

70 FLRA No. 79

UNITED STATES
DEPARTMENT OF THE TREASURY
BUREAU OF ENGRAVING AND PRINTING
WASHINGTON, D.C.
(Agency)

and

NATIONAL TREASURY
EMPLOYEES UNION
(Union/Petitioner)

WA-RP-17-0034

ORDER GRANTING
APPLICATION FOR REVIEW

January 16, 2018

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

I. Statement of the Case

The Union petitioned Federal Labor Relations Authority Regional Director Richard S. Jones (RD) to clarify the bargaining-unit status of seven information technology (IT) project managers. In the attached decision, the RD found that, because the IT project managers are not professional employees under the definition found in the Federal Service Labor-Management Relations Statute (the Statute),¹ they should be included in the bargaining unit. Specifically, the RD found that the work of the IT project managers did not 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 (the knowledge requirement) to qualify as a professional employee.²

In its application for review, the Agency alleges that the RD made several errors. First, the Agency alleges that the RD made a clear and prejudicial error concerning a substantial factual

matter when he found that the vacancy announcements did not require higher education or the equivalent level of experience. Because the occupational series assigned to IT project managers as determined by the Office of Personnel Management (OPM), 2210 and 0301, require higher education or equivalent experience, we find that the RD made a clear and prejudicial error concerning a substantial factual matter.

Furthermore, the Agency alleges that the RD made a clear and prejudicial error concerning a substantial factual matter when he found that the certification did not satisfy the knowledge requirement under the Statute. Because the certification requires a “prolonged course of specialized intellectual instruction and study,”³ we find that the certification satisfies the knowledge requirement.

Finally, the Agency contends that the RD’s decision raises an issue for which there is an absence of precedent. Because the RD’s decision raises the issue of the timing of the knowledge requirement, an issue that the Authority has not previously addressed, we grant the Agency’s application for review to resolve this issue. We find that the RD must determine the knowledge requirements at the time of the inquiry, not at the time the positions were filled. Consequently, as the IT project managers’ work requires the certification, they are “engaged in the performance of work . . . requiring knowledge of an advanced type,” and are professional employees.⁴

For the above reasons, we grant the Agency’s application for review, reverse the RD’s decision, and dismiss the Union’s petition.

II. Background and RD’s Decision

A. Background

The Union filed a petition seeking to clarify the bargaining-unit status of IT project managers. The Union is the certified, exclusive representative of a unit of non-professional employees who work for the Agency. The Union’s petition concerns whether the IT project managers are professionals, and therefore excluded from the bargaining unit, or non-professionals, and therefore part of the bargaining unit.

¹ 5 U.S.C. § 7103(a)(15).

² *Id.*

³ *Id.*

⁴ *Id.*

The IT project managers at issue range from General Schedule (GS)-11 employees to GS-13 employees. When a supervisor assigns a project to an IT project manager, that IT project manager generates templates to build the project. The IT project manager's task includes determining the stakeholders in the project, creating a list of requirements for the project, creating a schedule for the project, and negotiating for the resources necessary to complete the project. The IT project manager also monitors the project to make sure it is on schedule. After a project is completed, the IT project manager ensures that all tasks are completed and completes a final assessment of the project. In order to successfully perform this task, an IT project manager must have some technical knowledge in order to properly sequence tasks.

Although the Agency does not require IT project managers to have a four-year bachelor's degree when hired, IT project managers must begin the process of getting the federal acquisition certification once the Agency hires them. The certification is through a federal certification program and is a federal government requirement. In order to receive the certification, the IT project managers must attend classes that cover topics such as the process of requirement gathering and how the supply chain interacts with the projects.

The certification has three levels, and more complex and expensive projects can only be assigned to IT project managers with higher-level certifications. For IT project managers, the second and third levels of certification include some IT specialization. Each level requires certain classes as well as a certain amount of experience. Employees can earn some college credits by taking the courses necessary for the certification.

The Statute provides the definition of a "professional employee" as an employee who performs work that: (1) 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" (the knowledge requirement, as noted previously);⁵ (2) requires "the consistent exercise of discretion and judgment in its performance";⁶ (3) is "predominantly intellectual and varied in character," as opposed to "routine mental, manual, mechanical, or physical work";⁷ and (4) is

"of such a character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time."⁸

B. RD's Decision

Evaluating the evidence, the RD first determined that the IT project managers satisfied the final three criteria under the Statute for being professional employees. The RD then analyzed the first requirement, the knowledge requirement. The RD found that the IT project manager position does not require a college degree. However, the RD acknowledged that Authority case law states that, while a college degree may satisfy the knowledge requirement, a college degree is not required to satisfy the requirement.⁹ The RD further stated that, although Authority case law indicates that a college degree is not required to satisfy the knowledge requirement, the Authority has only found one instance where something other than a college degree satisfied the knowledge requirement. In that case, the Authority found that a position required "either 'the successful completion of a four-year college or university degree . . . or a combination of education and experience' equivalent to a 'four-year course of study.'"¹⁰

The RD stated that "it seems implicit that for the knowledge requirement to be met, the employee must generally be expected to come into the position with the type of advanced knowledge set forth in" § 7103(a)(15)(A)(i).¹¹ Because the certification was not a hiring requirement, the RD rejected the certification as satisfying the knowledge requirement.

Furthermore, the RD stated that the training received by the IT project managers to get the certification is more akin to the training techniques of victim assistance and crisis intervention received by non-professional victim/witness advocates¹² than a college degree or its equivalent in combined education and experience. The RD also found that, although employees could earn some college credit in the process of getting the certification, earning college credits is short of earning a college degree.

⁸ *Id.* at (iv).

⁹ RD's Decision at 4 (citing *VA Reg'l Office, Portland, Or.*, 9 FLRA 804, 805-06 (1982) (*VA Reg'l Office*)).

¹⁰ *U.S. Dep't of the Navy, Naval Air Station, Joint Reserve Base, New Orleans, La.*, 67 FLRA 422, 425 (2014) (*Dep't of the Navy*) (quoting the RD's decision in that case).

¹¹ RD's Decision at 5.

¹² *Id.* (citing *U.S. Attorneys Office for D.C.*, 37 FLRA 1077 (1990) (*U.S. Attorneys*)).

⁵ *Id.* at (a)(15)(A)(i).

⁶ *Id.* at (ii).

⁷ *Id.* at (iii).

As a result, the RD concluded that IT project manager positions were non-professional and were not excluded from the bargaining unit. The Agency then filed this application for review, and the Union filed an opposition to the Agency's application.¹³

III. Analysis and Conclusions

- A. The RD made a clear and prejudicial error concerning a substantial factual matter.¹⁴

The Agency argues that the RD made two clear and prejudicial errors concerning substantial factual matters. The Authority may grant an application for review if it is demonstrated that an RD committed a clear and prejudicial error concerning a substantial factual matter.¹⁵

The Agency alleges¹⁶ that the RD made a clear and prejudicial error concerning a substantial

¹³ The Agency, without requesting leave to do so, filed a supplemental submission addressing alleged misstatements in the Union's opposition. We do not find this submission appropriate and will not consider it. 5 C.F.R. § 2429.26(a); *Haw. Fed. Emp. Metal Trades Council*, 70 FLRA 324, 326 n.27 (2017).

¹⁴ The Agency also argues that the RD made a clear and prejudicial error concerning a substantial factual matter when the RD stated that the certification was expected, rather than required, for IT project managers to continue employment. Application at 11. However, the RD indicated that the IT project managers "are expected to obtain" (RD's Decision at 2) and that "IT [p]roject [m]anagers are required to obtain" the certification." *Id.* at 5. This indicates that the RD did not base his decision on this distinction and that the alleged error would not have prejudiced the Agency concerning a substantial factual matter. *U.S. Dep't of the Air Force, Edwards Air Force Base, Cal.*, 62 FLRA 159, 163 (2007) (finding that alleged error was not prejudicial where alleged error was irrelevant to the issue before the RD).

¹⁵ *U.S. Dep't of State, Bureau of Consular Affairs, Passport Servs.*, 68 FLRA 657, 659 (2015) (citing 5 C.F.R. § 2422.31(c)(3)(iii)).

¹⁶ In its opposition, the Union alleges that the Agency failed to present the OPM qualification standards as part of the record before the RD. Opp'n at 9. If this evidence were not presented to the RD, the Authority would not consider it now. 5 C.F.R. § 2429.5; see also *id.* § 2422.31(b). However, as the Union notes, the Agency attached the OPM qualification standards to its brief to the RD. Furthermore, although the RD did not address the OPM qualifications, the Agency argued before the RD that these OPM qualification standards were pertinent in satisfying the knowledge requirement. Agency's Br. at 7. Consequently, the Agency raised this evidence and argument before the RD, and we will consider it now.

factual matter when he found that the vacancy announcements did not require higher education or the equivalent level of experience.¹⁷ Specifically, the Agency argues that the RD made two such errors by not finding that: (1) the standards set by OPM for the series assigned to the IT project managers require either an advanced degree or significant experience;¹⁸ and (2) the IT project managers must complete "significant advanced coursework" for the certification and this coursework qualifies the employees to receive college credit.¹⁹

The Agency alleges that the RD erred when he failed to take into consideration the OPM-assigned series of the IT project managers when he found that the IT project managers did not require higher education. Under OPM standards, the series of the IT project managers—2210 and 0301—list requirements of education or equivalent experience. For a GS-11 or higher in the 2210 series, OPM standards state that the education requirement is either a doctor of philosophy (Ph.D.) or equivalent doctoral degree, or "[three] full years of progressively higher level education leading to a Ph.D. or equivalent doctoral degree," or equivalent experience.²⁰ A GS-11 in the 0301 series has similar requirements.²¹

Although the vacancy announcements provided to the RD did not list any education requirements,²² they did list the positions as in either the 2210 or 0301 series. Combined with the OPM standards for these series, the RD made a clear and prejudicial error concerning a substantial factual matter in finding that the IT project managers did not

¹⁷ Application at 8.

¹⁸ *Id.* at 9.

¹⁹ *Id.* at 8.

²⁰ Information Technology (IT) Management Series, 2210 (Alternate A), <https://www.opm.gov/policy-data-oversight/classification-qualifications/general-schedule-qualification-standards/2200/information-technology-it-management-series-2210-alternative-a/>.

²¹ Classification & Qualification: General Schedule Qualification Standards, <https://www.opm.gov/policy-data-oversight/classification-qualifications/general-schedule-qualification-standards/#url=Group-Standards> (requiring, as relevant here, a "Ph.D. or equivalent doctoral degree or [three] full years of progressively higher level graduate education leading to such a degree" or equivalent experience).

²² Application, Attach. A at 161 (listing no educational requirements or substitution of relevant experience for IT specialist); *id.* at 173 (listing no educational requirements or substitution of relevant experience for IT project manager).

require an advanced degree. As noted above, such a degree or equivalent experience may satisfy the knowledge requirement.²³ We further note that a college degree does not necessarily satisfy the knowledge requirement.²⁴ Here, a Ph.D., or its equivalent, demonstrates that the project managers must have “knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.”²⁵ Because the OPM requirements for the IT program manager series satisfy the knowledge requirement, the RD should have found that the IT program managers are professional employees. As such, this error is sufficient for us to grant the Agency’s application and reverse the RD’s decision.

Furthermore, the Agency argues that the RD erred when he found that the federal acquisition certification did not satisfy the knowledge requirement under the Statute. The Agency contends that the certification is equivalent to a college degree.²⁶ As noted above, the certification has three levels. IT project managers must take 80 to 120 hours of courses for each level.²⁷ Additionally, the levels require one, two, and four years of experience respectively.²⁸ Under our interpretation of the Statute, this represents a “prolonged course of specialized intellectual instruction and study.”²⁹ As such, the certification is “acquired by a prolonged course of specialized intellectual instruction and

study”³⁰ and satisfies the knowledge requirement. Consequently, the RD erred in finding otherwise, and we grant the Agency’s application on this issue.

- B. The RD’s decision raises an issue for which there is an absence of precedent.

The Agency alleges that the RD erred in finding that the knowledge requirement must be met at the time the Agency fills the IT project manager position at issue because the Authority has never found this to be the case.³¹ Although conceding that the certification might be considered “specialized intellectual instruction and study in an institution of higher learning,”³² the RD stated that “it seems implicit that for the knowledge requirement to be met, the employee must generally be expected to come into the position” with the requisite knowledge.³³ As the Authority has no case law concerning the timing of the knowledge requirement, the RD’s decision raises an issue for which there is an absence of precedent. We grant the Agency’s application for review to resolve this issue.

To iterate, in order for an employee to be a professional employee, the Statute requires, as relevant here, that the employee “engage[] in the performance of work . . . requiring knowledge of an advanced type.”³⁴ Although the certification is not a requirement at the time of hiring, IT project managers are required to obtain the certification during their time in the position in order to continue employment.³⁵ As found by the RD, without this certification, IT project managers do not have the requisite knowledge and cannot perform their work.³⁶ Consequently, the IT project managers perform work requiring the certification, that is, knowledge of an advanced type.

By looking solely at the requirements to obtain a position, the RD failed to take into consideration the requirements of the position after the Agency hires an IT program manager. The proper inquiry does not stop at a vacancy

²³ *Dep’t of the Navy*, 67 FLRA at 425; *U.S. Attorneys*, 37 FLRA at 1081; *VA Reg’l Office*, 9 FLRA 805-06.

²⁴ *U.S. Dep’t of Agric., Forest Serv., Francis Marion & Sumter Nat’l Forests*, 2 A/SLMR 596, 599 (1972) (employee required to have a bachelor’s degree was not a professional employee because he was “not required to have knowledge of an advanced type in a field of science or learning or a prolonged course of specialized intellectual instruction or study, but rather . . . at most, [his] knowledge [was] acquired essentially by a general academic education or by a combination of some limited education and experience”); *Dep’t of Agric., Farmers Home Admin., Nashville, Tenn.*, 2 A/SLRM 481, 484 (1972) (employee was not a professional employee because “knowledge of an advanced type acquired by a prolonged course of specialized instruction in agriculture [was] not utilized in the processing of rural housing loans[,] and . . . a general college background [was] sufficient to enable an individual to perform such a job function”).

²⁵ 5 U.S.C. § 7103(a)(15)(A)(i).

²⁶ Application at 4.

²⁷ Program and Project Managers (FAC-P/PM), <https://www.fai.gov/drupal/certification/program-and-project-managers-fac-ppm>.

²⁸ *Id.*

²⁹ 5 U.S.C. § 7103(a)(15)(A)(i).

³⁰ *Id.*

³¹ Application at 3.

³² RD’s Decision at 5 (quoting 5 U.S.C. § 7103(a)(15)(A)(i)).

³³ *Id.*

³⁴ 5 U.S.C. § 7103(a)(15)(A).

³⁵ RD’s Decision at 5.

³⁶ *Id.* (“The IT [p]roject [m]anagers are required to obtain FAC-P/PM certification.”).

announcement or a position description,³⁷ but the actual duties performed by an employee in that position.³⁸ In this regard, § 7103(a)(15) of the Statute requires us to consider whether the “work” that an employee performs requires knowledge of an advanced type.³⁹ Furthermore, unit determinations must reflect the conditions of employment that existed at the time of hearing rather than what may exist in the future unless there are definite and imminent changes planned by the agency.⁴⁰ Likewise, where there is no employee in a position—and thus no duties performed by an employee in that position—the Authority will not consider the bargaining-unit status of that position.⁴¹ Consequently, the proper inquiry for satisfying the knowledge requirement is not at the time of hiring in the past, but the requirements of the position in the present hearing; and the RD erred in finding otherwise.

Contrary to the dissent’s assertion, we do not find that these employees are rendered professional employees “merely by performing work ‘of an advanced type.’”⁴² Rather, the work the employees perform 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” as required by the plain language of the Statute.⁴³

Because the certificate is a degree of higher learning and the IT project managers are “engaged in the performance of work . . . requiring knowledge of

an advanced type,” the IT project managers satisfy the knowledge requirement for being a professional employee under the Statute.⁴⁴ Consequently, the IT project managers are professional employees who are excluded from the bargaining unit, and we overturn the RD’s decision finding otherwise.

For the reasons set forth above, we reverse the RD’s decision, grant the Agency’s application for review, and dismiss the Union’s petition.⁴⁵

IV. Decision

We grant the Agency’s application for review, and we dismiss the Union’s petition.

³⁷ *U.S. Dep’t of the Air Force, Air Force Materiel Command*, 67 FLRA 117, 123 (2013) (“[B]argaining-unit-eligibility determinations are not based on evidence such as written position descriptions, because such evidence might not reflect the employee’s actual duties.”).

³⁸ *U.S. Dep’t of the Navy Commander, Navy Region NW Fire & Emergency Servs., Silverdale, Wash.*, 70 FLRA 231, 238 (2017) (“[T]he Authority decides unit status disputes based on the actual duties performed by the employee.”).

³⁹ 5 U.S.C. § 7103(a)(15) (emphasis added).

⁴⁰ *Def. Logistics Agency, Def. Contract Mgmt. Command, Def. Contract Mgmt. Dist., N. Cent. Def. Plant Representative Office-Thiokol, Brigham City, Utah*, 41 FLRA 316, 327 (1991) (“[D]ecisions regarding unit determinations must reflect the conditions of employment that existed at the time of the hearing rather than what may exist in the future unless there are definite and imminent changes planned by the agency.”).

⁴¹ *U.S. Attorneys*, 37 FLRA at 1081 (citing *Dep’t of the Treasury, Bureau of the Mint, U.S. Mint, Denver, Colo.*, 6 FLRA 52 (1981)).

⁴² Dissent at 2-3 (quoting 5 U.S.C. § 7103(a)(15)(A)(i)).

⁴³ 5 U.S.C. § 7103(a)(15)(A)(i).

⁴⁴ *Id.* at (a)(15)(A).

⁴⁵ In reaching this decision, we did not consider affidavits the Agency submitted with its application but did not submit to the RD. 5 C.F.R. § 2429.5; see also *id.* § 2422.31(b); *U.S. Dep’t of the Air Force, Air Force Life Cycle Mgmt. Ctr., Hascom Air Force Base, Mass.*, 69 FLRA 554, 556 (2016); *SSA, Office of Disability Adjudication & Review, Nat’l Hearing Ctr., Chi., Ill.*, 67 FLRA 299, 301 (2014).

Member DuBester, dissenting:

I would uphold the Regional Director's (RD's) decision that the information technology (IT) project managers are not excluded from the bargaining unit as professional employees. The majority's decision to grant the Agency's application for review rests on a misstatement of the facts and a misapplication of the law.

The majority's conclusion that the IT project manager position requires higher education, and is therefore a professional position, is baseless. As the majority acknowledges, the relevant vacancy announcements do not list an education requirement.¹ Consequently, the majority relies on Office of Personnel Management (OPM) standards for the IT project manager series, which the majority finds require IT project managers to have an advanced degree or experience "equivalent" to an advanced degree.² This is not factually correct. As an initial matter, the standards do not require an advanced degree. The standards provide an option. Although the OPM standard for the six employees who fall under the 2210 job series allows for eligibility through education – education is *not a requirement*.³ This standard "allows eligibility through meeting *either* the requirements specified in the section titled *Education or the requirements specified in the section titled Experience*."⁴ Thus, an applicant for the IT project manager position in the 2210 job series may be eligible based *solely* on experience.⁵ But contrary to the majority's mistaken reading of OPM's standard, there is no requirement that this experience be "equivalent" to the standard's educational requirement. Instead, the standard sets out four job-related "competencies" that IT project managers must demonstrate.⁶

The majority's determination regarding the seventh employee is similarly unsupported. The seventh employee falls under the 0301 job series, but does not have a vacancy announcement for his position because this "position was created through a

management directed reassignment."⁷ Although the OPM standard for the 0301 job series indicates that applicants for GS-9-11 positions may be required to have a bachelor's degree, the record does not indicate that higher education, or its equivalent, even at this non-advanced level, was a requirement for this employee to be reassigned to the IT project manager position. Accordingly, I do not agree that the RD committed a clear and prejudicial error concerning substantial factual matters regarding this issue.

Further, the majority mistakenly treats—as a factual matter—the Agency's contention that the RD erred when he found that the "federal acquisition certification" did not satisfy the knowledge requirement for professionals under the Statute.⁸ To the contrary, the RD made a legal determination. Applying Authority precedent in *U.S. Attorneys Office for the District of Columbia (U.S. Attorneys Office)*,⁹ and interpreting the Statute, the RD determined that "the federal acquisition certification" did not meet § 7103(a)(15)'s knowledge requirement because it does not equate to a "college degree."¹⁰ The Agency did not challenge this determination on the ground that the RD failed to apply established law—and the Agency's challenge to the RD's determination on this issue should be rejected on that basis. And, to the extent that the Agency's assertion challenges the weight the RD gave the evidence, such a challenge is "not sufficient to find that an RD committed a clear and prejudicial error concerning a substantial factual matter."¹¹

Finally, the RD's decision rests firmly on applicable precedent.¹² The issue here concerns the interpretation of statutory language—whether the work done by the disputed employees requires knowledge "customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning."¹³ The answer does not turn, as the majority finds, on a novel issue of the "timing of the knowledge requirement."¹⁴ That is not an issue raised by the

¹ Application, Attach. A at 145-190.

² Majority at 5-6.

³ Application, Attach. A at 145-190.

⁴ Information Technology (IT) Management Series, 2210 (Alternate A), <https://www.opm.gov/policy-data-oversight/classification-qualifications/general-schedule-qualification-standards/2200/information-technology-it-management-series-2210-alternative-a/> (some italics added).

⁵ *Id.*

⁶ *Id.*

⁷ Application at 8.

⁸ Majority at 6.

⁹ 37 FLRA 1077, 1081-83 (1990).

¹⁰ RD's Decision at 5.

¹¹ *U.S. Dep't of the Air Force, Dover Air Force Base, Del.*, 66 FLRA 916, 920 (2012) (citing *U.S. Dep't of VA, Med. Ctr., Hampton, VA.*, 65 FLRA 354, 366 (2010)).

¹² RD's Decision at 4-5.

¹³ 5 U.S.C. § 7103(a)(15).

¹⁴ Majority at 7.

RD's decision. Citing *U.S. Attorneys Office*, the RD concluded that the requirement that employees obtain a "federal acquisition certification" simply does not satisfy the statute's knowledge requirement.¹⁵ "Timing" issues are therefore irrelevant.¹⁶

Moreover, the majority's contrary finding—that the required certification "is a degree of higher learning" satisfying the Statute's knowledge requirement¹⁷—is both unsupported and based on a misreading of the Statute. The majority states its finding without rationale or citation to supporting authority.¹⁸ Further, contrary to the majority's decision, § 7103(a)(15)'s knowledge requirement is not satisfied merely by performing work "of an advanced type."¹⁹ This knowledge requirement is only satisfied when the knowledge required to perform the job is of an advanced type "customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning."²⁰ The work the majority relies on to find the disputed employees "professionals" bears no demonstrated resemblance to this type of knowledge, which a "professional" is expected to acquire, customarily, in an institution of higher learning.

Private sector precedent—interpreting identical statutory language²¹—is instructive. The National Labor Relations Board has long held that

"professional employees," as defined in the National Labor Relations Act, include a "small and narrow class."²² This construction comports with the purpose of identifying employees who are "professional" under the Act and the Statute—to permit employees, who typically have advanced degrees, to choose whether to customize their collective-bargaining agreements based on the needs of their profession.²³

I would therefore deny the Agency's application for review.

¹⁵ RD's Decision at 5.

¹⁶ *Id.*

¹⁷ Majority at 8.

¹⁸ *See id.*

¹⁹ Compare Majority at 7, with § 7103(a)(15): "professional employee" means—

(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)[.]

²⁰ 5 U.S.C. § 7103(a)(15)(a)(i).

²¹ 29 U.S.C. § 152 (12).

²² *Express-News Corp.*, 223 NLRB 627, 629-630 (1976); see S. Rep. No. 80-103, at 417 (1947) (Definition is in response to concerns in testimony from "professional associations"); S. Rep. No. 80-105, at 425 (1947) ("[T]he committee was careful in framing the definition to cover only strictly professional groups such as engineers, chemists, scientists, architects, and nurses"); H. R. Rep. No. 80-510, at 540 (1947) (Conf. Rep.) ("This definition in general covers such persons as legal, engineering, scientific, and medical personnel").

²³ 5 U.S.C. § 7112(b)(5).

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

UNITED STATES DEPARTMENT OF THE
TREASURY
BUREAU OF ENGRAVING AND PRINTING
WASHINGTON, D.C.
(Agency)

and

NATIONAL TREASURY EMPLOYEES UNION
(Union/Petitioner)

WA-RP-17-0034

DECISION AND ORDER

I. Statement of the Case

The Union filed the petition in this case seeking to clarify the bargaining unit status of over twenty employees. During the processing of this petition, the Union and Agency signed an agreement in regard to several of the positions at issue, and as a result, the Union is no longer pursuing its petition as to those employees. The employees that remain at issue are seven employees who hold the position of Information Technology Project Manager: Eric Ford, Marcus Goosby, Sean Hasley, Tracy Hawkins, Gary Klyce, Sheila Porcher, and David Thomas.¹ The Agency contends that these employees are professional employees as defined by Section 7103(a)(15) of the Statute and therefore their positions do not fall within the bargaining unit, which only includes non-professional employees. The Union asserts these employees are non-professional employees and are thus included in the bargaining unit.

¹ The parties agree that all seven employees are working as Project Managers although their titles in their respective position descriptions (PDs) vary. Sean Hasley, Sheila Porcher and David Thomas have PDs with the title of "IT Project Manager"; Eric Ford, Tracy Hawkins, and Gary Klyce have PDs with the title of "IT Specialist"; and Marcus Goosby has a PD with the title of "Project Management Specialist".

The Region conducted an investigation in this case. The Agency and Union both submitted briefs which have been fully considered. Based on the entire record, including signed affidavits, I find that the IT Project Managers are not professional employees within the meaning of Section 7103(a)(15) of the Statute, and are therefore not excluded from the bargaining unit.

II. Findings

A. Bargaining Unit

The Union is certified as the exclusive representative of a unit of non-professional employees who work for the Agency, as certified in Case No. 22-07789(RO)(5/25/79). The unit is described as follows:

INCLUDED: All General Schedule, non-supervisory employees of the Bureau of Engraving and Printing.

EXCLUDED: All professional employees, management officials, supervisors, guards as defined in the Order and all employees engaged in Federal personnel work in other than a clerical capacity.

B. Information Technology Project Manager Duties and Educational Requirements

The Information Technology (IT) Project Managers at issue in this case are either GS-11s, GS-12s, or GS-13s. Regardless of grade, employees perform the same duties but employees at a higher-graded level may be given more complicated projects.

The IT Project Managers are not required to have a degree as a condition of hiring or for continued employment, but after they are hired they are expected to obtain certification through the Federal Acquisition Certification for Program and Project Managers, referred to as FAC-P/PM certification. There are three different certification levels, and for each level employees must attend classes on various topics and take a test at the end of each class. Topics include, among other things, the process of requirement gathering and how the supply chain interacts with the projects. Employees also must have a certain amount of experience to attain each level. For Levels 2 and 3, the employees also have to have an IT specialization since they are

working on IT projects. The FAC-P/PM is a federal certification program and it is a federal government requirement. Employees can earn some college credit for the FAC-P/PM courses.

Some of the employees at issue in this petition have obtained or are in the process of obtaining PMP certification. PMP is a private certification process that requires employees to have a certain number of hours of experience to sit for the PMP exam, which they must pass to obtain the certification. Once certified, they must complete continuing education requirements to maintain their certifications. The PMP is not a hiring requirement for the IT Project Manager position, and employees are not required to obtain the certification.

Rick Risner supervises the IT Project Managers and he assigns projects to the employees at different GS levels based on the complexity of the project. For example, he does not assign a project to a GS-11 employee that would require the employee to deal with a director or to deal with multiple agencies. Also, if the project involves a million dollars or more, he must assign it to an employee who has attained the Level 3 FAC-P/PM certification.

All of the IT Project Managers follow the same process for each project to which they are assigned. When the project is assigned to them they log into a project server and start generating templates to build the project. Employees must update the project server on a regular basis, and Risner reviews documents in the project server on a daily basis. For the most part employees manage projects independently unless there is a complaint, but if they run into an issue they can't handle they are supposed to address it with a GS-14 Program Manager. If the Program Manager can't handle the problem he or she discusses it with Risner.

When employees are first assigned a project, they determine who the stakeholders are and set up a kick-off meeting in accordance with their schedules. They then gather the requirements for the project, which involves discussing with the stakeholders what they want. The IT Project Managers complete a requirements document that must be approved by Risner and then signed off on by all of the stakeholders. Risner will return the requirements document to the Project Manager if it is inadequate. In general, employees with less experience may have their requirements documents returned to them more frequently, and for more experienced employees, it may be rarely or never.

After the requirements document is approved, the IT Project Managers build the schedule for the project and negotiate for the necessary resources. For example, if a server needs to be built the Project Manager negotiates with the manager in regard to how much time that will take and the Project Manager then creates a work task to send to the manager. Since people are fighting for the same resources a project may take longer than expected and the Project Manager must discuss that with the stakeholders and manage their expectations. Once the schedule is built the Project Manager must keep track of the work tasks to make sure the project stays on schedule and will be done by the expected completion date. Risner does not need to sign off on the schedule, but if there is a change in the expected completion date, the IT Project Manager must explain the situation to Risner. Once the project is complete the Project Manager must make sure all tasks were completed to the customer's satisfaction and the Project Manager must also fill out a "Lessons Learned" document.

All of the IT Project Managers use the same templates for each project, and templates are used at each step, although the content the Project Manager puts in the templates will be unique since each project is different. The employees are also required to follow standard operating procedures (SOPs) when working on an assigned project.

To perform their jobs effectively, employees must also possess soft skills, such as communication skills. Negotiating for resources, setting realistic expectations for project timelines, and ensuring work tasks are being completed in a timely manner can involve difficult conversations, and employees must be aware of things such as their body language and word choice when communicating with people. In addition to soft skills, the IT Project Managers must possess some technical knowledge so they can sequence tasks correctly.

III. Analysis and Conclusions

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 Sec., Bureau of Customs and Border Prot.*, 61 FLRA 485, 492 (2006). The employee must perform work that (1) 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;" (2) requires "the consistent exercise of discretion and

judgment in its performance;" (3) is "predominantly intellectual and varied in character," as opposed to "routine mental, manual, mechanical, or physical work;" 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[.]" 5 U.S.C. § 7103(a)(15).

In this case, the IT Project Managers meet the latter three criteria. Similar to a liaison officer that was found to be a professional, *see U.S. Dep't of the Navy, Naval Air Station Joint Reserve Base, New Orleans, La.*, 67 FLRA 422, 423 (2014) (*Naval Air Station, New Orleans*) (upholding determination that liaison officer was professional employee where she had little supervision and her duties included developing plan for accomplishing school support goals and developing timelines for projects and assuring planned events take place), the Project Managers work fairly independently, typically only contacting supervisors when there is a problem; and they consistently exercise discretion and judgment by establishing project schedules, negotiating for needed resources, and working with stakeholders to make sure the project stays on track.

The IT Project Managers' work is varied in character since each project is unique, with different requirements and different numbers of stakeholders that will help shape the project plan. The work is predominantly intellectual rather than manual, mechanical, or physical work, and it would not be classified as "routine mental . . . work" since the Project Managers must develop a different plan for each project. Moreover, the work is not the type that can be standardized. Although the IT Project Managers use templates for their work, and follow procedures outlined in SOPs, they must develop the content that they put into the templates, and that content will look different depending on the project requirements. Based on all of the above, the Project Managers meet three of the four criteria for professional employees.

Thus, the only criterion left is the requirement in Section 7103(a)(15) that the work performed 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." Although a college degree is not required to find that an employee is a professional, the first criterion may be met if the position does require a college degree. *See VA Reg'l Office, Portland, Or.*, 9 FLRA 804, 805-06 (vocational rehabilitation specialist, who was required to have a college degree

and either a master's degree or experience combined with credit hours beyond a bachelor's degree, was professional). Here, a college degree is not required for the IT Project Manager position.

Although the first criterion can be met even if there is no degree requirement, the only Authority case finding an employee to be a professional where the position did not require a college degree is *Naval Air Station New Orleans*, 67 FLRA at 423. In that case, the position of liaison officer required *either* a four-year degree *or* a combination of education and experience equivalent to a four-year degree. *Id.* In contrast with *Naval Air Station New Orleans*, the vacancy announcements for the IT Project Manager positions do not require education and experience, or even just experience, equivalent to a four-year degree. The IT Project Managers are required to obtain FAC-P/PM certification, which involves taking courses and tests. It is possible the certification process could potentially be considered "specialized intellectual instruction and study in an institute of higher learning," but the FAC-P/PM certification is not a hiring requirement. Although not expressly stated in Authority case law, it seems implicit that for the knowledge requirement to be met, the employee must generally be expected to come into the position with the type of advanced knowledge set forth in Section 7103(a)(15). If the employee is not required to have that knowledge to obtain the position, it would be difficult to determine at what point an employee becomes a professional, and arguably, any employee that receives extensive on-the-job training could be considered to be a professional if the other three criteria were met.

Moreover, the requirements for IT Project Managers in this case seem similar to the requirements for the Victim/Witness Advocate in *U.S. Atty. Office for the District of Columbia*, 37 FLRA 1077 (1990) (*U.S. Atty. Office*). The Victim/Witness Advocates were not required to have a college degree, but they did receive training in techniques of victim assistance and crisis intervention after they were hired. *Id.* at 1079. Despite this on-the-job training, the Authority upheld the Regional Director's determination that the first criterion of Section 7103(a)(15) was not met because the position did not require educational experience. *Id.* at 1082-83. Although the FAC-P/PM certification requirements in this case may be more extensive than the training the Victim/Witness Advocate received in *U.S. Atty. Office*, the education requirements for IT Project Managers still seem more similar to the requirements for the Victim/Witness Advocate than

the education requirements for the liaison officer in *Naval Air Station New Orleans*. Indeed, although the FAC-P/PM certification requirements may, in some circumstances, translate to college *credits*, this is still short of translating to a college *degree*.

For these reasons, I find that the IT Project Managers are not professional employees within the meaning of Section 7103(a)(15) of the Statute, and they are therefore not excluded from the bargaining unit.

IV. Order

Because I find the IT Project Managers are not professional employees within the meaning of Section 7103(a)(15) of the Statute, they are properly included in the bargaining unit and the Union's petition is therefore dismissed.

V. Right to Seek Review

Under Section 7105(f) of the Statute and Section 2422.31(a) of the Authority's Regulations, a party may file an application for review with the Authority within sixty days of this Decision. The application for review must be filed with the Authority by **November 20, 2017**, 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.²

Richard S. Jones
Regional Director
Federal Labor Relations Authority, Atlanta Region
South Tower, Suite 1950
225 Peachtree Street
Atlanta, Georgia 30303

Dated: September 20, 2017

² To file an application for review electronically, go to the Authority's website at www.flra.gov, select **eFile** under the **Filing a Case** tab and follow the instructions.