

**71 FLRA No. 46**

EXPORT-IMPORT  
BANK OF THE UNITED STATES  
(Agency)

and

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

WA-RP-17-0059

ORDER GRANTING  
APPLICATION FOR REVIEW

July 26, 2019

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

**I. Statement of the Case**

In this case, we conclude that certain positions demonstrate the requisite judgment and knowledge to be considered “professional” within the meaning of § 7103(a)(15)(A) of the Federal Service Labor-Management Relations Statute (the Statute).<sup>1</sup> Additionally, we clarify that the Authority’s majority standard – which requires an election when the number of employees proposed for inclusion into a unit exceeds the number already in that unit – is not limited to situations where there has been a change in an agency’s operations or organization.

As relevant here, the Union petitioned the Federal Labor Relations Authority (FLRA) to clarify the bargaining-unit status of several Agency positions. Before FLRA Regional Director Jessica Bartlett (the RD), the parties stipulated that some of the positions are not professional within the meaning of § 7103(a)(15)(A). However, the parties continued to dispute whether seven positions are professional or non-professional under the Statute. The RD concluded that those seven positions are non-professional. Accordingly, she directed that the employees occupying the seven positions – and the stipulated non-professional employees – be included in the bargaining unit of non-professional employees that the Union represents.

<sup>1</sup> 5 U.S.C. § 7103(a)(15)(A).

The first question before us is whether the RD failed to apply established law in determining the professional status of the seven positions. Because established Authority precedent supports the conclusion that the seven positions are professional within the meaning of § 7103(a)(15)(A), the answer is yes. Therefore, we direct the RD to clarify the bargaining unit to exclude those positions from the unit.

In addition, for the reasons discussed below, we direct the RD to conduct an election to determine whether the affected employees desire to be represented by the Union.

**II. Background and RD’s Decision****A. Background**

The Agency serves as the official export credit agency of the United States. As such, the Agency markets its products – mainly financial support, such as credit insurance and loan guarantees – to potential domestic exporters and foreign importers. Generally, the Agency’s customers are “U.S. exporters; foreign borrowers; brokers; lenders; international buyers; and government stakeholders.”<sup>2</sup>

The Union is the exclusive representative of a bargaining unit that includes, in relevant part, “[a]ll non-professional employees . . . employed by the [Agency] in the Washington D.C. metropolitan area.”<sup>3</sup> Before the proceedings discussed here, that unit contained roughly twenty non-professional employees.

The Union filed a petition seeking to clarify the bargaining-unit status of approximately 200 employees occupying approximately forty different positions. In the petition, the Union alleged that the positions are non-professional and, therefore, should be included in the unit. The RD scheduled a hearing on the petition.

Before the hearing, the Union amended its petition to withdraw several of the positions, and the parties entered into a pre-hearing resolution. As part of that resolution, the parties stipulated that sixty-four employees, occupying approximately twenty positions, are non-professional.<sup>4</sup> But the parties continued to dispute whether the following seven positions, occupied by twenty-nine employees, are professional or non-professional: business development specialist; business initiatives specialist; senior business development specialist; business development specialist - broker relations (broker relations specialist);

<sup>2</sup> RD’s Decision at 2.

<sup>3</sup> *Id.*

<sup>4</sup> The parties also stipulated that other employees, occupying approximately ten positions, are professional.

senior congressional analyst; senior credit review officer; and GS-14 information technology specialist (IT specialist).

Before the RD, the parties agreed that the testifying employees would provide representative testimony on behalf of all of the employees occupying the seven disputed positions.

#### B. The Seven Disputed Positions

##### 1. Business Development Specialist

The business development specialists serve “as the face of the Agency for its . . . customers.”<sup>5</sup> Individuals in this position identify potential customers, market the Agency’s financial products, and assist customers with applying for an Agency product. Business development specialists “have discretion” to decide how they market Agency products and communicate with customers.<sup>6</sup> Once a business development specialist has identified a customer, he or she must assess the customer’s business model and its value. And because many of the customers are foreign entities, and the proposed projects involve millions of dollars, the business development specialists must consider the market and “economics of the [relevant] country.”<sup>7</sup> Ultimately, the business development specialists determine, and recommend, an appropriate course of action for the customer – such as applying for a specific Agency product.

The representative testimony establishes that most business development specialists have bachelor’s degrees in business or finance, or other “advanced degree[s]” in similar fields.<sup>8</sup>

##### 2. Business Initiatives Specialist

Each business initiatives specialist is assigned to a geographic region of the world and serves as the subject-matter expert on the Agency’s banking portfolio in that region. The business initiatives specialists also formulate the Agency’s strategy for developing business opportunities in their particular region. As such, the specialists are uniquely familiar with their region’s financial and banking landscape. In addition, business initiatives specialists are responsible for meeting with foreign-government officials in order to secure certain Agency transactions.

The representative testimony establishes that individuals in this position have bachelor’s degrees in economics, master’s degrees in public policy and management, and master’s degrees in international relations.

##### 3. Senior Business Development Specialist

The senior business development specialist identifies business opportunities within the exporting community and markets the Agency’s products accordingly. After conducting a “high-level” risk and financial assessment of an exporter, its business, and its proposed project, the specialist discusses the assessment with the exporter and recommends an appropriate Agency product.<sup>9</sup> The specialist will then structure the transaction between the customer and the Agency. These transactions are frequently “the most complex transactions” at the Agency.<sup>10</sup>

In addition, the senior business development specialist acts as an Agency strategist, identifying emerging foreign markets and projects; assessing whether there is a need for an Agency product, such as financing; and outlining potential business ventures for the Agency.

The current senior business development specialist has a bachelor’s degree in finance and a Master of Business Administration (MBA) in international business.

##### 4. Broker Relations Specialist

The broker relations specialist is responsible for developing the Agency’s broker-management strategy and has “flexibility and independence to determine his own agenda for doing so.”<sup>11</sup> The specialist uses analytics to assess broker production and the profitability of broker-provided business. The specialist then uses that information to determine, among other things, whether the Agency’s broker commission structure should be changed, and makes recommendations to senior leadership on how to improve broker relations. In addition, the specialist maintains contacts within the “broker community” and develops resources – such as trainings, guides, webinars, webcasts, and newsletters – to provide brokers to assist them with their Agency-related work.<sup>12</sup> Moreover, as the Agency’s subject-matter expert in export credit insurance, the broker relations specialist “uses his understanding of mathematics and economics to develop pricing models” for new products and make

<sup>5</sup> RD’s Decision at 5.

<sup>6</sup> *Id.*

<sup>7</sup> Hr’g Tr. (Tr.) at 228.

<sup>8</sup> RD’s Decision at 6.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> Tr. at 475.

<sup>11</sup> RD’s Decision at 9.

<sup>12</sup> *Id.* at 10.

recommendations to upper management regarding changes to the Agency's export-credit-insurance products.<sup>13</sup>

The current broker relations specialist has multiple degrees, including an MBA in international business.

#### 5. Senior Congressional Analyst

The senior congressional analysts work in congressional and intergovernmental affairs. Individuals in this position are responsible for developing and implementing the Agency's legislative priorities and strategies; serving as liaisons between the Agency and Congress; and monitoring congressional activities that may affect the Agency. The analysts operate "independently to initiate and respond to communications with" Congress.<sup>14</sup> Moreover, the analysts develop, and present to Congress, informational materials about the Agency's business. If the Agency receives an inquiry from Congress, then the senior congressional analysts work "fairly independently [to] analyz[e] and formulat[e] a response."<sup>15</sup> The senior congressional analysts also provide advice to the Agency's vice president of congressional and intergovernmental affairs about legislation that may impact the Agency.

The representative testimony establishes that individuals in the senior-congressional-analyst position have bachelor's degrees in political science.

#### 6. Senior Credit Review Officer

The senior credit review officer is responsible for detecting and mitigating fraud in Agency transactions. The officer reviews certain transactions to determine whether they complied with internal policies. In that role, the officer must determine which transaction documents to review and which parties to the transaction to contact. Once a review is complete, the senior credit review officer reports his findings – which may include recommendations on how to further avoid fraud – to the supervisor.

The senior credit review officer also acts as a contracting officer representative on special projects. The vice president for credit review and compliance stated that he would not feel comfortable assigning any other employee to lead one of the senior credit review officer's special projects, given those projects' size and scope. As a contracting officer representative, the senior credit review officer manages vendors' contracts,

reviews vendors' work products, and signs vendors' invoices. However, a supervisor has final approval of any signed invoice. Nonetheless, the senior credit review officer performs most of this work "autonomously."<sup>16</sup>

#### 7. IT Specialist

The IT specialists perform traditional IT work, such as ensuring that the Agency's IT systems and security policies comply with applicable laws; developing and maintaining the Agency's intranet and extranet websites; and developing and maintaining custom software for the Agency. In addition, each IT specialist is a contracting officer representative and, in that role, administers and manages IT contracts between the Agency and contractors. In particular, the specialists: assist in hiring a team of contractors, draft contracts and performance-work statements, supervise contractors' work, and evaluate the contractors' work product.

Moreover, as project management professionals, the IT specialists monitor contractors' schedules and work assignments, and provide managerial support. IT specialists also draft "purchase agreements . . . and performance requirement specifications," but another position reviews and approves those documents.<sup>17</sup> However, the individual with review and approval authority "usually accepts the IT [s]pecialist's input."<sup>18</sup>

#### C. The RD's Decision

Addressing the seven positions, the RD noted that § 7103(a)(15)(A) defines a "professional employee" as an employee performing work that (1) requires "the consistent exercise of discretion and judgment" (the judgment requirement); (2) requires "knowledge of an advanced type . . . customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning" (the knowledge requirement); (3) is "predominantly intellectual and varied in character"; and (4) is "of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time."<sup>19</sup>

The RD determined that the positions of business development specialist, business initiatives specialist, senior business development specialist, broker relations specialist, and senior congressional analyst satisfy the third and fourth professional-employee criteria. However, the RD found that the duties performed by employees in those positions are "limited to offering advice and recommendations" and

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 15.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 17.

<sup>17</sup> *Id.* at 12.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 19 (quoting 5 U.S.C. § 7103(a)(15)(A)(i)-(iv)).

“subject to [supervisor] review.”<sup>20</sup> Therefore, the RD concluded that those positions do not satisfy the judgment requirement. In addition, the RD found that those five positions do not satisfy the knowledge requirement, because the relevant “positions descriptions do not list education or a college degree as a condition of employment.”<sup>21</sup>

As for the senior-credit-review-officer and IT-specialist positions, the RD found that those positions satisfy all of the professional-employee criteria except the judgment requirement. She found that those positions did not satisfy the judgment requirement because employees in those positions “remain in regular . . . communication with their supervisors” and have little authority with regard to the contracts that they manage.<sup>22</sup>

Based on the above, the RD concluded that the seven positions – which include twenty-nine employees – are non-professional under the Statute. Because the parties had stipulated that sixty-four other employees are non-professional, the RD’s conclusion resulted in a total of ninety-three non-professional employees becoming eligible for inclusion into the unit.

Before the RD, the Agency argued that those ninety-three employees could not be included in the unit without an election, because they outnumbered the roughly twenty employees already in the unit. The RD acknowledged that, under Authority precedent, an election must be conducted when the number of employees proposed for inclusion in a unit exceeds the number of employees currently in that unit (the majority standard). However, the RD determined that the Authority applies that standard only in accretion cases – where there has been a change in agency operations or organization. As the Union did not seek to add the employees to the unit based on such a change, the RD found an election unnecessary. Thus, the RD directed that the ninety-three employees be included in the unit.

On November 21, 2018, the Agency filed an application for review (application) of the RD’s decision, and on December 10, 2018, the Union filed an opposition.

### III. Analysis and Conclusions

As relevant here, the Agency alleges that review of the RD’s decision is warranted under § 2422.31(c)(3)(i) of the Authority’s Regulations.<sup>23</sup> Under that subsection, the Authority may grant an

application for review when the application demonstrates that the RD has failed to apply established law.<sup>24</sup> The Agency argues that the RD erred by (1) finding that the seven positions are non-professional<sup>25</sup> and (2) including non-professional employees in the unit without an election.<sup>26</sup>

#### A. The seven positions are “professional” under § 7103(a)(15)(A).

The Agency contends that the seven positions are “professional” under § 7103(a)(15)(A) and, therefore, should be excluded from the unit of non-professional employees.<sup>27</sup> As noted above, for a position to be “professional,” it must satisfy, as relevant here, the four criteria in § 7103(a)(15)(A).<sup>28</sup>

The parties do not dispute that all seven positions satisfy two of § 7103(a)(15)(A)’s criteria – specifically, subsections (A)(iii) and (A)(iv), which require, respectively, that the work performed must be “predominantly intellectual and varied in character,”<sup>29</sup> and “of such a character that the . . . result accomplished by such work cannot be standardized.”<sup>30</sup> Nor do the parties dispute that the senior-credit-review-officer and IT-specialist positions satisfy the knowledge requirement.<sup>31</sup> However, the Agency challenges the RD’s determinations that (1) none of the positions satisfy the judgment requirement, and (2) the positions of business development specialist, business initiatives specialist, senior business development specialist, broker relations specialist, and senior congressional analyst, do not satisfy the knowledge requirement.

#### 1. All seven positions satisfy the judgment requirement.

Section 7103(a)(15)(A)(ii) provides that the work of a “professional” position requires “the consistent exercise of discretion and judgment in its performance.”<sup>32</sup>

<sup>20</sup> *Id.* at 21.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 22.

<sup>23</sup> Application at 5-6.

<sup>24</sup> 5 C.F.R. § 2422.31(c)(3)(i).

<sup>25</sup> Application at 7.

<sup>26</sup> *Id.* at 7-9.

<sup>27</sup> *See generally id.* at 10-11.

<sup>28</sup> 5 U.S.C. § 7103(a)(15)(A)(i)-(iv).

<sup>29</sup> *Id.* § 7103(a)(15)(A)(iii).

<sup>30</sup> *Id.* § 7103(a)(15)(A)(iv); *see also* RD’s Decision at 20-23 (finding that the work performed in all seven of the positions is predominantly intellectual and of such a character that the result cannot be standardized).

<sup>31</sup> *See* RD’s Decision at 22 (finding that these positions satisfy the knowledge requirement).

<sup>32</sup> 5 U.S.C. § 7103(a)(15)(A)(ii).

- i. The Positions of Business Development Specialist, Business Initiatives Specialist, Senior Business Development Specialist, Broker Relations Specialist, and Senior Congressional Analyst

As noted above, the RD found that these positions do not satisfy the judgment requirement.<sup>33</sup> However, the record establishes that the individuals in these positions exercise significant discretion when performing their duties. For example, the business development specialists exercise “discretion” and judgment to identify potential customers, market and recommend the Agency’s financial products, and assist customers with applying for those products.<sup>34</sup> And the Agency tasks these employees with independently “determin[ing] what[] [is] going to be the best program or the best product [to market to] the potential [customer].”<sup>35</sup>

Employees in the business-initiatives-specialist position also have “a lot of latitude in what [they] are able to do” due to the varied nature of that position’s duties.<sup>36</sup> As noted above, each business initiatives specialist is assigned to a different geographic region of the world and, as such, there is no “set schedule” for the position.<sup>37</sup> Instead, the business initiative specialists must use their judgment to “balanc[e] and prioritiz[e]” their work.<sup>38</sup>

Similarly, the senior business development specialist uses judgment to, among other things, structure some of “the most complex transactions” at the Agency.<sup>39</sup> And in doing so, the senior business development specialist has the discretion to “change [certain] variables” within a project or transaction.<sup>40</sup>

Regarding the broker relations specialist, the individual in that position has the “flexibility and independence to determine . . . [the] agenda for” creating

and implementing the Agency’s broker strategy.<sup>41</sup> And, the broker relations specialist “define[s]” the goals and priorities for fulfilling that core duty.<sup>42</sup>

As for the senior-congressional-analyst position, employees in that position operate “independently to initiate and respond to communications with” Congress.<sup>43</sup> Specifically, when the Agency receives a congressional inquiry, the senior congressional analysts work “fairly independently [to] analyz[e] and formulat[e] a response.”<sup>44</sup>

While the RD concluded that these positions do not satisfy the judgment requirement because their duties are “limited to offering advice and recommendations,”<sup>45</sup> nothing in the Statute or case law states that an advisor cannot be a professional employee. In fact, the Authority has found that an employee who “act[ed] as a ‘primary advisor’ and ‘subject[-]matter expert’” was a professional employee under the Statute.<sup>46</sup> And here, as the RD found, the employees in these positions provide advice as subject-matter experts.<sup>47</sup>

Based on the above, we find that the positions of business development specialist, business initiatives specialist, senior business development specialist, broker relations specialist, and senior congressional analyst satisfy the judgment requirement. We further find that the RD, in determining otherwise, failed to apply established law.

- ii. Senior Credit Review Officer and IT Specialist

The RD concluded that the senior-credit-review-officer and IT-specialist positions do not satisfy the judgment requirement because employees in these positions “remain in regular . . . communication with their supervisors.”<sup>48</sup> However, as long as those

<sup>33</sup> RD’s Decision at 21.

<sup>34</sup> *Id.* at 5.

<sup>35</sup> Tr. at 82 (stating that business development specialists make “decisions on their own”).

<sup>36</sup> *Id.* at 120.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 475.

<sup>40</sup> *Id.* at 476.

<sup>41</sup> RD’s Decision at 9; *see also* Tr. at 164 (“I would say I have been given a lot of flexibility in creating the strategy and implementing it.”).

<sup>42</sup> Tr. at 156; *see also id.* at 151 (“I’m responsible for all broker strategy.”).

<sup>43</sup> RD’s Decision at 15.

<sup>44</sup> *Id.*; *see also* Tr. at 35 (the Agency expects the senior congressional analysts to “operate independently”).

<sup>45</sup> RD’s Decision at 21.

<sup>46</sup> *U.S. Dep’t of the Navy, Naval Air Station, Joint Reserve Base, New Orleans, La.*, 67 FLRA 422, 423 (2014) (*Navy*).

<sup>47</sup> RD’s Decision at 21 (finding that employees in the positions of business development specialist, business initiatives specialist, senior business development specialist, broker relations specialist, and senior congressional analyst “may be called upon for their advice and subject-matter expertise”).

<sup>48</sup> *Id.* at 22.

supervisors are not directing the positions' daily work, such communication, by itself, does not disqualify these positions from being professional.<sup>49</sup> And here, the RD did not determine – and the record does not establish – that supervisors provide such direction with regard to these positions.

In fact, the record establishes that the individuals in these positions exercise significant discretion in the performance of their duties. Specifically, the senior credit review officer – as a contracting officer representative – manages projects of substantial “size” and “scope.”<sup>50</sup> In relation to those projects, the Agency tasks the senior credit review officer with managing vendor contracts and reviewing vendors' work product.<sup>51</sup> The individual in that position is also responsible for detecting and mitigating fraud in certain Agency transactions<sup>52</sup> and has significant “autonom[y]” in that role.<sup>53</sup>

The IT specialists exercise a similar level of discretion. They draft project contracts, supervise contractors' work, and evaluate contractors' work product.<sup>54</sup> And the record shows that when performing those duties, the specialists must “adhere to their . . . judgment [because] that[ is part of the] job.”<sup>55</sup>

Although someone in a different position has final approval over the types of contracts that the senior credit review officer and IT specialists manage,<sup>56</sup> the relevant inquiry focuses on the work performed by individuals *in the disputed positions*.<sup>57</sup> And, with regard to these contracts, the senior credit review officer and IT specialists are consistently using judgment in the performance of their work. For instance, the senior credit review officer must be “satisfied with the [vendor's] work” before signing a vendor invoice.<sup>58</sup> Without the senior credit review officer's endorsement, those invoices

are not advanced for final approval.<sup>59</sup> Similarly, IT specialists use their understanding of the technical requirements of a project, and their familiarity with a contractor, to draft purchase agreements, statements of work, and other contracts.<sup>60</sup> Even though another individual reviews those contracts, that person “usually accepts the IT [s]pecialist's input.”<sup>61</sup>

Based on the above, we conclude that the senior-credit-review-officer and IT-specialist positions satisfy the judgment requirement.<sup>62</sup> As the parties do not contest that these positions satisfy the other three criteria in § 7103(a)(15)(A),<sup>63</sup> we further conclude that those two positions are professional under the Statute. Thus, we direct the RD to exclude those two positions from the unit.

2. The positions of business development specialist, business initiatives specialist, senior business development specialist, broker relations specialist, and senior congressional analyst satisfy the knowledge requirement.

Section 7103(a)(15)(A)(i) provides that the work of a “professional” position requires “knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning . . . (as distinguished from knowledge acquired by . . . training in the performance of routine mental, manual, mechanical, or physical activities).”<sup>64</sup> The Authority has stated that the “proper inquiry” for determining whether a position satisfies the knowledge requirement “does not stop at a vacancy announcement or a position description”;<sup>65</sup> it addresses whether the work that the employee performs – at the time of the hearing – requires knowledge of an advanced type.<sup>66</sup>

Here, the RD found that these five positions do not satisfy the knowledge requirement because the related position descriptions and vacancy announcements did not

<sup>49</sup> *Navy*, 67 FLRA at 426 (finding that a position's work required the consistent exercise of discretion and judgment where the supervisor did “not direct [the position's] daily work duties”).

<sup>50</sup> Tr. at 407.

<sup>51</sup> RD's Decision at 17; *see also* Tr. at 406 (senior credit review officer “manage[s] [vendor] workflow and their work product”).

<sup>52</sup> RD's Decision at 16-17; Tr. at 403-04.

<sup>53</sup> Tr. at 409; *see also* RD's Decision at 16 (the senior credit review officer “decides who[m] to contact and what documents are needed for a specific review”).

<sup>54</sup> Tr. at 331-32, 359; *see also* RD's Decision at 11-12.

<sup>55</sup> Tr. at 350; *see also id.* at 279 (IT specialists are responsible for managing the “daily operation[]” of a contract).

<sup>56</sup> *E.g., id.* at 423.

<sup>57</sup> *See* 5 U.S.C. § 7103(a)(15)(A)(ii) (a professional employee is one “engaged in the performance of work . . . requiring the consistent exercise of discretion and judgment in its performance” (emphasis added)).

<sup>58</sup> Tr. at 423.

<sup>59</sup> *Id.*

<sup>60</sup> RD's Decision at 12.

<sup>61</sup> *Id.*

<sup>62</sup> *See Veterans Admin., Reg'l Office, Portland, Or.*, 9 FLRA 804, 805-06 (1982) (finding, after review of the evidence, that certain employees were professional).

<sup>63</sup> RD's Decision at 21-22 (finding that those positions satisfy § 7103(a)(15)(A)(i), (iii), and (iv)).

<sup>64</sup> 5 U.S.C. § 7103(a)(15)(A)(i).

<sup>65</sup> *U.S. Dep't of the Treasury, BEP, Wash., D.C.*, 70 FLRA 359, 362-63 (2018) (Member DuBester dissenting).

<sup>66</sup> *Id.* at 363.

provide any educational requirements.<sup>67</sup> However, the RD did not consider how the educational qualifications of the employees occupying those positions relate to the positions' duties. Thus, the RD's analysis is inconsistent with Authority precedent.<sup>68</sup>

The record establishes that employees occupying these five positions perform similar duties. Each of the positions requires knowledge of, and the ability to communicate about, the types of complex financial transactions that the Agency facilitates between U.S. exporters and foreign importers.<sup>69</sup> Moreover, the representative testimony demonstrates that employees in these positions possess degrees related to their profession. For example, of the two business development specialists who testified, one possesses a degree in business management,<sup>70</sup> and the other has a bachelor's degree in economics and finance with a master's degree in applied economics.<sup>71</sup> Similarly, the testimony establishes that most of the business initiatives specialists have master's degrees in "either finance or . . . international relations."<sup>72</sup> And the senior business development specialist and the broker relations specialist possess, respectively, a bachelor's degree in finance with an MBA in international business,<sup>73</sup> and a bachelor's degree in international relations with an MBA specializing in international business.<sup>74</sup>

The record demonstrates that the above "group of employees is predominantly composed of individuals possessing a degree in the field to which the[ir] profession is devoted," and the employees use

their advanced knowledge to perform their work.<sup>75</sup> Therefore, we conclude that the positions of business development specialist, business initiatives specialist, senior business development specialist, and broker relations specialist satisfy the knowledge requirement.<sup>76</sup>

Regarding the senior-congressional-analyst position, the record shows that the individuals occupying that position acquired their knowledge through "intellectual instruction," as opposed to "training in the performance of routine mental, manual, mechanical, or physical activities."<sup>77</sup> In this regard, the testifying senior congressional analyst stated that her bachelor's degree in political science provided her with the necessary knowledge to fulfill that position's duties<sup>78</sup> – such as developing and implementing the Agency's legislative priorities and strategies and analyzing legislation that may impact the Agency.<sup>79</sup> Therefore, we also find that the senior-congressional-analyst position satisfies the knowledge requirement.

As we have found that the positions of business development specialist, business initiatives specialist, senior business development specialist, broker relations specialist, and senior congressional analyst satisfy the judgment and knowledge requirements, and the parties do not dispute that these positions satisfy the other two professional-employee criteria, we conclude that these positions are "professional" under

<sup>67</sup> RD's Decision at 21.

<sup>68</sup> See *id.*; see also *Navy*, 67 FLRA at 425 (the determination of whether a position satisfies the knowledge requirement cannot be based solely on positions descriptions, but must also consider the employees' actual duties).

<sup>69</sup> Tr. at 228 (the business development specialists regularly interact with "foreign entities [and] foreign borrowers" about agency products); *id.* at 123 (to support the Agency's mission of sustaining "U.S. jobs by financing exports," the business initiatives specialists talk "to companies . . . interested in exporting [to a particular region of the world]"); RD's Decision at 3 (finding that the senior business development specialist "engages with project developers and exporters about their proposed projects, their financial needs, and [the Agency's] finance products"); *id.* at 9 (finding that the broker relations specialist is the subject-matter expert on export credit insurance and regularly communicates with brokers, who help sell the Agency's credit insurance).

<sup>70</sup> Tr. at 374.

<sup>71</sup> *Id.* at 220; see also *id.* at 73 (testifying that when hiring for a business development specialist, the Agency looks for candidates with a "degree in business or a degree in finance").

<sup>72</sup> *Id.* at 120.

<sup>73</sup> *Id.* at 451.

<sup>74</sup> *Id.* at 147, 173.

<sup>75</sup> *W. Elec. Co.*, 126 NLRB 1346, 1349 (1960) (*W. Elec.*). We note that the definition of the term "professional" in § 7103(a)(15) is essentially the same as the definition of the term "professional" in § 2(12)(a) of the National Labor Relations Act (NLRA). In particular, both definitions state that the work performed must require "knowledge of an advanced type." Compare 5 U.S.C. § 7103(a)(15)(A)(i), with 29 U.S.C. § 152(12)(a)(iv). Where there are comparable provisions under the Statute and the NLRA, decisions of the National Labor Relations Board (NLRB) interpreting the NLRA have "a high degree of relevance" to similar circumstances under the Statute. *U.S. DOL, Office of the Solicitor, Arlington Field Office*, 37 FLRA 1371, 1381 (1990).

<sup>76</sup> Our dissenting colleague's reliance on *Express-News Corp.*, 223 NLRB 627 (1976) (*Express-News*) is misplaced. In that case, the NLRB specifically stated that "[t]he test for determining professional status, as stated . . . in *Western Electric* . . . remains valid." *Express-News*, 223 NLRB at 629. The NLRB did not apply *Western Electric* because, unlike here, the employees at issue possessed degrees in fields *unrelated* to their profession. *Id.* at 630-31.

<sup>77</sup> 5 U.S.C. § 7103(a)(15)(A)(i) ("knowledge of an advanced type" is "distinguished from knowledge acquired . . . [through] training in the performance of routine mental, manual, mechanical, or physical activities").

<sup>78</sup> Tr. at 45.

<sup>79</sup> RD's Decision at 14-15.

§ 7103(a)(15)(A). Accordingly, we direct the RD to exclude them from the unit.<sup>80</sup>

B. The sixty-four stipulated non-professional employees cannot be included in the unit without an election.

As part of the pre-hearing resolution, the parties stipulated that sixty-four employees, who were originally part of the petition, are non-professional employees under the Statute. Citing Authority precedent,<sup>81</sup> the Agency argues that those employees cannot be included in the unit without an election.<sup>82</sup> Generally, the FLRA does not conduct an election where, as here, a union “attempt[s] to clarify the bargaining[-]unit status of employees.”<sup>83</sup> But, under the majority standard, when “the number of employees proposed for inclusion . . . exceeds the number of employees in the existing unit,”<sup>84</sup> an election is necessary to ensure that the minority of employees does not dictate the representational status of the majority.<sup>85</sup>

<sup>80</sup> Member Abbott observes that his dissenting colleague again calls for unceasing obedience to precedent that was neither clear nor contrary to our decision today. This call sounds more shopworn by the day. See *U.S. DHS, U.S. CBP*, 71 FLRA 119, 120 (2019) (Member DuBester dissenting); *SSA*, 71 FLRA 205, 206 n.10 (2019) (Member Abbott concurring, Member DuBester dissenting); *U.S. HUD*, 70 FLRA 605, 607 n.29 (2018) (Footnote by Member Abbott) (Member DuBester dissenting). What remains thoroughly unclear is the level of deference that is owed by this Authority to its own Regional Directors. Is it as high as the deference our dissenting colleague demands for the decisions of arbitrators and greater than what he is willing to give to our own Administrative Law Judges? See *U.S. Small Bus. Admin.*, 70 FLRA 885, 887 n.18 (2018) (Footnote by Member Abbott) (Member DuBester dissenting); *U.S. DOJ, Fed. BOP, Fed. Med. Ctr. Carswell, Fort Worth, Tex.*, 70 FLRA 890, 892 n.20 (2018) (Member DuBester dissenting). We provide no guidance to the parties or to the Authority’s own RD’s when we leave them in the dark. In my view, therefore, it is high time that we resolve what level of deference is appropriate to extend to arbitrators, regional directors, and our administrative law judges but also what level of review – substantial, preponderant, or de novo – should be applied under each scenarios.

<sup>81</sup> *U.S. Dep’t of the Air Force, Materiel Command, Wright-Patterson Air Force Base*, 47 FLRA 602 (1993) (*Wright-Patterson*); *Dep’t of HHS, Region II, N.Y., N.Y.*, 43 FLRA 1245 (1992).

<sup>82</sup> Application at 7-9.

<sup>83</sup> *Wright-Patterson*, 47 FLRA at 612.

<sup>84</sup> *Id.*

<sup>85</sup> See *Dep’t of the Interior, Bureau of Land Mgmt., Sacramento, Cal.*, 53 FLRA 1417, 1422 (1998) (*Interior*) (stating that “the representational status of a minority will not control the representational status of a majority of employees”); *Renaissance Ctr. P’ship*, 239 NLRB 1247, 1247-48 (1979) (*Renaissance*) (where the number of employees a union sought to add to a certified unit exceeded the number currently in that unit, the NLRB directed an election, noting that the majority status of the union could “no longer reasonably be presumed”).

In addition, the standard preserves for the majority of employees – those proposed for inclusion – the statutory right to select a representative.<sup>86</sup>

As the RD noted,<sup>87</sup> the Authority has recognized the majority standard as an exception to accretion – which involves the addition of a group of employees to an existing bargaining unit, without an election, based on a change in agency operations or organization.<sup>88</sup> But the Authority has not stated that the majority standard applies only in accretion cases. And, indeed, the rationale underlying the majority standard supports its application whenever the proposed addition of a number of employees calls into question a union’s majority support.<sup>89</sup> Accordingly, we find that the RD erred by including, without an election, a number of employees that exceeds the number already in the unit.<sup>90</sup> In so holding, we reiterate the importance of employees’ “interests and concerns,” which the Authority has emphasized “should not be ignored.”<sup>91</sup> Thus, we direct the RD to conduct an election to determine whether the

<sup>86</sup> 5 U.S.C. § 7111(a) (an agency shall accord exclusive recognition to a labor organization “if the organization has been selected as the representative . . . by a majority of the employees . . . in [the] unit” (emphasis added)); see also *Renaissance*, 239 NLRB at 1247-48 (when the number of employees proposed for inclusion in a unit “numerically overshadows” the existing unit, it would “deprive the larger group of employees of their statutory right to select their own bargaining representative” to include them without an election).

<sup>87</sup> RD’s Decision at 18-19.

<sup>88</sup> See, e.g., *Interior*, 53 FLRA at 1420 (noting that an election is necessary “to determine representation after a reorganization or consolidation when the number of unrepresented employees in the gaining entity exceeds the number of represented employees”).

<sup>89</sup> See *SSA, Dist. Office, Valdosta, Ga.*, 52 FLRA 1084, 1091 (1997) (when determining whether an election is necessary, the “[u]nion[’s] majority status among employees in the gaining [unit] is crucial” (citing *Geo. V. Hamilton, Inc.*, 289 NLRB 1335 (1988))).

<sup>90</sup> RD’s Decision at 18-19.

<sup>91</sup> *Dep’t of the Navy, Portsmouth Naval Shipyard, Portsmouth, N.H.*, 70 FLRA 995, 1000 (2018) (Member DuBester dissenting) (considering employees’ interests in determining whether a proposed unit’s employees share a clear and identifiable community of interest); *id.* at 998 (criticizing the RD’s failure to “account in any respect for the wishes of the [employees] themselves” when determining whether severance was appropriate); see also *Exp.-Imp. Bank of the U.S.*, 70 FLRA 907, 909 (2018) (Member DuBester concurring) (“Employee self-determination is an ‘essential tenet of our Statute.’” (citation omitted)).



affected employees desire to be represented by the Union.<sup>92</sup>

#### **IV. Order**

We direct the RD to clarify the bargaining unit to exclude employees occupying the following positions in the Washington D.C. metropolitan area: business development specialist; business initiatives specialist; senior business development specialist; broker relations specialist; senior congressional analyst; senior credit review officer; and IT specialist. We further direct the RD to conduct an election to determine whether the affected employees desire to be represented by the Union.

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<sup>92</sup> See *Renaissance*, 239 NLRB at 1248. In its opposition, the Union states that additional employees have been included in the unit since the RD issued her decision. Opp'n at 13. However, the Union does not dispute that the sixty-four employees proposed for inclusion still outnumber the employees already in the unit.

### Member DuBester, dissenting

Contrary to the majority, I would uphold the Regional Director's (RD's) decision that employees in the seven positions at issue are not excluded from the bargaining unit as professional employees. The majority's decision excluding these positions from the bargaining unit improperly disregards the RD's extensive factual findings and misconstrues Authority precedent governing application of the professional employee exclusion. Also, for reasons discussed below, I would find that the inclusion of employees in those seven positions and the employees in the stipulated positions does not warrant directing the RD to conduct an election.

In applying the judgment requirement set forth in § 7103(a)(15)(A)(ii) of the Federal Service Labor-Management Relations Statute (Statute),<sup>1</sup> the RD found that – while employees in the positions of Business Development Specialist, Business Development Specialist - Broker Relations, Business Initiatives Specialist, Senior Business Development Specialist, and Senior Congressional Analyst “do require some judgment and discretion in the performance of their respective duties”<sup>2</sup> – these employees do not exercise “the type of consistent discretion and judgment” required under the Statute.<sup>3</sup> She based this conclusion upon her findings that a “majority of their work product is subject to the review of a supervisor with whom they are in regular communication.”<sup>4</sup> She also found that their responsibility for providing advice or subject-matter expertise is “limited to offering advice and recommendations,” and they generally “do not implement the recommendations nor do they have the authority to make many of the final decisions involved in their work.”<sup>5</sup>

The majority concludes that the RD erred because “the record establishes that the individuals in these positions exercise significant discretion when performing their duties.”<sup>6</sup> But the majority fails to account for the RD's detailed factual findings supporting her conclusions to the contrary.

For example, with respect to the Business Development Specialist position, the RD found that these employees “do not play a role in the development of . . . program guidelines, nor are they authorized to deviate from them.”<sup>7</sup> She further found that

they “do not perform risk analysis or underwriting functions” and “do not play a part in [the] final decision as to whether [customer] applications are approved.”<sup>8</sup> She made similar findings with respect to the Business Initiatives Specialist position,<sup>9</sup> the Business Development Specialist - Broker Relations position,<sup>10</sup> and the Senior Congressional Analyst position.<sup>11</sup>

The majority also concludes that employees occupying these positions satisfy the judgment requirement because the RD found that these employees “may be called upon for their advice and subject-matter expertise.”<sup>12</sup> But the RD, relying on Authority precedent, properly weighed this factor against her finding that these employees generally do not implement their recommendations or have the authority to make the final decisions regarding their work.<sup>13</sup>

The RD similarly found that employees in the Senior Credit Review Officer and IT Specialist positions do not exercise independent discretion and authority when administering a contract because the authority to “sign contracts, finalize invoices, and end contract obligations” rests with their Contracting Officer (CO).<sup>14</sup> She further found that the IT Specialists rely upon templates and Agency policies when drafting documents, which are then submitted for review and approval by the CO,<sup>15</sup> and that the IT Specialists “remain in regular, daily communication with their supervisors and rely upon their

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.* at 8 (finding that these employees “are not permitted to deviate from content and requirements” of the specific products they are marketing; have “no role in deciding whether or not an exporter's application ultimately gets approved”; and “generally . . . are not the entity responsible for making the final decision [f]or implementing” their recommendations).

<sup>10</sup> *Id.* at 9-10 (finding that these employees do not have authority “to make the ultimate decision” regarding their recommendations involving commission structures, and provide materials they develop to managers for review, including recommendations regarding changes to insurance products).

<sup>11</sup> *Id.* at 15 (finding that these employees submit materials they develop for supervisory approval and that they meet with their supervisors “at least once or twice a day”).

<sup>12</sup> Majority at 9 nn.46-47 (citing RD's Decision at 21; *U.S. Dep't of the Navy, Naval Air Station, Joint Reserves Base, New Orleans, La.*, 67 FLRA 422, 423 (2014) (*Naval Air Station*)).

<sup>13</sup> RD's Decision at 21 (citing *U.S. DHS, Bureau of CBP*, 61 FLRA 485, 493 (2006)) (concluding that the “weight of the evidence shows that employees in these positions do not exercise the level of discretion required for the position to be deemed professional under the Statute”).

<sup>14</sup> *Id.* at 22; *see also id.* at 12.

<sup>15</sup> *Id.* at 12.

<sup>1</sup> 5 U.S.C. § 7103(a)(15)(A)(ii).

<sup>2</sup> RD's Decision at 21.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Majority at 8.

<sup>7</sup> RD's Decision at 5.

supervisors' guidance and assistance."<sup>16</sup> She similarly found that the Senior Credit Review Officers are required to submit their reports and recommendations to their supervisors for review.<sup>17</sup> These findings all support the RD's conclusion that these positions do not satisfy the judgment requirement under the Statute.

Citing our decision in *U.S. Dep't of the Navy, Naval Air Station Joint Reserves Base, New Orleans, Louisiana (Naval Air Station)*,<sup>18</sup> the majority concludes that these findings are insufficient because regular communication with supervisors, "by itself, does not disqualify these positions from being professional."<sup>19</sup> But in *Naval Air Station*, we simply held that the mere fact that an employee brings "issues/problems to her immediate supervisor" does not refute the RD's conclusion that the employee otherwise met the judgment requirement.<sup>20</sup> And here, as noted, the RD found that these employees do not satisfy the judgment requirement because, among other reasons, the final decisions regarding their work product are generally made by senior managers.

In sum, the majority's conclusion that the RD erred as a matter of law with respect to her application of the judgment requirement amounts to little more than a challenge to the "weight, importance, or significance ascribed by the RD to various factual matters in the record."<sup>21</sup> Accordingly, I would adopt the RD's findings and conclusions on this issue, and would deny the Agency's application for review on these grounds.

I would also uphold the RD's conclusion that the employees occupying the positions of Business Development Specialist, Business Development Specialist - Broker Relations, Business Initiatives Specialist, Senior Business Development Specialist, and Senior Congressional Analyst do not satisfy the knowledge requirement specified in § 7103(a)(15)(A)(i)

of the Statute.<sup>22</sup> In support of this conclusion, the RD found that – while employees in these positions possessed college degrees, and some had advanced education in their fields of study – the record "fail[ed] to demonstrate that such degrees or education are necessary for the work of the position[s]."<sup>23</sup>

The majority concludes that the RD's application of the knowledge requirement is inconsistent with the Authority's decisions in *U.S. Dep't of the Treasury, BEP, Washington, D.C. (BEP)*<sup>24</sup> and *Naval Air Station* because she failed to "consider how the educational qualifications of the employees occupying those positions relate to the positions' duties."<sup>25</sup> But, as the RD properly concluded, both decisions are distinguishable.

Unlike *BEP*, where the Authority found that the knowledge requirement was met by the requirements set forth in the OPM standards for the positions' job series,<sup>26</sup> the RD found "no evidence that the vacancy announcements for the positions or their relevant OPM standards require education and experience, or even just experience, equivalent to a college degree or advanced course of study."<sup>27</sup> And also unlike *BEP*, where the Authority found the knowledge requirement was met because the agency required incumbents to obtain education certificates as a condition of continued employment,<sup>28</sup> the RD found "no record evidence of the Agency having *or enforcing* any education or certification requirements for the positions."<sup>29</sup>

The majority does not take issue with the RD's factual findings on these points, but instead summarily concludes that the knowledge requirement was met because "[e]ach of the positions requires knowledge of, and the ability to communicate about, the types of complex financial transactions that the Agency facilitates[.]"<sup>30</sup> Yet the duties the majority relies upon for this conclusion<sup>31</sup> simply reflect that these employees interact and communicate with the Agency's constituents

<sup>16</sup> *Id.* at 22. The RD also found that, when testing new IT systems, the IT Specialists "do not decide the type of tests to run or when the tests are to be conducted as those details are dictated by [National Institute of Standards and Technology] guidelines." *Id.* at 13.

<sup>17</sup> *Id.* at 22.

<sup>18</sup> 67 FLRA at 422.

<sup>19</sup> Majority at 10 (citing *Naval Air Station*, 67 FLRA at 426).

<sup>20</sup> 67 FLRA at 426.

<sup>21</sup> *U.S. Dep't of the Army, U.S. Army Corps of Eng'rs, Logistics Activity Ctr., Millington, Tenn.*, 69 FLRA 436, 439 (2016) ("While restating Authority precedent in arguing that the RD failed to apply established law, the Agency largely challenges the factual findings of the RD, more so than her application of established law, by selectively presenting testimony and exhibits from the record favorable to its position.").

<sup>22</sup> 5 U.S.C. § 7103(a)(15)(A)(i).

<sup>23</sup> RD's Decision at 21.

<sup>24</sup> 70 FLRA 359 (2018) (Member DuBester dissenting).

<sup>25</sup> Majority at 11.

<sup>26</sup> *BEP*, 70 FLRA at 361-62.

<sup>27</sup> RD's Decision at 21. This finding also distinguishes the instant case from *Naval Air Station*, where the Authority upheld the RD's determination that the incumbent's positions satisfied the knowledge requirement because their position descriptions required either a college degree or a combination of education and experience equivalent to a "four-year course of study." *Naval Air Station*, 67 FLRA at 425.

<sup>28</sup> *BEP*, 70 FLRA at 362-63.

<sup>29</sup> RD's Decision at 21 (emphasis added).

<sup>30</sup> Majority at 11-12.

<sup>31</sup> *Id.* at 12 n.69.

and contractors regarding the Agency's mission. The majority provides no authority for its conclusion that these duties require "knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning," as required by the Statute.<sup>32</sup>

Moreover, the majority's reliance upon National Labor Relations Board (NLRB) precedent<sup>33</sup> to conclude that the knowledge requirement is met because employees occupying some of the positions testified that they possessed advanced degrees not only ignores Authority precedent – which has consistently examined whether the work done by the employees *requires* the requisite knowledge – but also disregards subsequent NLRB case law cautioning against broad application of this precedent.<sup>34</sup>

Finally, I dissent from the majority's decision to direct the RD to conduct an election to determine whether the employees in the bargaining unit desire to be represented by the Union. Here, the pertinent unit certification was issued on October 1, 1998, describing the unit as including "[a]ll non-professional employees GS and Wage Grade employees employed by the [Agency] in the Washington[,] D.C. metropolitan area."<sup>35</sup> When this certification was issued, the question concerning representation was *resolved* with respect to employees falling within its terms. By filing the unit clarification petition before us, the Union simply sought to clarify the status of employees that the Union alleges were improperly excluded by the Agency from the certified bargaining unit.

As the majority recognizes, the Authority has not previously required an election to be conducted where a union has petitioned to clarify the bargaining-unit status of employees without a triggering event such as an agency reorganization, transfer, or consolidation.<sup>36</sup> The Authority has properly limited application of this

"majority rule" to these narrow circumstances because the purpose of a unit clarification petition is to "clarify, *consistent with the parties' intent*, inclusions or exclusions from a unit *after the basic question of representation has been resolved*."<sup>37</sup> And because a triggering event has not occurred, based on long-standing precedent, there is no need for an election. To hold otherwise would allow agencies to force an election in a *previously certified unit* by improperly excluding employees from the bargaining unit subsequent to its certification.<sup>38</sup>

The case before us is clearly distinguishable from the NLRB case cited by the majority in support of its conclusion.<sup>39</sup> In *Renaissance Center Partnership*, the NLRB concluded that a consolidation of two groups of employees had "completely obscured the separate identity of the certified bargaining unit which existed prior to the consolidation."<sup>40</sup> Finding that the certified unit was no longer appropriate, the Board directed an election because a "question concerning representation exists in the overall unit."<sup>41</sup>

Here, however, the Agency stipulated that employees occupying twenty of the positions in dispute were improperly excluded from the bargaining unit.<sup>42</sup> In my view, contrary to the majority's, this action does not "call into question" the Union's majority support, even where the number of employees mistakenly excluded exceeds the number of employees currently in the unit. Accordingly, I disagree with the majority's direction to the RD to conduct an election based upon the parties' stipulation.

<sup>32</sup> 5 U.S.C. § 7103(a)(15)(A)(i).

<sup>33</sup> Majority at 12 n.75 (citing *W. Elec. Co.*, 126 NLRB 1346, 1349 (1960) (*Western Electric*)).

<sup>34</sup> See, e.g., *Express-News Corp.*, 223 NLRB 627, 630 (1976) (refusing to apply *Western Electric* because the exclusion of professional employees under the National Labor Relations Act "was meant to apply to small and narrow classes of employees").

<sup>35</sup> Application, Attach., Authority Ex. 1(b), RD's Notice of Unit Clarification Pet. at 2; 4; RD's Decision at 2.

<sup>36</sup> Majority at 14; see, e.g., *SSA Dist. Office, Valdosta, Ga.*, 52 FLRA 1084, 1090-91 (1997) ("[t]he Authority and the [NLRB] have found a question concerning representation, and therefore directed an election, in only a limited number of situations in cases where successorship or accretion are otherwise appropriate").

<sup>37</sup> *Fed. Trade Comm'n*, 35 FLRA 576, 583 (1990) (emphasis added).

<sup>38</sup> On this point, I note the Union's allegation that it filed its petition "due to the Agency's deliberate scheme of excluding employees from the bargaining unit in its attempts to get rid of the Union." Opp'n at 4. And the Agency itself states that it has "effectively . . . narrowed [the fundamental nature of the unit] from 'all non-professionals' of the [Agency]" to an "'administrative' legacy unit" consisting of only twenty employees. Application at 9.

<sup>39</sup> See Majority at 14 n.85 (citing *Renaissance Ctr. P'ship*, 239 NLRB 1247, 1247-48 (1979)).

<sup>40</sup> 239 NLRB at 1248.

<sup>41</sup> *Id.*

<sup>42</sup> Application, Attach., Tr. at 10; see also Application at 3.

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL LABOR RELATIONS  
AUTHORITY  
WASHINGTON REGIONAL OFFICE

EXPORT-IMPORT BANK OF THE UNITED STATES  
(Agency)

and

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

WA-RP-17-0059

DECISION AND ORDER

**I. Statement of the Case**

The American Federation of Government Employees, AFL-CIO (AFGE or Union) filed the initial petition for this case on September 20, 2017, to clarify the bargaining unit status of certain positions at that the Export-Import Bank of the United States (EXIM or Agency), in the Washington, DC Metropolitan Area. The Union filed a first amended petition and a second amended petition on January 23, 2018. The second amended petition listed 35 positions that the Union sought to clarify and include in its existing bargaining unit of nonprofessional employees.

An Authority Hearing Officer conducted a hearing on this matter from January 29 to January 30, 2018. The issue at the hearing was whether certain positions at the Agency should be clarified as being included in the existing bargaining unit represented by the Union or should be clarified as being excluded from that unit under section 7103(a)(15) of the Federal Service Labor-Management Relations Statute (Statute). Prior to the hearing, the parties narrowed the list of disputed positions and stipulated to their agreement on the record. Accordingly, the testimony and evidence obtained at hearing addressed the seven positions that remained in dispute, namely the positions of Business Development Specialist, Business Development Specialist - Broker Relations, Business Initiatives Specialist, Senior Business Development Specialist, Senior Congressional Analyst, Information Technology Specialist (GS-14), and Senior Credit Review Officer. The Hearing Officer’s rulings were not prejudicial to either party, and I hereby affirm them.

After consideration of the entire record, including the parties’ post-hearing briefs, I have determined that the positions of Business Development Specialist, Business Development Specialist - Broker Relations, Business Initiatives Specialist, Senior Business Development Specialist, Senior Congressional Analyst, Information Technology Specialist (GS-14), and Senior Credit Review Officer are not professional within the meaning of section 7103(a)(15) of the Statute, and are included in the existing bargaining unit.

**II. Findings of Fact**

**A. The Bargaining Unit**

On October 1, 1998, in Case No. WA-RP-70096, the Authority certified AFGE as the exclusive representative of the following bargaining unit:

Included: All non-professional employees GS and Wage Grade employees employed by the Export-Import Bank of the United States in the Washington D.C. metropolitan area.

Excluded: All professional GS employees, managers, supervisors, confidential employees, temporary employees with an appointment of less than 90 days, and employees engaged in Federal personnel work in other than a purely clerical capacity.

**B. Overview of EXIM**

EXIM serves as the official export credit agency of the United States. The mission of the Agency is to create and maintain U.S. jobs by assisting in financing the export of U.S. goods and services to international markets. To achieve this mission, EXIM has programs or products that it markets to potential exporters in the U.S. as export finance solutions. These products include: (1) working capital loan guarantees for lenders that make loans to U.S. companies so they can purchase materials or produce U.S. goods and services for export; (2) short-term and medium-term export credit insurance which, among other things, protects U.S. exporters against foreign buyer nonpayment; and (3) buyer financing that supports lender loans to foreign buyers for purchasing U.S. capital equipment and services. When

customers apply for an EXIM product, it is the Agency's Board of Directors or other individuals with delegated authority who determine whether EXIM will approve the application. In the course of carrying out its mission, EXIM employees interact with and serve numerous external partners and customers within the exporting community including: U.S. exporters; foreign borrowers; brokers; lenders; international buyers; and government stakeholders. Generally, EXIM employees promote these products to external customers and identify and develop business opportunities for EXIM. Other EXIM employees perform work for the Agency to support those carrying out its mission to finance U.S. exporting. Approximately eighty percent of EXIM employees are located in the Agency's headquarters in Washington, DC. The remaining employees work out of the Agency's regional offices which are located throughout the country.

With respect to vacancy announcements and position descriptions, the Agency determines a position's educational requirements using OPM's qualification standards for the position's occupational series. While the Agency always includes information about OPM education requirements in its vacancy announcements, it does not include them on its position descriptions.

### C. Senior Business Development Specialist

EXIM Senior Business Development Specialist Craig O' Connor provided representative testimony regarding the duties and requirements of his position. O' Connor is the only employee currently occupying the position of Senior Business Development Specialist, and his position is located within EXIM's Project Finance Division. This division is divided into three broad categories, Power, Technology, and Oil/Gas Commodities. O' Connor's industry expertise is in environmental technologies and, more specifically, alternative energy, energy efficiency and storage, and other similar technologies. The Project Finance Division focuses on certain international markets and it deals with larger, more complex transactions than other offices at the Agency. As a result, the bulk of O' Connor's work involves EXIM's medium and long-term loan guarantees.

Generally speaking, as a Senior Business Development Specialist, O' Connor's primary duties include developing a network of contacts in the exporting community, marketing EXIM and its products, and identifying and developing business opportunities within his sector of environmental technologies and renewable energy. The other primary duty of the position is to formulate EXIM's strategy for growing its business in the designated sector.

In his business development role, O' Connor engages with project developers and exporters about their

proposed projects, their financial needs, and EXIM finance products. The Senior Business Development Specialists' goal is to help the company to make the decision to purchase U.S. goods and services and, ultimately, to submit a successful application for EXIM financing. To do so, O' Connor offers guidance about what issues the project sponsor should consider before applying for an EXIM product and what the project sponsor should expect during EXIM's process after the application has been submitted. The Senior Business Development Specialist is responsible for conducting an initial, high-level risk assessment of the exporter, its business, and its proposed project. Before recommending that the exporter submit an application, O' Connor shares his evaluation of the merits of the project and the likelihood that an application for EXIM financing would be approved. According to O' Connor, the amount of time or effort that it takes to identify a business opportunity or to assist a project developer to prepare for an application varies depending on the facts and circumstances of the transaction and the entities involved. Once the application has been submitted, the Senior Business Development Specialist's role is essentially over with respect to that transaction.

Beyond working with and advising potential EXIM customers, the position of Senior Business Development Specialist also involves work focused on EXIM strategy. O' Connor works with his division to formulate EXIM's overall strategy for business development within the environmental technologies sector. O' Connor researches, attends conferences, and engages in professional networking to identify leading players and emerging markets. He also develops account plans with U.S. exporting companies within his sector.

Each year, the Agency sets specific performance goals that are used as a metric for evaluating the Senior Business Development Specialists' performance. Generally, O' Connor's performance goals are to identify new opportunities for the Agency to pursue and to prepare account plans for leading developers. O' Connor further testified that the overarching goal or output of his position is to grow EXIM's business within his assigned sector. Because the output of his work is, to a certain degree, beyond his control, O' Connor testified that he focuses on the measurable steps that he takes to identify projects and promote the Agency.

At hearing, O' Connor characterized the day-to-day activities of his position as highly varied. O' Connor testified that he is subject to a fair amount of oversight in his position. At a minimum, he checks in with his supervisor on a weekly basis, but oftentimes these check-ins occur daily. However, O' Connor has discretion when it comes to setting his own schedule, prioritizing his daily work and determining what

approach to use when engaging in outreach and meeting with entities in the industry. Although O'Connor must submit travel requests to his supervisor, he testified that his requests are almost always granted.

A review of the position description shows that the position of Senior Business Development Specialist is classified as a 1101 job series, but the document does not list a formal education or degree requirement. With respect to requisite knowledge, the position description indicates that the incumbent travels to maintain knowledge of economic, financial, and political conditions throughout the world. It further indicates that the incumbent applies exceptional business judgement based on knowledge and experience of banking and corporate business practices in the field of foreign trade and international finance.

O'Connor possesses an undergraduate degree in Finance and a Master's in Business Administration (MBA) in International Business. As for his occupational background, O'Connor has worked for the Agency for the past 25 years. Prior to accepting his current position as a Senior Business Development Specialist, he worked for EXIM as a Loan Officer in the Insurance Division and later as an Environmental Liaison Officer. As a Loan Officer, O'Connor analyzed financial transactions in the Middle East and North Africa. Later, in his position as an Environmental Liaison Officer, he was responsible for marketing EXIM products.

Performing the work of a Senior Business Development Specialist requires knowledge in finance and international business. According to O'Connor, without his educational background in these areas, he would not be able to understand his job. O'Connor credited his degrees as providing his foundation of knowledge in business and finance concepts, and his testimony emphasized that he further developed and refined this foundational knowledge through his work experiences, particularly his time as a Loan Officer. O'Connor testified that he does not believe he could succeed in this position without his background working in credit and his understanding of how the industry works. However, O'Connor further testified that the job involves continuously learning and developing as no one person comes into the position knowing everything.

#### **D. Business Development Specialist**

For the Business Development Specialist position at EXIM's Headquarters, the parties agreed to representative testimony from Supervisor Tammy Maxwell and employees Reza Nikfarjam and Aerek Stephens. The various Business Development Specialists who work in EXIM's regional offices across the country are not at issue here. Additionally, the parties agreed that

the representative testimony from Nikfarjam and Stephens does not apply to the position of Business Development Specialist in the Broker Relations Unit. Separate testimony for Business Development Specialist - Broker Relations was provided at hearing, and the position is addressed in a subsequent section of this decision.

Business Development Specialists are located in various offices at EXIM. Several work within the Minority and Women-Owned Business Division (MWOB) in the Office of Small Business. Stephens is a Business Development Specialist in the Regional Export Promotion Program (REPP), which falls within MWOB, and Maxwell, who worked as a Business Development Specialist in MWOB for approximately 13 years, is now a supervisor in the group and is responsible for hiring people into the position. Other Business Development Specialists, such as Nikfarjam work in the Project Finance Division within the Office of Board Authorized Finance. Although there are some variations in the functions and the audiences to which these different Business Development Specialists cater, employees in this position perform substantially similar duties.

Generally, employees in the Business Development Specialist position are responsible for serving as the face of the Agency for its external customers, developing a network of relationships within the exporting public, identifying potential EXIM customers and marketing EXIM products to them, assessing the viability of the customer's proposed transaction, and recommending appropriate courses of action. The goal is that these efforts will lead to EXIM customers successfully applying for and receiving EXIM financial products.

Business Development Specialists are expected to meet or exceed specific sales goals resulting in bank authorizations to purchase EXIM products. When evaluating their performance, the Agency considers the number of new accounts or prospective customers that the Business Development Specialist generates and how many of those contacts translate into applications for EXIM products. The amount of time and level of engagement necessary to meet these goals may vary based on the customer or the situation.

One aspect of the Business Development Specialist position involves outreach and networking with the exporting community in order to spread awareness about EXIM's services and products. Business Development Specialists leverage relationships in this network for referrals and assistance identifying possible leads as to new business opportunities. Business Development Specialists have discretion in how

they decide how to go about expanding this network and communicating with potential clients as there is no standard approach.

After identifying a potential customer, the primary role of the Business Development Specialists is to educate them about EXIM and market EXIM's products as trade finance solutions. To do so, Business Development Specialists are required to know and understand the content and requirements of each of the EXIM products they deal with. Each of these EXIM products has program guidelines with respect to benefits, coverage, and costs. Business Development Specialists do not play a role in the development of these program guidelines, nor are they authorized to deviate from them. The Agency provides Business Development Specialists with informational marketing materials to use and refer to when explaining EXIM products. Some Business Development Specialists customize these materials or develop their own, which must be approved by management. Using these materials, as well as his or her knowledge of the industry, the Business Development Specialist engages with exporters or organizations about how EXIM products and programs may address their needs. From there, the Business Development Specialist is responsible for conducting an initial assessment and, based on that assessment, offering a recommendation as to the customer's appropriate course of action.

If and when these efforts result in the customer applying for an EXIM product or program, the transaction is handed off to an underwriter or loan officer. The Business Development Specialists may remain involved to answer questions but, generally speaking, Business Development Specialists do not perform risk analysis or underwriting functions. Although Nikfarjam testified that he has been assigned some underwriting responsibilities in his position in the Project Finance Division, he confirmed on the record that this was due to his unique background and experience in credit and that underwriting is not an official task required of others in the Business Development Specialist position. Ultimately, Business Development Specialists do not play a part in final decision as to whether applications are approved.

For the most part, Business Development Specialist work independently to perform the duties of their position. The types of activities and responsibilities required of the position vary day-to-day and Business Development Specialists exercise discretion when it comes to arranging and adjusting their schedules and prioritizing their daily work. When deciding whether to attend a specific event or to travel to a certain customer, Business Development Specialists generally discuss the request with a Supervisor and seek approval,

since allocating budget for travel must be authorized by senior management.

While many Business Development Specialists may possess a bachelor's or advanced degree, the Agency does not require Business Development Specialists to have a college degree as a condition of hiring or for continued employment. Neither the vacancy announcement nor the position description for the Business Development Specialist specifies a formal education or degree requirement. The vacancy announcement does, however, list specialized experience as a condition of employment, indicating that such experience must be documented in an applicant's resume. In order to qualify for the position, new hires must have one year of specialized experience in areas such as: selling and promoting organizational products and services; assisting in the development of communication plans and digital outreach campaigns; researching consumer and market data; and providing guidance to the exporting community on finance regulations and limitations. The vacancy announcement further states that education cannot be substituted for experience at the GS-12 & GS-13 levels. The Business Development Specialist job series classification is 1101. The vacancy announcement notes that additional information regarding qualification requirements for the position may be found in OPM's General Schedule Qualifications Standards.

The position description for Business Development Specialists also includes a section listing knowledge required by the position, which includes areas such as: knowledge of the theories, dynamics, and factors which underlie business development activities; in-depth knowledge of EXIM policies, regulations, precedents; specific knowledge of the area or category of emerging exporters assigned; extensive knowledge of EXIM's services, programs, objectives, sequence of key loan processing events and milestones, and methods of assessing the process with respect to an assigned area; thorough knowledge of the roles, responsibilities, and programs of government agencies, private sector interests, and international organizations who deal with exporting issues; knowledge of export trade and commercial banking practices; and, knowledge of trade finance and credit as they relate to all EXIM programs.

Maxwell, who worked as a Business Development Specialist prior to accepting her current position of supervisor, obtained a 2-year degree in accounting, a 4-year degree in Psychology, and completed some coursework toward an MBA prior to assuming the position. According to Maxwell, the position requires some type of background or advanced knowledge in the areas of finance or business. When



hiring for the position, Maxwell looks for applicants with experience in international finance or banking. During her time with the Agency, she has found that employees need such experience in order to be able to perform the particular duties of a Business Development Specialist. As for Stephens and Nikfarjam, Stephens has a Bachelor of Science in Business Management while Nikfarjam has earned a Bachelor's degree in Economics with a minor in Finance, as well as a master's degree in Applied Economics. Stephens testified that, without his bachelor's degree in Business Management, he does not believe that he would be able to effectively perform the duties of his position. Nikfarjam testified that most of his sector specific knowledge on the space industry and his knowledge of EXIM's products and guidelines he learned while on the job. After starting in his position, he was able gain this knowledge through his work, by attending conferences, and by reviewing previous deals at the Agency.

#### **E. Business Initiatives Specialist**

EXIM Business Initiatives Specialist Benjamin Todd provided representative testimony regarding the duties and requirements of his position, which is located in EXIM's Office of Board Authorized Finance. Broadly speaking, Business Initiatives Specialists are assigned to a specific geographic region and tasked with networking, marketing EXIM products, and identifying potentially viable transactions within that region. Additionally, the Business Initiatives Specialist serves as the internal expert on EXIM's current portfolio of businesses the region. For instance, Todd is assigned to EXIM's portfolio in Africa.

An important aspect of the Business Initiatives Specialist position is outreach and customer assistance. Business Initiatives Specialists are required to develop and maintain a network of contacts in their assigned region in order to identify business opportunities there. Business Initiatives Specialists communicate with this network, schedule trips and meetings, attend conferences, give presentations, and participate in panels in an effort to identify potential business opportunities. For Todd, this network includes U.S. exporters, African government officials, and leaders from Africa's corporate and banking sectors. While in the position, Todd has traveled to Africa approximately ten times, met with six or seven Presidents of different African countries, and regularly meets with various government officials at the ministerial level, primarily Ministers of Finance. Todd assists the EXIM Chairman or Vice-Chairman in meetings and conducts some meetings on his own. According to Todd, someone with only a general education would not be able to participate in the types of discussions he has with these officials.

After connecting with a U.S. exporter interested in exporting to Africa, Todd and the exporter discuss potential business opportunities in the region. Todd gathers information related to the exporter and the proposed transaction. Because Business Initiatives Specialists are not permitted to deviate from content and requirements of the specific EXIM products they are marketing, Todd uses the information to assess whether the exporter meets EXIM's requirements to qualify for an EXIM product and makes a recommendation as to what, if any, EXIM products might be available to them. If and when an exporter submits its application, the matter is assigned to a loan officer. Although the Business Initiatives Specialist may continue to work with the loan officer during the application process, the Business Initiatives Specialist has no role in deciding whether or not an exporter's application ultimately gets approved.

In addition to the position's duties involving the exporting public, Business Initiatives Specialists are called upon to advise on matters related to his or her region and portfolio. In this capacity, Todd fields internal inquiries related to his or region and helps to formulate EXIM strategy for targeting specific areas where EXIM products may be of value in Africa. In order to identify and understand these business opportunities, Todd researches and reviews literature related to his region, attends conferences and consults with colleagues. According to Todd, offering advice on accessing markets and financing transactions in Africa requires a working knowledge of the banking sectors, political systems, and public procurement processes of the fifty-four individual African countries in his region. And risk analysis and financial analysis are essential parts of the work. While Business Initiatives Specialists may offer recommendations and advice, generally they are not the entity responsible for making the final decision or implementing that recommendation.

According to Todd, there is no set schedule for Business Initiatives Specialists, and no one day is the same with respect to his work for EXIM. Some days his work may be focused on EXIM strategy, while other days he may spend his time tending to specific clients and their needs. Todd indicated that the position requires that he balance and prioritize his own schedule. While supervisors manage work at a macro level, Business Initiatives Specialists are given latitude when setting priorities and determining who to meet with and what opportunities to pursue.

Todd testified that it is difficult to measure the outputs for his position or to properly evaluate his performance based on the number of closed transactions since they are contingent on numerous external factors. Instead, Todd testified that the Agency usually measures

his performance by his inputs, namely the number of outreach events that he attends, the number of contacts he has made, and the number of different transactions he has been involved with.

The position of Business Initiatives Specialist is classified as a 1101 job series, according to its corresponding position description. While many Business Initiatives Specialists may possess a bachelor's or advanced degree, there is no such education or degree requirement listed on the position description. However, the position description does state that the incumbent maintains a current and in-depth knowledge of all programs, structures, EXIM policies, and market changes necessary to fulfill the mission. At hearing, Todd recalled that the position required a master's degree or equivalent experience at the time he applied with EXIM.

As to Todd's educational background, he possesses a bachelor's degree in Economics with a minor in Models and Data and a master's degree in Science and Public Policy and Management. Todd testified that, due to the coursework he completed for his bachelor's and master's degrees, he came to the Agency with a broad understanding of corporate finance and financial analysis. He also indicated that he knew a bit about export and trade finance before starting as a Business Initiatives Specialist for EXIM. According to Todd, the skills and knowledge he obtained from his degree programs are directly related to, and necessary for, his work at EXIM. Todd indicated that he essentially applies that knowledge to the facts of different African countries when assessing potential transactions. However, Todd testified that it was not until after he started working for the Agency that he acquired his knowledge of the specific EXIM products and policies that he deals with in his position. With respect to Todd's employment experience, before coming to EXIM, Todd worked in the budget office for the Federal Aviation Administration. There, he worked in the finance and investment portion of the budget office conducting cost benefit analyses. Prior to that, Todd served as a Peace Corps volunteer Southern Africa. His time with the Peace Corp sparked his interest in the region and led him to further his studies of Africa while pursuing his master's degree.

#### **F. Business Development Specialist - Broker Relations**

The position of Business Development Specialist in the Broker Relations Unit of EXIM's Office of Small Business, Export Credit Insurance Division is occupied by Edward Coppola. He is the only EXIM employee performing the work of his position. Because he performs entirely different functions than the other Business Development Specialists at issue, he provided testimony regarding his educational background

and the duties he performs. Accordingly, Coppola's position, that of Business Development Specialist - Broker Relations, will be addressed and considered separately from the other Business Development Specialists at issue.

In his position as Business Development Specialist - Broker Relations, Coppola is responsible for broker strategy at EXIM and serves as EXIM's subject matter expert on product development as it relates to export credit insurance. Broadly speaking, Coppola described his role as establishing positive direct working relationships with brokers and, although he has some duties related to product development, Coppola dedicates the majority of his time and resources to his work supporting the Agency's broker relations.

In his current position, Coppola is charged with creating and implementing the Agency's broker strategy, and he has been permitted the flexibility and independence to determine his own agenda for doing so. One of Coppola's responsibilities is to develop and coordinate projects and initiatives to improve the Agency's broker relations and expand its broker outreach. For example, Coppola is currently reviewing the Agency's broker commission structure to see if there are opportunities for the Agency to be more generous. Based on this review, Coppola formulate his recommendation as to how the commission structure should be revised. Although Coppola will present his recommendations to his supervisor for consideration, he does not have the authority to make the ultimate decision as to whether the structure will be revised. Another strategic initiative that Coppola engages with involves broker analytics. By studying and manipulating historical data on broker performance, Coppola identifies areas where EXIM can improve how it relates to, segments, or incentivizes brokers.

In addition to studying EXIM's broker strategy, Coppola's job as the Business Development Specialist - Broker Relations also involves engaging with the brokers and managing the Agency's relationships with the broker community. In this role, Coppola provides brokers with tools and resources to aid them in their work with the Agency, including training materials, user guides, webinars, quarterly webcasts, and newsletters. Although he looks to others in the Agency for assistance when it comes to designing or editing these resources, Coppola is responsible for writing, developing, and presenting all content. Prior to sharing these materials with brokers, Coppola provides them to his manager for review. Coppola frequently fields calls and questions from brokers about challenges concerning some aspect of their working with the Agency. Oftentimes, Coppola refers them to information on the website or to

the user guides and training resources that he created specifically for them.

Beyond broker strategy and broker relations, the other primary function of Coppola's position is in product development, where Coppola serves as the subject-matter expert for export credit insurance at EXIM. Coppola sits on the Agency's small business committee responsible for vetting early proposals of new products for further review, and he uses his understanding of mathematics and economics to develop pricing models. When the Agency is considering making a change to its export credit insurance products, Coppola participates in discussions, but any final determinations are made by senior management, not by Coppola.

As Coppola testified at hearing, there is no standard day for him as a Business Development Specialist - Broker Relations. Rather, his schedule and the tasks he performs vary day-to-day depending on what project or initiative he is currently working on. Coppola does have weekly meetings with his supervisor and, due to the nature of their work, they stay regular communication. Coppola also confirmed that his supervisor allows him a fair amount of discretion and independence when it comes to how he structures his projects, his schedule, and his workload. This discretion began when Coppola was hired as the Business Development Specialist - Broker Relations, and was permitted to develop his own list of priorities and initiatives for the position. This document was reviewed by his managers and has served as Coppola's guidance when carrying out his duties. At hearing, Coppola indicated that the Agency has not formalized the performance requirements of his position for the current fiscal year, but that he was currently working with his supervisor to determine his goals, which he expects will remain fairly general.

According to Coppola's position description, the Business Development Specialist -Broker Relations position is classified as a 1101 job series at the GS-14 level. The position description also includes lists knowledge required by the position, including knowledge of: EXIM products and services; small business and middle market landscape; trade finance needs and products; marketing; and the economics of small business transactions. However, there is no mention of a formal education or degree requirement in the position description.

Prior to assuming his current position with EXIM, Coppola earned a bachelor's degree in International Relations as well as an MBA. As for his previous work experience, Coppola worked as a Claims Officer in EXIM's finance department, held positions at the Overseas Private Investment Corporation,

the Multilateral Guarantee Agency of the World Bank, and the Zurich Insurance Company, and did some consulting work. Coppola testified that his educational and occupational backgrounds are closely related to the projects and initiatives that he works on now as a Business Development Specialist - Broker Relations. At hearing, Coppola referred to his MBA as an entry card for working in his industry where, according to Coppola, the majority of people have MBAs or graduate degrees in areas such as International Relations and International Business. In his MBA program, Coppola specialized in International Business and gained a comprehensive overview of business and its interrelated concepts. According to Coppola, he started developing his base of knowledge in export credit insurance during his time as a Claims Officer at EXIM, a position he held after obtaining his MBA. He continued to work with matters related to export credit insurance in his subsequent jobs before returning to EXIM for his current position in the Broker Relations Unit.

#### **G. Information Technology Specialist (GS-14)**

Representative testimony for the position of Information Technology (IT) Specialist (GS-14) was provided by Chief Information Officer Howard Spira and IT Specialists Muhammad Iqbal, Catherine Gallagher and Lin Zhou. Although EXIM also employs IT Specialists at lower General Schedule (GS) levels, only those IT Specialists at the GS-14 level are at issue here. Accordingly, for purposes of this decision, the term "IT Specialist" refers to IT Specialists at the GS-14 level.

IT Specialists work in one of five units within EXIM's Office of Management & Technology: IT Security & Systems Assurance, Systems Engineering, Data & Reporting, IT Governance & Administration, and Records Management. Each unit is responsible for different IT functions. For example, in the IT Security & Systems Assurance Unit, Zhou works to ensure that the EXIM's information system and security policies meet assurance requirements pursuant to relevant oversight bodies and are in compliance with applicable laws, regulations, and guidance on information security in the federal sector. Gallagher, who works in the IT Governance & Administrative Unit, oversees the IT work necessary to develop, support, and maintain EXIM's intranet and extranet websites. IT Specialists in the Systems Engineering Unit, such as Iqbal, are responsible for managing the development and operation of custom software and complex package software for the Agency.

Regardless of their unit, IT Specialists at EXIM perform substantially similar duties. All of the IT Specialists are certified Contracting Officer Representatives (CORs) and certified

Project Management Professionals (PMPs) pursuant to which they administer and manage contracts for IT projects performed by teams of contractors. Specifically, all IT Specialists draft performance work statements, assist with selecting the teams of contractors to hire, supervise the teams in their performance of the work for the projects, and evaluate the contractors' work product to ensure it adheres to the contract specifications. Furthermore, as Spira testified, there are certain workplace characteristics and capabilities that are universally expected of all IT Specialists irrespective of their assigned unit, such as leadership, management, attention to detail, oral communication, and problem solving.

All IT Specialists act as a Contracting Officer Representative (COR) in some capacity, with some managing more than one contract and more than one vendor. Gallagher, for example, currently manages three separate contracts with the same vendor and Iqbal testified that he oversees 28 contracting staff performing the work on his assigned projects. In order to serve as a COR, IT Specialists are required to have and maintain a COR certification which requires a significant amount of study and ongoing training. Recertification requires forty hours of approved education every two years. Depending on the level of contracts being administered, there are three types of COR certifications. According to Spira, the ongoing training for the COR certification takes approximately one week each year. IT Specialists also have their PMP certifications to serve as the project managers for the contracted IT projects that they oversee. To qualify to sit for the PMP exam, an individual must have a certain level of prior experience managing projects. Once a PMP certification has been obtained, an IT specialist is required to take sixty professional development units every three years in order to maintain the certification. According to Spira, there are no certifications that IT Specialists are required to have or to maintain in order to keep their job. For instance, he indicated that an IT Specialist could remain in the position even if he or she failed to maintain their COR certification and were unable to serve as a COR for their IT projects. However, Spira indicated that he has never had such a situation occur, and further noted that it would be problematic.

The fundamental job of the IT Specialist acting in his or her capacity as a COR on a project is to ensure adherence to the contract document entered into by EXIM and the vendor. When doing so, the IT Specialist takes steps to make sure that the contractor's work meets the contract requirements, the project is completed on time, and the team remains within budget. Each project also has an assigned Contracting Officer (CO) from the Agency's Office of Procurement whose responsibility it is to view and approve contract documents and sign off

on any contractual obligations on behalf of the Agency. However, the day-to-day administration and oversight of the contract is delegated to the COR. As the project manager, the IT Specialist is responsible for monitoring the schedules and work assignments for the contractors on his or her team. When doing so, IT Specialists must be able to provide managerial support as well as technical guidance related to the project. The IT Specialist must have a working knowledge of the IT functions being performed by the contractor. Using the parameters set out in the contract and the PWS, the IT Specialist evaluates the contractors' work product.

IT Specialists may draft several documents related to the contract, such as blanket purchase agreements, statements of work, task orders, and performance requirement specifications. When drafting such documents, IT Specialists use and refer to templates as well as EXIM policies and the Federal Acquisition Regulations (FAR). All official contracting documents and invoices are subject to review and approval by the CO. And it is the CO, not COR, with the discretion and authority to sign a contract or end a contract on behalf of the Agency. However, because the IT Specialist understands the technical requirements of the project and is familiar with the CO and the contractor, the CO usually accepts the IT Specialist's input and recommendations.

Zhou also testified that a primary component of her job in the IT Security and Systems Assurance Unit is to ensure security compliance, which involves making sure that, when new software is used, the system meets certain requirements set by National Institution of Standards and Technology (NIST). The duty of the IT Specialist is to oversee the contracting teams hired to help perform this work. Using guidelines, documents, and policies developed by NIST and OPM, Zhou and her team of contractors conduct tests on the new system. IT Specialists do not decide the type of tests to run or when the tests are to be conducted as those details are dictated by NIST guidelines. Zhou indicated that her unit may, on occasion, offer recommendations for changes to existing policies, but only on matters specifically related to IT security. She further noted that such recommendations are subject to higher-level review and approval.

Due to changing government mandates, updated technologies, and increased security risks, the types of projects and issues that IT Specialists deals with when performing the work of the position vary. According to Zhou, while certain aspects of the position may involve routine or cyclical work, most of the projects she is responsible for are constantly changing in response to the rapid developments in the field of security.

IT Specialists are trusted to manage their day-to-day schedules and they are responsible for making independent decisions when it comes to managing the work of their contracting teams. However, testimony shows that IT specialists are in regular communication with their supervisors, talking in-person, by phone, or by email on a daily basis about issues and updates with their projects. According to Gallagher, although she performs the majority of her work without direct supervision, she knows and relies upon the fact that her supervisor is there to offer assistance or intervention should issues arise. Zhou testified that she keeps her supervisor aware of her plans and, on a case-by-case basis, seeks out guidance before dedicating resources to a specific project. Both Zhou and Iqbal testified that their supervisors set their yearly performance goals, while Gallagher indicated that she collaborated with her supervisor to identify her goals and priorities. There are project-specific performance goals that IT Specialists are expected to achieve, such as the successful and timely completion of a particular contract.

The IT Specialist position is designated in the 2210 occupational series. OPM standards for the 2210 occupational series “allows eligibility through meeting either the requirements specified in the section titled Education or the requirements specified in the section titled Experience.” For a GS-11 or higher in the 2210 series, the education requirement is either a doctor of philosophy (Ph.D.) or equivalent doctoral degree, or “[three] full years of progressively higher level graduate education leading to a Ph.D. or equivalent doctoral degree.” Alternatively, applicants may also qualify for the position through IT-related experience. The standard sets out the “specialized experience” and the four job-related competencies that IT specialists must demonstrate under the experience requirement. For some IT Specialists, the position description explicitly states that the position is responsible for functioning as the COR on EXIM projects.

Spira, who participates in the hiring of IT Specialists, testified that the process is primarily focused on an applicant’s experience, and he confirmed that it is possible for an individual to be experienced in the IT arena without having a specific educational background. Spira explained that an applicant’s lack of a particular degree or educational background would not be a disqualifying criterion because it is not the exclusive way for applicants to demonstrate expertise. An applicant for the IT Specialist position may also qualify through demonstrated specialized experience pursuant to the vacancy announcement.

Spira also acknowledged that an employee will not succeed as an IT Specialist if he or she does not participate in regular, recurring training on the latest

technologies. Because it is important that IT Specialists stay current on developments and technologies in their field, the Agency considers an applicant’s certifications and employees engage in continual training. For instance, IT Specialists typically possess the Certified Information System Security Professional (CISSP) certification. Moreover, IT Specialists participate in eight hours of security training relevant to their area of specialty every year and are permitted to select the specific training that they feel is most relevant to their work for the Agency.

IT Specialists’ position descriptions also include a section listing the knowledge required by the position. For example, according to the position description for IT Specialists in the IT Security & Systems Assurance Unit, the position requires the application of expert knowledge in the areas of computer security program development, implementation, maintenance, and auditing. It also states that incumbents must possess expert level knowledge in design and systems programming to evaluate technical developments. As for the Systems Engineering Unit, the position description indicates, among other things, that the incumbent functions as a senior technical advisor on the delivery of software development and financial management accounting systems, that knowledge of the full release management and quality assurance processes is necessary, and that the incumbent must demonstrate knowledge of the full range of software development processes and procedures from requirements capture to audit system review.

Zhou, who has a bachelor’s degree in Law Economics and a master’s degree in Computer Science, testified that her master’s degree is connected to the knowledge necessary to perform her job. She indicated that the knowledge she obtained from her education is a tremendous help to her in her current position and that she does not think she would be able to do her job had she not pursued her master’s degree. Iqbal, who earned a bachelor’s degree in Computer Information Systems, stated that his education in computer science prepared him for a career in this field and directly relates to the duties that he performs for EXIM on a day-to-day basis. He noted that someone with a degree in an unrelated field, such as one of the social sciences, might be capable of performing the duties of an IT Specialist but would experience difficulties doing so. Gallagher indicated that her bachelor’s degree in Mathematics Computer Science provided her with a fundamental understanding of computers that serves as the grounding for the work she performs as an IT Specialist. However, she also provided testimony about how she acquired a significant amount of her knowledge about websites while on the job.

## H. Senior Congressional Analyst

EXIM Senior Congressional Analyst Ana McAlvanah and her supervisor, EXIM Vice President of Office of Congressional and Intergovernmental Affairs Kevin Warnke, provided representative testimony regarding the duties and requirements of the Senior Congressional Analyst position. Senior Congressional Analysts are located within EXIM's Office of Congressional and Intergovernmental Affairs. McAlvanah, who started in the position approximately one year ago, reports directly to Warnke and, on certain projects, to the office's Acting Senior Vice President, Natalia McGarry. Broadly speaking, the position of Senior Congressional Analyst works alongside those within the Office of Congressional and Intergovernmental Affairs to monitor, respond to, and assist with congressional and legislative matters directly affecting the Agency.

One aspect of the Senior Congressional Analyst position, as described by McAlvanah, involves outreach and networking on Capitol Hill. McAlvanah is responsible for building and maintaining relationships with congressional members or staff from congressional offices. Warnke testified that McAlvanah is expected to be able to operate fairly independently to initiate and respond to communications with congressional offices. McAlvanah provides information and updates to congressional offices in order to educate and spread awareness about EXIM and to further the Agency's legislative interests. McAlvanah develops informational materials and presentations to use for education and networking purposes. While Warnke reviews the materials, he generally does not make extensive edits. Another duty assigned to Senior Congressional Analysts is to respond to congressional inquiries and to internal inquiries about congressional matters. After receiving such an inquiry, McAlvanah works fairly independently when analyzing and formulating a response, which may involve conducting research and obtaining information EXIM officials. Although the Senior Congressional Analyst drafts and edits the response, Warnke testified that these responses go through an approval process.

Senior Congressional Specialists are also tasked with monitoring, and analyzing congressional activities which may affect or relate to EXIM policies and operations. When carrying out this duty, the Senior Congressional Specialist identifies and reviews potentially impactful legislation as well as related reports and hearing transcripts. Based on his or her review and analysis, the Senior Congressional Specialist produces memorandum summarizing possible effects on Agency activities and relays this information to senior management. According to McAlvanah, the

complexity of such analysis varies depending on how the legislation is drafted and how directly it relates to EXIM. Warnke testified that he looks to McAlvanah for her advice as to what steps the Agency should take in response to certain legislative matters.

At hearing, McAlvanah described her day-to-day activities and work as varied. Supervisors expect that Senior Congressional Specialists' work is timely, accurate, and complete, but Senior Congressional Specialists have discretion to prioritize among their various tasks. There is no standard amount of time required for each task performed by the Senior Congressional Analyst as the position involves both long-term projects and short-term projects of different varieties. Some projects are initiated by the Senior Congressional Analyst, while others are taken on per managements' guidance. With respect to supervision, in addition to weekly staff meetings, McAlvanah checks in with her supervisor at least once or twice a day. While she operates independently in certain matters, such as her interactions with congressional offices, McAlvanah may seek feedback from Warnke, McGarry, and others in her office should questions or issues arise.

According to the position description for the Senior Congressional Analyst position, the position is classified as GS-0301. There is no mention of a formal education or knowledge requirement in the relevant position description. McAlvanah testified that, when applying for the position, it was her understanding that the position required a bachelor's degree and experience working on Capitol Hill. McAlvanah earned a dual bachelor's degree in political science and environmental studies prior to working for EXIM. McAlvanah testified that the coursework required for that degree sparked her interest in working in politics and taught her baseline information that has helped throughout her career. McAlvanah also stated her belief that a bachelor's degree of some kind is required for her work as a Senior Congressional Analyst. Outside of her bachelor's degree, McAlvanah does not possess any additional degrees or professional certifications.

As for employment experience, McAlvanah spent eight years working on Capitol Hill for Senator Patty Murray where McAlvanah was responsible for handling policy issues in a variety of areas, including trade policy, and served as lead staff member on policy during EXIM's reauthorization in 2015. According to McAlvanah, the knowledge and understanding she gained from her work experiences on Capitol Hill, specifically with respect to how committees operate and the role of congressional leadership, are important when implementing her duties as a Senior Congressional Analyst. Warnke, who was involved in McAlvanah's hiring process, testified that experience working on

Capitol Hill and advanced knowledge of congressional processes are necessary for the position. According to McAlvanah, her work as a Senior Congressional Analyst requires some knowledge of international trade and finance and, while her background in trade is helpful in her current position, she has gained significantly more knowledge about finance since starting in her position with EXIM.

### **I. Senior Credit Review Officer**

EXIM Senior Credit Review Officer Juan Velez and EXIM Vice President for Credit Review and Compliance Walter Hill provided representative testimony regarding the duties and requirements of the Senior Credit Review Officer position. Velez reports directly to Hill, who oversees EXIM's Credit Review and Compliance Division. Those in the Credit Review and Compliance Division are tasked with detecting and mitigating fraud in the context of EXIM's deals and transactions. According to testimony from the hearing, the Senior Credit Review Officer position carries out this role in two primary ways: performing post-authorization program compliance reviews and serving as the project manager and COR in the Agency's review of the its local costs portfolio.

In his position as a Senior Credit Review Officer, Velez engages in post-authorization program compliance reviews, where a sampling of EXIM transactions are selected for in-depth review as their compliance with the policies and procedures. When conducting this independent verification, the Senior Credit Review Officer reaches out to the parties and reviews the documentation associated with the transaction to determine whether the transaction actually occurred as documented. During his investigation, Velez decides who to contact and what documents are needed for a specific review. Velez uses his understanding of how the deal is structured and the types of information that the documents should contain to identify irregularities in the paperwork and other indications of fraud. Velez reviews short-term, medium-term, and long-term transactions, which may differ in complexity and in the amount of time necessary to review. After completing the post-authorization review, the Senior Credit Review Officer prepares a report of his findings, which may include recommendations for improving practices and avoiding fraud moving forward, and submits the report to his or her supervisor. According to Velez, he does not use or refer to Agency policies, manuals, or any sort of checklist in these reviews. Instead, Velez testified that he mostly relies upon the knowledge and experience he acquired in his prior position as a Loan Officer and from his background in finance.

In addition to post-authorization compliance and IDA reviews, Senior Credit Review Officers may be assigned to special projects. Currently, Velez is charged with serving as the project manager and COR for a project referred to as the local costs project. Through this project, the Credit Review and Compliance Division has undertaken the task of reviewing the transactions within the local costs portfolio from a fraud detection and mitigation standpoint. Both Hill and Velez testified to the significant size and scope of this special project, which is considered to be highly visible and has consumed much of Velez's time over the past few years. Thus far, the team has completed reviewing local costs for seven transactions and is approximately halfway through the portfolio as a whole.

To implement and carry out a project of this size, Hill's division vetted and hired contracted vendors to assist with reviewing and verifying the local cost transactions. In order to serve as the project manager and COR for the project, Velez completed training to become COR certified. With respect to his COR certification, Velez testified that he was not required to obtain this certification in order to be a Senior Credit Review Specialist. Rather, while already in the position and doing the work of a Senior Credit Review Specialist, Velez was told that he should complete the training because of the responsibilities he would take on with the local costs project. Velez prepared the project work statement and participated in vendor selection, but ultimately it was Hill who possessed the authority to sign off on chosen vendors. As for his current duties related to this special project, Velez manages the vendors' workflow, reviews their work product, and ensures that they are addressing the issues outlined in the statement of work. Vendors draft reports of their findings, which Velez collects and reviews. While the vendor is responsible for the details of the review, Velez may provide technical feedback or ask the vendor for additional information. Once he is satisfied with the vendors' work, Velez, in his capacity as the COR for the project, signs off on the vendors' invoices and submits them for the CO's final approval. Using the findings and information provided by the vendors, Velez submits recommendations to Hill for review and discussion.

When it comes to managerial supervision and discretion, Hill indicated that he directs the division to look into or perform reviews of certain areas. From there, Velez manages his own projects and reports back to Hill with regular updates. Hill testified that he does not supervise Velez as much as he supervises the Credit Review Officers that he also manages, and noted Velez's demonstrated ability to manage projects and work autonomously. Hill also indicated that, given the size and the scope of the local costs project, he would not feel comfortable with another employee leading that

specials project. Moreover, Hill also trusts Velez to stand-in for him at meetings when he is double-booked. Nevertheless, Hill does review the reports and recommendations that Velez submits before distributing them to senior management. In his testimony concerning Hill's supervision and oversight, Velez indicated that he and Hill will discuss Velez's recommendations and deliberate over the matters on which they agree or disagree but, for the most part, Hill agrees with his recommendations. Aside from the occasional special project that he may be assigned, Velez testified that his work is generally consistent day-to-day and that the duties he performs on a regular basis are similar. Velez is allowed a fair amount of autonomy with respect to his schedule and prioritizing his work. Velez participates in routine staff meetings with his division

The position of Senior Credit Review Officer is classified as a 1101 job series, according to its corresponding position description. While the position description does not include a formal education or degree requirement, it does list knowledge required by the position. Specifically, with respect to technical knowledge, the Senior Credit Review Officer position description states that the position requires the application of a professional level of knowledge and a high level of skill in the areas of auditing, information reporting, and data integrity principles. It further states that position requires a professional level of knowledge regarding the Agency's programs, or a demonstrated ability to quickly learn the Agency's programs.

Velez obtained a bachelor's degree in Business Administration with a concentration in Finance and has taken additional coursework in Consumer Lending and Financial Accounting. However, Velez testified that he has not pursued or obtained a Master's degree. As for Velez's previous employment, he held the position of Branch Manager at two U.S. banks, he worked with mortgages at Washington Mutual, and he worked for a broker company for a couple of years. Thereafter, Velez served as a Loan Officer at the Agency for five years before moving into his current position of Senior Credit Review Officer. As a Loan Officer, he was engaged in financial analysis, rating, and identifying issues with financial statements. According to Velez, having experience working as an underwriter, and the knowledge that he gained from analyzing and verifying documents at the front end of a transaction, is beneficial to the work of a Senior Credit Review Specialist. He testified that knowledge underwriting is relevant to his job in that it provides the basics for understanding the structure of the deal when reviewing a case.

At hearing, Hill testified to his belief that a bachelor's degree is required for the position and that a master's degree, though helpful, is not necessary. He

further testified to his belief that work experience, particularly experience with a financial institution or in financial analysis, may offset an applicant's lack of education. According to Hill, in order to be successful in the position of Senior Credit Review Specialist, an employee must possess an understanding of EXIM's various policies and procedures as well as knowledge in the areas of finance and underwriting. In that regard, Hill indicated that, without a background in finance, Velez would not be able to understand the transactions that he reviews or perform in his job as he does.

### III. Analysis and Conclusions

#### A. Majority Principle

The Agency contends that, because the petition seeks to clarify and add an employee group that exceeds the number of employees in the existing unit, the FLRA should hold an election before deeming the employees part of the existing bargaining unit. In arguing this position, the Agency asserts that the situation is akin to accretion.

The Authority applies the majority principle, also referred to as the majority standard, in accretion cases involving groups of represented and unrepresented employees. Accretion is a longstanding doctrine that involves the addition of a group of employees to an existing bargaining unit without an election, based on a "triggering event" or change in agency operations or organization. *U.S. Dep't of the Interior, Bureau of Reclamation, Columbia-Cascades Area Office, Yakima, Wash.*, 65 FLRA 491, 493 (2011) (citing *U.S. Dep't of the Interior, Bureau of Reclamation, Pacific Nw. Region, Grand Coulee Power Office, Wash.*, 62 FLRA 522, 524 (2008)); see also *Dep't of the Navy, Naval Supply Ctr., Oakland, Cal.*, 5 FLRA 775, 777-78 (1981) (finding accretion after reorganization). Because accretion precludes employee self-determination, the Authority applies the accretion doctrine narrowly. *Id.* at 493.

Here, the Agency's reliance on the application of the majority principle is misplaced. The cases cited by the Agency in its brief all involve triggering events such as a reorganization, transfer, or consolidation, where accretion principles apply. The subject petition filed by the Union seeking to clarify the bargaining unit status of EXIM employees was not filed pursuant to such a triggering event, and the Union is well within its right to file a petition to clarify the bargaining unit status of employees. When an issue is raised as to the inclusion or exclusion of certain employees from an existing bargaining unit, a unit clarification petition filed pursuant to section 2422.1 of the Authority's Regulations is the proper procedure for clarification. *Library of Congress,*



3 FLRA 736,739 (1980). Consequently, I reject the Agency's argument that an election is required before the employees may be added to the unit.

### B. Professional Employees

To find that an employee is a professional employee within the meaning of section 7103(a)(15) of the Statute, four criteria must be met. *See U.S. Dep't of Homeland Security, Bureau of Customs and Border Protection*, 61 FLRA 485, 492 (2006) (CBP). Section 7103(a)(15) of the Statute defines a professional employee as follows:

- (A) an employee engaged in the performance of work
  - (i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);
  - (ii) requiring the consistent exercise of discretion and judgment in its performance;
  - (iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and
  - (iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or
- (B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under

appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph

In applying this definition, the Authority has customarily assessed whether the position in question requires advanced knowledge of a type that is usually acquired in an institution of higher learning. *See, e.g., U.S. Attorneys Office for the Dist. of Columbia*, 37 FLRA 1077, 1082 (1990) (USAO); *Veterans Admin., Regional Office, Portland, Ore.*, 9 FLRA 804, 805-06 (1982) (Regional Office). The Authority has acknowledged, however, that a college degree is not necessarily required for an employee to be considered a professional. *See USAO*, 37 FLRA at 1082; *see, e.g., U.S. Dep't of the Treasury, Bureau of Engraving and Printing, Wash., D.C.*, 70 FLRA 359 (2018) (BEP). The Authority has also considered the extent to which performance of the job involves the exercise of discretion and judgment, as well as whether the nature of the work is intellectual and varied, as opposed to routine mental, manual, or physical work. *See, e.g., 934th Tactical Airlift Group (AFRES), Minneapolis-St. Paul Int'l Airport, Minneapolis, Minn.*, 13 FLRA 549 (1983); *Regional Office*, 9 FLRA at 805-06; *CBP*, 61 FLRA at 492-93; *U.S. Dep't of the Navy, Naval Air Station Joint Reserve Base, New Orleans, La.*, 67 FLRA 422,425 (2014) (Naval Air Station).

Although Authority case law indicates that a college degree is not required to satisfy the requirements for professional employees, there are only two instances where the Authority has found something other than a college degree met the knowledge requirement under section 7103(a)(15)(A)(i). In *Naval Air Station*, the Authority found that a liaison officer position requiring either a four-year college or university degree or a combination of education and experience equivalent to a four-year course of study met the knowledge requirement. *Id.* at 425. Likewise, in *BEP* the Authority found an IT Project Manager position satisfied the knowledge requirement because it required that employees obtain a federal acquisition certification and because the OPM standards for the relevant series required a doctoral degree, three full years of higher level education leading to a doctoral degree, or equivalent experience. *Id.* at 361-62.

**1. The positions of Business Development Specialist, Business Development Specialist - Broker Relations, Business Initiatives Specialist, Senior Business Development Specialist, and Senior Congressional Analyst are not professional employees under the established statutory framework.**

The positions of Business Development Specialist, Business Development Specialist- Broker Relations, Business Initiatives Specialist, Senior Business Development Specialist, and Senior Congressional Analyst satisfy the final two criteria under the Statute for being professional employees. Their work is varied in character and predominately intellectual, as demonstrated by the range of different projects and initiatives described in testimony, all of which involve meeting various requirements and require technical expertise as well as strategic analysis. Moreover, the work is not the type that can be standardized, as evidenced by the fact that there is no one standard day for employees in these positions. Also, with the exception of Business Development Specialists, these positions lack established quantitative outputs used to evaluate performance. Instead, employees are primarily evaluated based on qualitative aspects of their performance or project-specific accomplishments that cannot be tied to standard amounts of time or effort.

The record did not establish that work performed by these positions requires knowledge of an advanced type or the consistent exercise of discretion and judgment sufficient to satisfy the statutory criteria under in section 7103(a)(15).

First, with respect to the knowledge requirement specified in section 7103(a)(15)(A)(i), although employees performing the duties of these positions all possess college degrees and, for some, advanced education in their fields of study, the record fails to demonstrate that such degrees or education are necessary for the work of the position. While testimony emphasizes how these educational backgrounds are important and closely related to the work of the position, there is no record evidence of the Agency having or enforcing any education or certification requirements for the positions. The position descriptions do not list education or a college degree as a condition of employment. And, unlike in *Naval Air Station* and *BEP*, the only instances where the Authority found something other than a college degree satisfied the knowledge requirement under section 7103(a)(15)(A)(i), there is no evidence that the vacancy announcements for the positions or their relevant OPM standards require education and experience, or even just experience, equivalent to a college degree or advanced course of study.

As for the criterion specified in section 7103(a)(15)(A)(ii), while the positions of Business Development Specialist, Business Development Specialist- Broker Relations, Business Initiatives Specialist, Senior Business Development Specialist, and Senior Congressional Analyst do require some judgment and discretion in the performance of their respective duties, the evidence shows that this is not the type of consistent discretion and judgment required for status as a professional employee under the Statute. Although employees may develop and draft reports and informational materials, the majority of their work product is subject to the review of a supervisor with whom they are in regular communication. Similarly, employees in these positions may be called upon for their advice and subject-matter expertise, but their responsibility is limited to offering advice and recommendations. Generally, they do not implement the recommendations nor do they have the authority to make many of the final decisions involved in their work. For these reasons, the weight of the evidence shows that employees in these positions do not exercise the level of discretion required for the position to be deemed professional under the Statute. *See CBP*, 61 FLRA at 493.

Accordingly, Business Development Specialists, Business Development Specialists- Broker Relations, Business Initiatives Specialists, Senior Business Development Specialists, and Senior Congressional Analysts are not professional employees within the meaning of section 7103(a)(15) of the Statute.

**2. The positions of IT Specialist (GS-14) and Senior Credit Review Officer are not professional employee under the established statutory framework.**

It is clear from the evidence that all IT Specialists are in the 2210 job series and that the Agency routinely includes and follows these OPM occupational requirements when hiring for the position. In *BEP*, the Authority found that the very same occupational series required a Ph.D., or its equivalent and therefore demonstrated that the IT Project Managers at issue had knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction as required under section 7103(a)(15)(A)(i). *See id.* at 361-62. Applying Authority precedent, I find that the OPM requirements for the IT Specialist position satisfy the knowledge requirement under the Statute.

Likewise, IT Specialists and Senior Credit Review Officers are COR certified. Despite Spira's testimony that IT Specialists could, in theory, hold the position at EXIM without such a certification, the evidence as a whole indicates that the certification is

necessary to administer IT contracts, which is an essential function performed in the position. Same applies for Velez in the Senior Credit Review Officer position. Although it was not required at first, while in the job, he was told to become COR certified in order to serve in his assigned role as the local costs project manager, and he could not have served in this role without the certification. The Authority addressed a similar matter again in *BEP*, finding that IT Project Manager's requisite federal acquisition certification represented a prolonged course of specialized intellectual instruction and study. *See id.* at 362. Like the certificate program in *BEP*, the COR certification has multiple types or levels and requires a significant amount of study and continual training. And, although the certification may not be a requirement at the time of hiring, without this certification, IT Specialists and Senior Credit Review Officers do not have the requisite knowledge and cannot perform their work. Accordingly, the IT Specialist position and the Senior Credit Review Officer position satisfy section 7103(a)(15)(A)(i) due to the fact that the COR certification is required to perform their job duties.

The positions of IT Specialist and Senior Credit Review Officer also satisfies the criteria in section 7103(a)(15)(A)(iii) and (iv) under the Statute. As was the case with the employees analyzed above, the positions' work is varied in character and predominately intellectual, as demonstrated by the various types of projects they are assigned and the technical expertise required in the position. Their work would not be described as physical or mechanical, nor is it the type that can be standardized. Also, IT Specialists are primarily evaluated based on project-specific accomplishments that cannot be tied to standard amounts of time or effort. For these reasons, the positions meet the section 7103(a)(15)(iii) and (iv) requirements for professional employees.

With respect to the criterion specified in 7103(a)(15)(A)(ii), similar to the employees in the positions listed above, while IT Specialists and Senior Credit Review Officers exercise some discretion and judgement in the manner in which they go about the performance of their duties, the evidence shows that employees in these positions do not consistently exercise the type of discretion and judgement required under the Statute. They do not exercise independent discretion and authority when administering a contract, specifically when selecting vendors and drafting contract documents. It is the CO, not the IT Specialist or Senior Credit Review Officer with the authority sign contracts, finalize invoices, and end contract obligations. IT Specialists rely upon templates, the Federal Acquisitions Requirements, and Agency policies when drafting documents which are submitted for review before becoming official. And, in the Senior Credit Review Officer position, Velez must submit his reports and recommendations to his supervisor

for review. Moreover, the evidence shows that, even though IT Specialists and Senior Credit Review Officers are trusted to manage their daily tasks and schedules, IT Specialists remain in regular, daily communication with their supervisors and rely upon their supervisors' guidance and assistance. Overall, the IT Specialist and Senior Credit Review Officer positions do not require the exercise of discretion and judgment sufficient for status as a professional under the statutory framework. *See CBP*, 61 FLRA at 493

Accordingly, IT Specialists (GS-14) and Senior Credit Review Officers are not professional employees within the meaning of section 7103(a)(15) of the Statute.

#### **IV. Order**

In view of the above findings and conclusions, it is ordered that that employees in the positions of Business Development Specialist, Business Development Specialist - Broker Relations, Business Initiatives Specialist, Senior Business Development Specialist, Senior Congressional Analyst, IT Specialist (GS-14), and Senior Credit Review Officer be included in the AFGE's existing nonprofessional bargaining unit.

#### **V. Right to File and Application for Review**

Under Section 7105(f) of the Statute and Section 2422.31(a) of the Authority's Regulations, a party may file an application for review with the Authority within sixty (60) days of this Decision. The application for review must be filed with the Authority by November 27, 2018, and addressed to the Chief, Office of Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 201, 1400 K Street, NW, Washington, DC 20424-0001. The parties are encouraged to file an application for review electronically through the Authority's website, [www.flra.gov](http://www.flra.gov).

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Jessica S. Bartlett  
Regional Director, Washington Region  
Federal Labor Relations Authority

Dated: September 28, 2018