other grounds, *NLRB v. Hershey Chocolate Corp.*, 297 F.2nd 286 (3rd Cir. 1981). The Authority held that the existence of a schism depends on the presence of two conditions:

(1) A basic intra-union conflict over fundamental policy questions within the highest level of an international union or federation; and

(2) The conflict causes employees in the local unit to take action, based on the conflict itself, which creates such confusion in the bargaining relationship that stability can only be restored through an election.

Pearl Harbor, 28 FLRA at 173. *See also Hershey Chocolate*, 121 NLRB at 908-09.

As to the first condition, the dispute causing the alleged schism must relate to fundamental policy questions at the highest level of the international union and cannot be based on disagreements regarding internal procedures. *Pearl Harbor,* 28 FLRA at 174; *See also Hershey Chocolate*, 121 NLRB at 908-09 (Finding the first prong of the schism test met when AFL-CIO expelled the incumbent union based on corruption charges and a new union was then chartered in the same jurisdiction leading to the dispute in question).

As to the second condition, there must be a direct link between the intra-union conflict and the resulting actions taken by the employees which markedly confused the bargaining relationship and makes an election necessary in order to restore stability. *See Pearl Harbor*, 28 FLRA at 174; *Hershey Chocolate*, 121 NLRB at 909 (Finding the second requirement to be met when the dispute directly prompted employees to leave their disaffiliated local union in order to charter a new union and the employer was then faced with conflicting claims as to which union should be recognized.)

The Authority also upheld the Regional Director's holding in *Pearl Harbor* that where the continuity of a bargaining relationship remains unbroken, no schism is found where a union merely changes affiliation from one international or federation to another because in such circumstances the petitioner is substantially in the same position as any other rival union seeking to take over the representation of employees during an inappropriate time. 28 FLRA at 174; *See also Louisville Railway Co.*, 90 NLRB 678 (1950).

(iii) Appropriate Unit Determinations

When the Authority determines that there are unusual circumstances meriting severance, then, and only then, will it go on to consider whether the petitioned-for unit is appropriate. *See Presidio*, 64 FLRA at 499. A unit is appropriate under section 7112(a) of the Statute if: (1) the employees at issue share a clear and identifiable community of interest; (2) the unit promotes effective dealings with the agency involved; and (3) the unit promotes efficiency of operations of the agency involved. *U.S. Dep't of the Navy, Fleet and Industrial Supply Ctr., Norfolk, Va.,* 52 FLRA 950, 959 (1997) (*FISC*).[56] A proposed unit must meet all three appropriate unit criteria in order to be found appropriate. *Id.* at 961 n.6. *See also, Dep't of the Interior, Nat'l Park Serv., Lake Mead Nat'l Recreation Area, Boulder City, Nev*., 57 FLRA 582, 585-86 (2001) (*Lake Mead*); and *Dep't of the Navy, Naval Computer & Telecommunications Area, Master Station Atl., Base Level Communications Dep't. Reg'l Operations Div., Norfolk, Va., Base Communications Office- Mechanicsburg*, 57 FLRA 230, 236 (2001). Determinations as to each of these elements are made on a case-by-case basis by balancing the relevant findings of fact. *FISC,* at 960.

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[56] There is nothing in the Statute that requires a unit proposed for exclusive recognition to be the only appropriate unit or the most appropriate unit. The proposed unit meets the requirements of the Statute if it is an appropriate unit. *FISC*, 52 FLRA at *959,* citing *Am. Fed'n of Gov't Employees, Local 2004 and Letterkenny Army Depot*, 47 FLRA 969, 972-73 (1993).

(a) Community of Interest

The term "community of interest" involves the commonality or sharing of interests between the employees in the unit. These interests must be sufficiently similar so that it is possible for the employees to deal collectively with management as a single group. *FISC,* 52 FLRA at 960. In considering whether employees have established a clear and identifiable "community of interest," the Authority has not specified the particular factors or the number of factors needed. *FISC,* 52 FLRA at 960 citing *Dep't of Health and Human Serv., Reg. II, New York, N.Y.*, 43 FLRA 1245, 1254 (1992). However, the Authority has looked at several factors, including whether the employees in the proposed unit are part of the same organizational component of the agency, support the same mission, are subject to the same chain of command, have similar or related duties, job titles and work assignments, and are subject to the same general working conditions and are governed by the same personnel and labor relations policies that are administered by the same personnel office. *FISC,* 52 FLRA at 960-61 citing *U.S. Dep't of the Air Force, Air Force Material Command, Wright-Patterson Air Force Base*, 47 FLRA 602 (1993). Such factors as geographic proximity, unique conditions of employment, distinct local concerns, degree of interchange between other organizational components and functional or operational separation may bear upon whether employees in the unit share a community of interest. *FISC,* 52 FLRA at 961; *see also Dep't of Agriculture, Office of the Chief Information Officer, Information Technologies Services and Am. Fed. of State, Local and Municipal Employees, Council 26*, 61 FLRA 879, 881 (2006). In making unit determinations, the Authority does not rely on individual factors, but rather examines the totality of the circumstances in each case. *U.S. Dep't of Justice, Executive Office for Immigration Review, Office of the Chief Immigration Judge, Chi., Ill.*, 48 FLRA 620, 635 (1993) (*OCIJ Chicago)* and *U.S. Dep't of the Army, U.S. Army Reserve Command, Fort McPherson, Ga.,* 57 FLRA 95, 96 (2001). Also to be considered is whether the employees at issue have significant employment concerns or personnel issues that are different or unique from those of the employees in the rest of the bargaining unit. *Defense Logistics Agency, Defense Supply Ctr. Columbus, Columbus, Ohio,* 53 FLRA 1114, 1129 (1998) citing *FISC,* 52 FLRA at 960.

(b) Effective Dealings

The criterion of effective dealings pertains to the relationship between the employer and the exclusive representative of the employees in an appropriate bargaining unit. *FISC,* 52 FLRA at 961. The Authority examines such factors as the past collective bargaining experience of the parties, the locus and scope of authority of the responsible personnel office servicing the employees in the proposed unit, the limitations, if any, on the negotiation of matters of critical concern to these employees and the level at which labor relations policy is set in the agency. *Id.* A question is whether the proposed unit is so functionally integrated with the other components of the agency that the establishment of a separate unit would artificially fragment the agency thereby hampering or impeding its mission. *OCIJ Chicago* 48 FLRA at 636.

(c) Efficiency of Operations

In regard to the impact of a proposed unit on the efficiency of the agency's operations, the Authority considers the benefits to be derived from the unit structure bearing a rational relationship to the operations and organizational structure of the agency, namely potential economic savings and increased productivity. *FISC,* 52 FLRA at 961. Thus, the Authority considers such factors as the effect of the proposed unit on agency operations in terms of cost, productivity and use of resources. *Id. at* 962; s*ee also Dep't of the Air Force, 82nd Training Wing, 361st Training Squadron, Aberdeen Proving Ground, Md.,* 57 FLRA 154, 156-57 (2001) (*Aberdeen Proving Ground*)).

(iv) Functional Units

The Authority has held that employees can be included in a unit that is separate from other employees in their organization provided that the unit is appropriate under Section 7112(a) of the Statute. For example, the Authority recognizes that units can be established on a functional basis. However, when applying the "community of interest" criterion, the Authority assesses whether the employees in the proposed unit share a community of interest that is separate and distinct from other employees in the component. *See U.S. Dep't of the Army, Army Materiel Command Headquarters, Joint Munitions Command, Rock Island, Ill., 63 FLRA 394, 403-05 (2009)(JMC*). That said, the mere fact that the employees have unique concerns does not compel the Authority to find a separate community of interest where the employees are operationally and organizationally integrated with other employees. *Dep't of Homeland Security, Bureau of Customs and Protection,* 61 FLRA 485, 496 (2006) (*CBP*) (the Authority determined that he employees were functionally integrated as they were all cross-trained.); *Lake Mead,* 57 FLRA at 584-85.

(d)

B. **Application of the Analytical Framework**

(i) Continued Appropriateness of the Incumbent's Bargaining Unit

The first consideration is whether the Incumbent's existing unit at the Shipyard remains appropriate. The record establishes that the Incumbent's unit, which includes all of the Wage Grade employees in the Production Resources Department or Code 900, is an appropriate unit. First, these unit employees continue to share in a community of interest. *See FISC*, 52 FLRA at 960-61. Specifically, regardless of their particular trade the employees are subject to the same personnel policies and practices, pay system, health insurance, geographical conditions and Shipyard instructions. Likewise these aspects of their working conditions are all administered by the same HRO and payroll office at the Shipyard. With respect to the work performed, the employees all support the Shipyard's mission of repairing and overhauling submarines. While their specific contributions vary amongst the shops in light of their specific skills (e.g. electrical work, insulating, sound damping, staging, etc.), they combine to form project teams that are tasked with repairing or overhauling a particular vessel. Even though the trades are not always working side-by-side and communicating directly with each other, their efforts are coordinated; the individual trades do not each work in a vacuum. While the shops have home bases that are located in different buildings, much repair and overhaul work is performed in common areas such as Building 174 and at the three dry docks. Similarly, while there are break and locker areas that are either designated for, or at least frequented by, certain trades, there are also common break areas, locker rooms, and tool cribs. Although the trades have different supervisors, different general foremen and different superintendents, depending on which of the six codes their shop is organizationally assigned to, these chains of command all intersect to form Code 900. Further, the employees are all sourced through the same hiring practices and they are trained in the same apprentice programs. While these training programs are individualized for each trade, many of the courses apply to the trades generally.

The existing unit also continues to promote effective dealings. *FISC,* 52 FLRA at 961. As noted previously, all labor and employee relations matters for the Incumbent's unit are handled through the Shipyard's HRO office with support from OCHR Norfolk. The evidence demonstrates that for the better part of a century, the Shipyard and the Incumbent have enjoyed an effective labor-management relationship, they have a longstanding CBA, multiple supplemental agreements covering various Shipyard instructions, and they have been able to effectively resolve grievances and unfair labor practice charges. The evidence indicates that here, unlike *Electric Boat*, there are no working conditions that are unique to the shipwrights and/or plastic fabricators that would require separate negotiation, and as a result, there are no provisions of the CBA or separate memoranda of understanding that apply to just the shipwrights or plastic fabricators.

The Incumbent's unit likewise continues to promote efficiency of operations. *Id.* at 962. The unit encompasses all of the Wage Grade employees in the Productions Resources Department. While the unit stretches across Code 900's shops, it does not require the creation of an additional organization. *See Aberdeen Proving Ground,* 57 FLRA at 156-57. Accordingly, the existing unit remains appropriate, within the meaning of section 7112(a) of the Statute. *Library of Congress*, 16 FLRA at 432; *Carswell*, 40 FLRA at 228.

ii. Unusual Circumstances

As the Incumbent's bargaining unit remains appropriate, severance of the petitioned-for unit employees can be justified only if unusual circumstances are present. *Library of Congress*, 16 FLRA at 431. Here, the Petitioner asserts that such an unusual circumstance exists as the Incumbent's representation of the shipwrights and plastic fabricators has been inadequate. Specifically, the Petitioner argues that since the Incumbent removed Nathan Proper from his position as executive secretary, the chief steward duties he was performing on behalf Local 3073 have been neglected if not abandoned. While the Incumbent assigned the chief stewards from two of its other affiliated locals, Gary Guertin and Brandon Clithero, to take over Proper's chief steward responsibilities, the Petitioner asserts this is inadequate. In its view a steward from another trade local lacks sufficient understanding of the shipwright and plastic fabricators' working conditions and priorities and is not as accessible as the Petitioner's representatives working in one of their shops would be. The Petitioner also maintains that the Incumbent inadequately communicated these representational changes, leaving the employees confused about how grievances would be handled, whether they would have to join the Insulators or the Sheet Metal Workers' local, and where their current dues withholdings were going.

However, the record does not show that the Incumbent's stewards and chief stewards have failed to adequately represent the employees at issue. The mere fact that employees have been assigned to other trade locals for representational purposes does not, standing alone, demonstrate lack of representation. While the Petitioner argues that the Sheet Metal Workers and the Insulators have no knowledge of the work performed by the Petitioner's employees, it is worth noting that there are no

carpenters in the unit sought by the Petitioner, only shipwrights and plastic fabricators. As a result, the argument that the Carpenters union, and only the Carpenters union, is capable of representing these employees is less than compelling. Moreover, there is no record evidence of any trade-specific working conditions such that only shipwrights and plastic fabricators could competently represent shipwrights and plastic fabricators. Furthermore, the Petitioner's argument is undercut by the fact that shipwrights and plastic fabricators perform dissimilar work, and yet there is no evidence that they have been incapable of representing each other. In fact, a number of the Incumbent's affiliated locals have historically represented more than one shop, apparently without issue. The Incumbent also presented testimony and evidence that rather than randomly pairing Shops 64 and 76 with representatives from the other trades, it consulted with the MTD and with metal trades councils at other shipyards about how they assign stewards and it paired the shipwrights and plastic fabricators with the local unions that most closely aligned with their trades. The evidence indicates that the shipwrights and plastic fabricators do not share a community of interest that is separate and distinct from other employees in the Incumbent's unit, and it is just as appropriate to pair them with the sheet metal workers and insulators as it is to pair them with each other.

Since reassigning the shipwrights to the Sheet Metal Workers local and the plastic fabricators to the Insulators local, the evidence does not support that the employees have been treated unfairly, ineffectively or differently with respect to how the Incumbent has represented their shops. *See NAS Jacksonville,* 61 FLRA at 143. While the Incumbent's reliance on flyers and the good graces of supervisors to communicate scheduled meetings has proven to be problematic, there is also evidence of the stewards and chief stewards providing support to both Shops 76 and 64.

Petitioner contends that the shipwrights and plastic fabricators will not enjoy the same input as they did before the revocation of the Solidarity Agreement in 2011. Specifically, they point to the fact that before that revocation the Petitioner was able to have its own chief stewards, stewards and had voting rights on the Council and now this is not the case. But this does not, by itself, indicate that the shipwrights and plastic fabricators will lack representation going forward. The shipwrights and plastic fabricators are free to participate in the local unions chosen to represent them, and there is no barrier to their voice being heard at the Metal Trades Council level through those local unions. The Petitioner also points to witness testimony that not every steward fully understands the work performed by shipwrights and plastic fabricators whom they have been assigned to represent. Again, there is no evidence to indicate that this is anything but a temporary problem. There is no barrier to shipwrights and plastic fabricators becoming stewards and using their expertise in the trade to competently represent their fellow trade employees. In other words, even though there may be certain problems with representation during this period of transition, there is no inherent barrier to the shipwrights and plastic fabricators receiving full and competent representation in the future. Viewing the totality of the facts, the level of the Incumbent's representation of the petitioned-for employees does not in itself present an unusual circumstance supporting a severance.

Both the Petitioner and the Incumbent argue that NLRB case law supports their respective positions. The Petitioner suggests that the facts in *Electric Boat* are similar to the facts here, while the Incumbent contends that *Battelle* should be followed. I find that the facts in this case are distinguishable from those in *Electric Boat* and more closely resemble the relevant facts in *Battelle.* In *Electric Boat*, the record indicated that the carpenters had much greater craft-specific training, a line of supervision for just the petitioned-for employees, and less integration with the work of other crafts. In addition, in *Electric Boat*, the working conditions of the carpenters were sufficiently distinct to merit the negotiation of contract provisions that applied just to them. Such is not the case here. In *Electric Boat*, the carpenters had their own seniority roster. Here, the shipwrights and plastic fabricators have separate rosters for overtime. In general, the record indicates that there is no greater functional integration between the shipwrights and the plastic fabricators than there is between them and any other craft.

By contrast, the facts here track those in *Battelle* in significant aspects. In *Battelle*, petitioned-for employees, carpenters and millwrights, did not constitute a homogeneous group, but instead, performed work that was distinct from, and did not overlap with, the work performed by each other. Likewise, here, the shipwrights and plastic fabricators perform distinct work with little or no overlap with each other. Here, as in *Battelle*, the shipwrights and plastic fabricators work on teams composed of multiple crafts. And, to the extent that the supervisory chain-of-command for the shipwrights and plastic fabricators is separate from other crafts on these teams, it is also separate from each other. On the whole, the factors that would support severance are lacking here just as they were in *Battelle.*

(iii) Sch ism

The record reflects that in 2001 the UBC was at odds with the AFL-CIO concerning the Federation's organizing efforts and withdrew from the Federation. Many of the MTD's metal trades councils included UBC

affiliated locals, and in 2003, the AFL-CIO directed the Metal Trades Department to disaffiliate with the UBC. Even though the UCB and MTD disaffiliated, by the end of 2005, they reached a solidarity agreement temporarily allowing the UBC's locals to continue their affiliations with various metal trade councils. The parties to the instant case took advantage of this locally until the agreement terminated in 2011. After the agreement terminated, the Incumbent's president, O'Connor, arranged for the Petitioner to have a full-time representative, who was the Incumbent's executive secretary and performed the duties of chief steward for the shipwrights and plastic fabricators. Apart from the Petitioner's portion of the bargaining unit having lost their voting delegates, this arrangement seemed to work. Following O'Connor's retirement, however, the Incumbent decided to terminate this arrangement and problems ensued. According to the Petitioner, the removal of Nathan Proper and the reassignment of Shops 76 and 64 to other trade locals left employees feeling disenfranchised and confused in regard to the identity of their stewards, their dues withholdings and who they should approach with questions and the Incumbent's removal of Proper was so disruptive that during a union meeting the Petitioner's membership unanimously voted to sever its ties with the Incumbent.

But, regardless of how the employees may have felt, they were not in fact disenfranchised. Now, as before, the Incumbent is the exclusive representative of the Petitioner's employees. Since 2016, the shipwrights and plastic fabricators have local unions to represent them, the Sheet Metal Workers and the Insulators, respectively, and those unions have full representation on the executive board. If employees were confused as to who their stewards were, this was simply because they had new stewards and did not know who they were yet. This is not a situation where there is confusion due to the fact that there are two labor organizations, both of which claim to be the one exclusive representative; no one disputes the fact that the Incumbent is the one and only exclusive representative.

With respect to the impact of the changes on the Shipyard, there was testimony to the effect that Code 900 managers had questions as to who was representing the employees in their shops and whether it was as they put it, "business as usual." The disruption between the parties likewise spilled over into the Shipyard's security department in connection with parties' attempts to communicate with the petitioned-for employees. But again, these appear to be transitory problems, confusion due to new people acting as representatives, and not the problems brought on by competing claims to exclusive representation status.

Based on the evidence presented, even assuming that the rift between the UBC and the AFL-CIO constitutes a "basic intra-union conflict over policy at the highest level" and even assuming that it has resulted in a "disruption of existing intra-union relationships," I find no evidence that any resulting conflict has engendered confusion *in the bargaining relationship*, as opposed to transitory confusion as to who one's new steward might be, nor do I find it necessary to restore stability to the bargaining relationship through an election.
Having found no basis for severance, I need not reach the question of whether the bargaining unit sought by the Petitioner would be an appropriate one.

V. Order

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

VI. Right to File Application for Review

Under the provisions of section 2422.31 of the Authority's Regulations, a party may file an application for review of this Decision and Order with the Federal Labor Relations Authority within sixty (60) days. The contents of, and grounds for, an application for review are set forth in section 2422.31(b) and (c) of the Authority's Regulations.

The application for review must be filed on or before **June 27, 2017**, and must be filed with the Chief, Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 201, 1400 K Street, NW, Washington, DC 20424-0001. Documents hand-delivered for filing must be presented in the Docket Room not later than 5:00 p.m. to be accepted for filing on that day. The application for review may be filed electronically through the Authority's website, www.flra.gov.[57]

Philip T. Roberts
Regional Director
Boston Region
Federal Labor Relations Authority
Thomas P. O'Neill Jr. Federal Building
10 Causeway Street, Suite 472
Boston, Massachusetts 02222

Dated: May 4, 2017

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