

71 FLRA No. 83

U.S. ARMY CORPS OF ENGINEERS
LITTLE ROCK DISTRICT
(Activity/Petitioner)

and

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS
LOCAL 2219, AFL-CIO
(Labor Organization)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 953, AFL-CIO
(Labor Organization)

DA-RP-18-0026

DECISION AND ORDER
ON REVIEW

December 4, 2019

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

I. Statement of the Case

In this case, we find that a petition for the creation of a more efficient bargaining unit does not necessitate the dismantling of a unit structure that remains otherwise appropriate within the meaning of the Federal Service Labor-Management Relations Statute (the Statute).

The Activity/Petitioner—the U.S. Army Corps of Engineers, Little Rock District—filed a petition with the Atlanta Regional Office to determine whether the 2014 and 2016 reorganizations that resulted in one McClellan-Kerr Arkansas River Navigation System (MKARNS) made the two pre-existing bargaining units inappropriate under the successorship doctrine and whether the predominate unit should be certified as the exclusive representative of the two units without an election. In the attached decision and order, Federal Labor Relations Authority Regional Director

Richard S. Jones (RD) found that the Petitioner is a successor employer of the two units and that each of the units remained appropriate despite the reorganizations.

Consequently, the Petitioner filed an application for review of the RD’s decision.

The main question before us is whether the RD made a clear and prejudicial error of substantial fact when he determined that each bargaining unit remains “appropriate” following the reorganizations of the MKARNS.¹ Because the record supports the RD’s determination that each bargaining unit remains appropriate within the meaning of § 7112(a) of the Statute, we deny the application for review.

II. Background and RD’s Decision

A. Background

The MKARNS is a river system managed by the U.S. Army Corps of Engineers to oversee the infrastructure of the Arkansas River. The Little Rock District (the District), which is a district in the Southwestern Division of the U.S. Army Corps of Engineers, supervises portions of the MKARNS in Arkansas and Missouri. Prior to 2014, the District had two project offices that were divided into a northern and southern region based on the geography of the Arkansas River. Additionally, each project office was responsible for the management and supervision of the locks, dams, hydropower, navigation, and recreation on its respective portion of the Arkansas River. The parties also stipulated that the International Brotherhood of Electrical Workers, Local 2219 (IBEW) represents the bargaining unit in the northern region and that the American Federation of Government Employees, Local 953 (AFGE) represents the bargaining unit in the southern region.

In 2014, the Petitioner reorganized the District by downgrading the two project offices to site offices and by creating the MKARNS Project Office.² The MKARNS Project Office is now solely responsible for the management and supervision of the District and the two site offices are now maintained by one manager. In 2017, the Petitioner orchestrated a second reorganization to make supervisory roles governed by function rather than geography. Therefore, the Petitioner moved navigation functions to the MKARNS Project Office and

¹ 5 U.S.C. § 7112(a).

² The “[e]mployees affected by this reorganization included all of the Lock and Dam Operators and Mechanics at each . . . lock[] and dam[], maintenance employees such as Electricians, Welders, and Crane Operators on the floating plants, survey crews who oversee bank stabilization and dredging, and a dive team.” RD’s Decision at 5.

created two new navigation manager positions.³ However, the reorganizations did not change the job duties or work locations for employees in AFGE or IBEW in any meaningful way.

The Petitioner initiated the reorganizations to create more efficiency and effectiveness in the operation, budget, and management of the District and filed the petition in September 2018 seeking the determination of a single bargaining unit with the Petitioner being a successor employer to both units and by merging AFGE into “sufficiently predominate” IBEW.⁴ The Petitioner claimed the reorganizations of the District eliminated the appropriateness of having two bargaining units divided by geographic location and, therefore, one unit would be appropriate.

Both unions opposed the petition and argued that the reorganizations did not change the bargaining-unit employees’ job duties, work locations, working conditions, or conditions of employment. Accordingly, both unions sought to remain the representatives of their respective bargaining units.

The parties also stipulated to the following facts: that AFGE and IBEW each have active collective bargaining agreements (CBA) with the Petitioner, that the geographic boundary of the MKARNS had not changed for at least ten years, that no new mission had been added to the MKARNS as a result of the reorganizations, and that labor relations and human resources of the Petitioner had not been affected by the reorganizations.

B. RD’s Decision

In his decision, the RD applied the three-prong test prescribed in *Naval Facilities Engineering Service Center, Port Hueneme, California* for resolving successorship claims.⁵ Accordingly, he found that a

majority of the bargaining-unit employees were transferred to the MKARNS Project Office.⁶ The RD next considered whether the two bargaining units, represented by AFGE and IBEW, remained appropriate units following the reorganization. Pursuant to § 7112(a) of the Statute, a unit is appropriate if (1) the employees in the unit share a community of interest; (2) the unit promotes effective dealings with the agency; and (3) the unit promotes the efficiency of agency operations.⁷

The RD determined that the two bargaining units remained appropriate because the unit employees shared a clear and identifiable community of interest with their respective unions, the reorganizations did not affect the effective dealings that the unions had with the Petitioner, and the Petitioner continued to have an efficiency of operations with the unions following the reorganizations.⁸ In reaching this conclusion, the RD found that the reorganizations of the MKARNS system was “simply a new system of management intended to manage the two site offices that were formerly more independent.”⁹ Additionally, he noted that the bargaining-unit employees were not “transferred over to an entirely new activity from a distinctly-separate activity” and that the unions had longstanding, successful relationships with the Petitioner.¹⁰ The RD also noted that the reorganizations did not significantly change the bargaining-unit employees’ job duties, work locations, working conditions, or conditions of employment.¹¹ Therefore, the RD concluded that the Petitioner was a successor employer to AFGE and IBEW and that both unions remained appropriate.¹²

³ While the Petitioner also created two additional bargaining unit positions and altered others, the parties stipulated that the Petitioner did not involuntarily change any SF-50. *Id.*

⁴ *Id.* at 1; see also *Dep’t of the Army, U.S. Army Aviation Missile Command (AMCOM) Redstone Arsenal, Ala.*, 56 FLRA 126, 131 (2000) (“The Authority has recognized that when more than one labor organization has represented employees in a new unit, one group may be ‘sufficiently predominant’ to render an election unnecessary.”).

⁵ 50 FLRA 363, 368 (1995) (“[The Authority] will find that a gaining entity is a successor, and a union retains its status as the exclusive representative of employees who are transferred to the successor, when:

(1) An entire recognized unit, or a portion thereof, is transferred and the transferred employees: (a) are in an appropriate bargaining unit, under section 7112(a)(1) of the Statute, after the transfer; and (b) constitute a majority of the employees in such unit; (2) The gaining entity has substantially the same organizational mission as the losing entity, with the transferred

employees performing substantially the same duties and functions under substantially similar working conditions in the gaining entity; and (3) It has not been demonstrated that an election is necessary to determine representation.”).

⁶ RD’s Decision at 8.

⁷ 5 U.S.C. § 7112(a); *U.S. Dep’t of the Navy, Fleet and Indus. Supply Ctr., Norfolk, Va.*, 52 FLRA 950, 959 (1997) (*FISC*).

⁸ RD’s Decision at 9-13.

⁹ *Id.* at 12.

¹⁰ *Id.* at 11-12.

¹¹ *Id.* at 10-11.

¹² *U.S. Dep’t of VA, VA Conn. Healthcare Sys., W. Haven, Conn.*, 61 FLRA 864, 864-65 (2006) (*CHSC*) (finding that both bargaining units remained appropriate following the merging of two hospitals following a reorganization).

The Petitioner filed an application for review on October 7, 2019. IBEW filed an opposition on October 22, 2019.¹³

III. Analysis and Conclusions

- A. We decline to first consider the Petitioner's claim that one bargaining unit is appropriate.

The Statute usually prefers to prevent unit fragmentation when an existing unit remains otherwise appropriate.¹⁴ Consequently, where there are competing claims for appropriate units following a reorganization, the Authority first considers the claim that most fully preserves the status quo in terms of unit structure.¹⁵ In its application for review, the Petitioner requests that we overrule the precedent set by *U.S. Department of the Navy, Commander, Naval Base, Norfolk, Virginia, (COMNAVBASE)* and, instead, first consider the Petitioner's claim because it promotes "effectiveness and efficiency."¹⁶

While efficiency and effectiveness are important concerns, we recently reiterated in a representation case involving severance that "preventing unit fragmentation is an important consideration, but employee interests, concerns, and self-determination are of equal importance

¹³ The Authority's regulations permit a party to file an opposition to an application for review within ten days after the party is served with the application. 5 C.F.R. § 2422.31(d). However, the Authority's regulations give parties an additional five days to file a response if the application was served by "first-class mail or commercial delivery." *Id.* § 2429.22. As a result, IBEW's opposition is timely since the application was filed on October 7, 2019 and IBEW was served by certified mail. *Id.*

AFGE was granted an extension of time until 5 p.m. on October 28, 2019 to file its opposition to the application for review. However, AFGE only filed a copy of its opposition by facsimile on October 28, 2019 at 4:37 p.m. Therefore, AFGE failed to comply with 5 C.F.R. § 2429.24, which does not permit a party to file an opposition to an application for review by facsimile, and the Authority's prior order requiring AFGE to file its opposition by 5 p.m. on October 28, 2019. Therefore, AFGE's opposition is untimely and is not considered.

¹⁴ *U.S. Dep't of the Navy, Commander, Naval Base, Norfolk, Va.*, 56 FLRA 328, 332 (2000) (*COMNAVBASE*) ("If we find that a petitioned-for, existing unit continues to be appropriate, then we will not address any petitions that attempt to establish different unit structures, because the Statute requires only that a proposed unit be *an appropriate unit*, not the most, or the only, appropriate unit.") (emphasis added) (citing *U.S. Dep't of the Navy, Naval Supply Ctr. Puget Sound, Bremerton, Wa.*, 53 FLRA 173, 183 n.9 (1997) (*Bremerton*)).

¹⁵ *Id.*

¹⁶ Application at 12-13.

. . . ."¹⁷ In the instant case, the RD took into consideration that the employees had already selected AFGE and IBEW as their representatives and there was no evidence of dissatisfaction with their choice, as inefficient as their choices may have been to the Petitioner.¹⁸ Consequently, we decline to overrule *COMNAVBASE* and we will not consider the Petitioner's appropriate unit claim because, as outlined below, the two existing bargaining units remain appropriate following the reorganizations.¹⁹

- B. The RD did not commit clear and prejudicial errors concerning a substantial factual matter.

1. Both unions continue to have a separate community of interest.

The Petitioner argues that the RD "failed to consider the majority of the relevant facts in determining the appropriate unit for the agency employees."²⁰ Therefore, it argues that the RD erred in finding that the two bargaining units, as represented by AFGE and IBEW, remain appropriate units following the reorganizations.²¹ The record indicates that the reorganizations did not significantly change any of the transferred employees' job duties,²² or duty station.²³ While bargaining-unit employees may sometimes travel to another location for work,²⁴ the parties stipulated that the Petitioner's mission and labor relations personnel have not changed since the reorganization.²⁵ Additionally, the reorganizations added more supervisors at each lock and dam,²⁶ but, the unit employees still report to the same chain of command.²⁷ Furthermore, the reorganizations of the MKARNS have not changed the unit employees' duty stations and, therefore, eliminated

¹⁷ *Dep't of the Navy, Portsmouth Naval Shipyard, Portsmouth, N.H.*, 70 FLRA 995, 999 (2018) (Member DuBester dissenting) (*Naval Shipyard*).

¹⁸ RD's Decision at 13.

¹⁹ *Naval Shipyard*, 70 FLRA at 999.

²⁰ Application at 4.

²¹ *Id.* In determining whether the unit employees continue to share a community of interest with their respective unions, the Authority will consider factors such as whether the employees in the proposed unit are a part of the same organizational component of the agency; support the same mission; are subject to the same chain of command; have similar or related duties, job titles and work assignments; are subject to the same general working conditions; and are governed by the same personnel and labor relations policies that are administered by the same personnel office. *CHSC*, 61 FLRA at 869.

²² Tr. at 204, 233.

²³ *Id.* at 181, 205, 227.

²⁴ *Id.* at 183, 227.

²⁵ *Supra* Part II.A.

²⁶ Tr. at 205.

²⁷ *Id.* at 182

the pre-existing geographic divide between the two units.²⁸ While the Petitioner passionately reargues its case and highlights assorted factual findings that supported its original petition for one bargaining unit,²⁹ the Petitioner has failed to demonstrate that the RD erred in his decision. Despite arguments by the Petitioner that the RD ignored certain facts in evidence, the fact that no one factual finding has any particular weight does not necessarily mean that the RD erred in his determination.³⁰ Accordingly, the record supports the RD's findings and the Petitioner has failed to show that the RD erred in concluding that the reorganizations did not eliminate AFGE's and IBEW's separate community of interests.³¹

2. The current unit structure promotes effective dealings following the reorganizations.

The Petitioner maintains that "the current bargaining unit structure does not promote effective dealings" and that the RD erred when he found that the Petitioner is able to achieve effective dealings with AFGE and IBEW following the reorganizations.³² The

²⁸ See *CHSC*, 61 FLRA at 869 ("However, [the agency] does not explain why the fact that there is more administrative centralization between the Newington and West Haven facilities necessarily outweighs the facts relied on by the [regional director]. These facts include the geographic separation of the two groups of employees and that the Newington employees remain subject to the same overall chain of command and have the have same working conditions and duties.").

²⁹ Application at 5-7.

³⁰ *COMNAVBASE*, 56 FLRA at 332 ("The Authority makes appropriate unit determinations on the basis of a variety of factors, without specifying the weight of any individual factors.").

³¹ *U.S. Dep't of the Navy, Naval Facilities Eng'g Command, Mid-Atl., Norfolk, Va.*, 70 FLRA 263, 267 (2017). The Petitioner also cites to *U.S. Dep't of the Navy, Fleet Readiness Ctr. Sw., San Diego, Cal.*, 63 FLRA 245, 252 (2009) (*Fleet Readiness*), to support its assertion that the units do not share a separate community of interest. Application at 7. However, the facts in *Fleet Readiness* are distinguishable from the instant case. In *Fleet Readiness*, one bargaining unit was "administratively and organizationally integrated" into the other bargaining unit. 63 FLRA at 251. There is no evidence from the record that employees of either bargaining unit were integrated into each other.

³² Application at 9. In assessing the effective-dealings requirement, the Authority examines such factors as: the past collective-bargaining experience of the parties; the locus and scope of authority of the responsible personnel office administering personnel policies covering employees in the proposed unit; the limitations, if any, on the negotiation of matters of critical concern to employees in the proposed unit; and the level at which labor-relations policy is set in the agency. *U.S. Dep't of the Army, Army Corps of Eng'rs, Directorate of Contracting Sw. Div., Fort Worth Dist., Fort Worth, Tex.*, 67 FLRA 211, 214 (2014) (*Fort Worth*).

Petitioner further argues that the RD erred by relying on the parties' stipulation that the Petitioner's human resources and labor relations personnel have not changed as a result of the reorganization.³³ However, this argument does not challenge the RD's factual findings and, therefore, does not demonstrate that the RD made clear and prejudicial errors concerning substantial factual matters.³⁴

Regardless, the Authority has held that the continuity of a party's labor-relations personnel office is a factor in determining whether a unit(s) has effective dealings with an agency following a reorganization.³⁵ Furthermore, the Petitioner does not challenge the RD's finding that the Petitioner's reorganizations were unimpeded by either AFGE or IBEW.³⁶ While the Petitioner highlights two instances in which the parties failed to negotiate identical agreements,³⁷ the record clearly establishes that the Petitioner has successfully negotiated very similar CBAs with both unions and that the parties have a largely successful bargaining history.³⁸ Lastly, the record demonstrates that the reorganizations have not changed how agreements are negotiated between the parties.³⁹ Thus, the Petitioner has failed to establish that the RD erred in finding that the current unit structure promotes effective dealings.⁴⁰

3. The current unit structure promotes efficiency of operations following the reorganizations.

The Petitioner argues that the RD erred by finding that the current unit structure promotes efficiency of operations because the Petitioner has to negotiate with two unions and, therefore, possibly agree to two different

³³ Application at 9. The Petitioner also argues that the RD "misleadingly blamed" the Petitioner for failing to negotiate a "lock operator agreement" with AFGE. *Id.* However, the RD found that the Petitioner is able to have effective dealings with the unions based on a number of factors. RD's Decision at 10-11; see also *COMNAVBASE*, 56 FLRA at 332-33. Also, the Petitioner does not challenge the fact that AFGE agreed to an identical agreement as IBEW. Application at 8-9. Consequently, the Petitioner has failed to show that the RD committed a clear and prejudicial error of *substantial* fact. See *Fort Worth*, 67 FLRA at 216.

³⁴ *Fort Worth*, 67 FLRA at 215-16.

³⁵ See *id.* at 216.

³⁶ RD's Decision at 11.

³⁷ Application at 8-9.

³⁸ Tr. at 90-91; RD's Decision at 10-11.

³⁹ Tr. at 103.

⁴⁰ See *U.S. Dep't of the Navy, Naval Dist. Wash.*, 60 FLRA 469, 474 (2004) (finding that an agency's history of effectively dealing with three separate units was not affected by a reorganization).

agreements,⁴¹ but, it does not identify any factual errors that were committed by the RD.⁴² Rather, the Petitioner challenges the weight that the RD ascribed to evidence and it is well-established that “disagreement over the weight that an RD has accorded certain evidence is not sufficient to find that an RD committed a clear and prejudicial error concerning a substantial factual matter.”⁴³

Moreover, the Petitioner maintains that the RD erred by concluding that the reorganizations were a “new system of management.”⁴⁴ Even though the Petitioner characterizes this conclusion as being an “erroneous over-simplification,”⁴⁵ it fails to establish that the RD’s finding is not supported by the record.⁴⁶ The record reflects that the reorganizations of the MKARNS largely affected the management system and did not reorganize the duty stations or job duties of unit employees.⁴⁷ Additionally, the Petitioner’s central argument is that the current unit structure is not the most efficient.⁴⁸ However, the Authority has held that “the Statute requires only that a proposed unit be *an appropriate unit*, not the most, or the only, appropriate unit.”⁴⁹ Consequently, the Petitioner has failed to demonstrate that the current unit structure does not promote efficiency of operations.

IV. Decision

The application for review is denied.

Member DuBester, concurring:

I agree with the Decision to deny the application for review.

⁴¹ Application at 11-12. The criterion of efficiency of agency operations concerns the benefits to be derived from a unit structure which bears some rational relationship to the operational and organizational structure of the agency. *FISC*, 52 FLRA at 961. That is, a unit that bears a rational relationship to an agency’s operational and organizational structure could result in economic savings and increased productivity to the agency. *Id.* at 961-62. Consequently, factors to be examined in assessing efficiency of agency operations pertain to the effect of the proposed unit on agency operations in terms of cost, productivity and use of resources. *Id.* at 962 (citations omitted).

⁴² *Fort Worth*, 67 FLRA at 216.

⁴³ *U.S. Dep’t of VA, Med. Ctr., Hampton, Va.*, 65 FLRA 364, 366 (2010).

⁴⁴ Application at 11.

⁴⁵ *Id.*

⁴⁶ Tr. at 54, 71, 110, 181, 211.

⁴⁷ *Id.*

⁴⁸ Application at 11-12.

⁴⁹ *COMNAVBASE*, 56 FLRA at 332 (citing *Bremerton*, 53 FLRA at 183 n.9).

Member Abbott, concurring:

I wholeheartedly agree with the Chairman that “effectiveness of dealings and efficiency of Agency operations” is a primary and important consideration in determining whether a bargaining unit structure remains appropriate following a reorganization. I also agree that, in the past, the Authority has accorded far too much weight to the status quo in determining which bargaining-unit structure is most effective and efficient.

Here, however, the Agency failed to establish exactly how changing the two-unit status quo to a combined, single unit would be more effective and efficient. To be sure, the Agency mentions in passing how it might be inconvenienced in several respects but mere inconvenience, without more, does not warrant setting aside the Regional Director’s determination to maintain the existing unit structure. Absent any facts more compelling than the inconvenience of having to negotiate two collective bargaining agreements, albeit a costly venture, the Agency failed to present sufficient facts – such as additional costs, loss of productivity, or use of resources¹ – to establish that a single unit would be more effective and efficient than the existing two units.

Therefore, based on the evidence presented to the Regional Director, there is no basis upon which to conclude that two units are no longer appropriate.

¹ *U.S. Dep’t of the Interior, Nat’l Park Serv., Ne. Region (NPS)*, 69 FLRA 89, 97 (2015) (Authority affirmed an RD’s decision which found that consolidating nine bargaining units into one unit was appropriate because the agency failed to demonstrate “that the consolidated unit would result in any additional costs, loss of productivity, or use of resources.”).

Chairman Kiko, dissenting:

I disagree with this decision because I would find that established policy warrants reconsideration.¹ Although I would not go so far as to find that the “effectiveness of dealings and efficiency of Agency operations” should be the primary, *determinative* consideration,² I agree with the Agency that reluctance to disturb established bargaining relationships has resulted in an inappropriate level of deference to maintaining the status quo.

Here, in an apparent effort to apply Authority precedent requiring preservation of the status quo even in the face of substantial inefficiencies, the Regional Director (RD) minimized the significant changes that resulted from the reorganizations and the sizable inefficiencies that result from maintaining the two separate units. The reorganizations were intended to provide more efficient management and improve productivity. I agree with Member Abbott that we are bound to preserve employees’ exercise of the rights provided for in the Statute, but that “Congress, and taxpayers who foot the bill for all of these processes, expect those rights to be pursued in an effective and efficient manner.”³

The RD’s deference to the status quo resulted in his failure to properly consider whether employees in their respective units continue to share a community of interest; whether maintaining separate units promotes effective dealings with the agency; and whether the status quo promotes efficiency of agency operations.⁴ Specifically, he neglected to fully evaluate: whether employees are subject to the same chain of command,⁵ have similar or related duties, job titles, and work assignments; the degree to which the unit structure bears a rational relationship to the operational and

organizational structure of the Agency; and the effect of the proposed unit on the Agency’s operations in terms of cost, productivity, and the efficient use of resources.⁶

The prior unit structure consisted of one union, IBEW, representing employees who were responsible for maintaining the navigation locks and dams, hydropower plants, and hundreds of miles of navigation channel on the *north* side of the Arkansas River and one union, AFGE Local 953, representing employees doing the same thing on the *south* side of the river. The IBEW employees all reported to the Russellville Resident Office (on the north side of the river) and the AFGE employees all reported to the Pine Bluff Resident Office (on the south side of the river).

The first reorganization in 2014 reduced the Russellville and Pine Bluff Resident Offices to site offices, with both of them reporting to the newly-formed McClellan-Kerr (MKARNS) Project Office. The agency conducted a second reorganization of the river system by function rather than geographical boundaries by moving the navigation functions to the MKARNS Project Office. For example, those doing hydrological surveying and dredging work on both sides of the river reported to the new position of Navigation Operations Manager. Similarly, those who supervised both marine terminals and all four of the District’s floating plants on both sides of the river reported to the new position of Navigation Maintenance Manager. The community of interest that was once enjoyed by the employees on either side of the river no longer existed.

¹ 5 C.F.R. § 2422.31(c)(2) (the Authority may grant an application for review where the application demonstrates that review is warranted because “[e]stablished law or policy warrants reconsideration”).

² Application at 13 (arguing that “when there are competing claims of appropriate units, the unit that best provides for effectiveness of dealings and efficiency of [a]gency operations should be determined to be the appropriate unit, rather than the unit that maintains the *status quo*”).

³ *U.S. DOJ, Fed. BOP, Fed. Corr. Inst. Englewood, Littleton, Colo.*, 70 FLRA 372, 376 (2018) (Member DuBester dissenting) (Concurring Opinion of Member Abbott).

⁴ See *U.S. Dep’t of the Navy, Fleet & Indus. Supply Ctr., Norfolk, Va.*, 52 FLRA 950, 959-62 (1997) (*Navy*).

⁵ After finding that “[t]he chain of command has changed at the upper level and there are new lock supervisors at the first level,” the RD nevertheless concluded that “the new chain of command is not substantially dissimilar from what it was before.” RD’s Decision at 10.

⁶ See *Navy*, 52 FLRA at 959-62 (discussing factors to be examined in assessing the appropriateness of a unit).

Employees performing the same work with the same supervisor are in two different bargaining units represented by two different unions. This means that employees working for the same supervisor doing the same job are governed by two different leave policies, and subject to different rules about Sunday pay and different work schedules.⁷ The RD's decision would force the Agency to negotiate and administer duplicative – but not necessarily identical – collective-bargaining agreements for people performing the same functions in each unit.⁸ The current structure is inefficient and adversely affects the Agency's operations.⁹

In sum, I would find that established policy warrants reconsideration because “first” considering the appropriateness of the existing bargaining-unit structure should not include undue deference to maintaining the status quo while turning a blind eye to facts that demonstrate that the current structure is no longer effective or efficient and thus no longer appropriate. Yet the majority would adhere to the principle that maintaining the status quo trumps all. Consequently, I would grant the application for review, and find that only a consolidated unit is appropriate.

⁷ RD's Decision at 6.

⁸ *See id.* (finding that bargaining separately with each union “sometimes results in different outcomes and requires more time and employee representatives than negotiations with one union would require”).

⁹ *E.g., id.* (finding that the result of the two units operating under different leave procedures is that “supervising them [is] more cumbersome” and the disparity has reportedly negatively affected employee morale); *id.* at 11 (acknowledging that “[l]ock and [d]am operators cannot be assigned to certain other locks and dams due to their different work schedules”).

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AUTHORITY
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DA-RP-18-0026

DECISION AND ORDER

I. Statement of the Case

On September 5, 2018, the U.S. Army Corps of Engineers, Little Rock District (Petitioner or Activity/Agency) filed a petition seeking to clarify whether its reorganization of the McClellan-Kerr Arkansas River Navigation System (MKARNS) resulted in separate units represented by the International Brotherhood of Electrical Workers, Local 2219, AFL-CIO (IBEW) and the American Federation of Government Employees, Local 953, AFL-CIO (AFGE) becoming inappropriate, and whether one combined bargaining unit is appropriate under the successorship doctrine. Under the Agency’s suggested clarification, IBEW would be certified as the exclusive representative of the unit because it is sufficiently predominate over AFGE to render an election unnecessary.

The Agency maintains that the reorganization--the creation of the MKARNS Project Office which replaced the Russellville and Pine Bluff Project Offices (north and south of Little Rock, respectively)--consolidated resources and higher-level management, increased lower-level supervision, and allowed it to begin operating the MKARNS by function rather than geography.

The Unions maintain that their employees’ conditions of employment, working conditions, job duties, and work locations have not changed so their units remain appropriate and should be recognized as having a separate bargaining relationship with the successor employer.

The Region conducted a hearing in Little Rock on February 26 and 27, 2019. Documentary evidence, testimony, and a Stipulation of Facts were entered into the record. The parties submitted Post-Hearing Briefs. Based on the investigation and existing precedent, I find that the units remain appropriate and continue to have a bargaining relationship with the successor employer.

II. Findings

The International Brotherhood of Electrical Workers, Local 2219, AFL-CIO is a labor organization under Section 7103(a)(4) of the Statute. The American Federation of Government Employees, Local 953, AFL-CIO is a labor organization under Section 7103(a)(4) of the Statute. The U.S. Army Corps of Engineers, Little Rock District is an agency within the meaning of Section 7103(a)(3) of the Statute.

In 1977, in Case No. 64-3816 (RO), AFGE was certified as the exclusive representative of a bargaining unit described as follows:¹

- Included: All non-supervisory, non-professional employees of the Pine Bluff Arkansas Resident Office, U.S. Army Engineer District, Corps of Engineers.
- Excluded: Professionals; management officials; employees engaged in Federal personnel work in other than a purely clerical capacity; supervisors as defined in E.O. 11491 as amended, and Park Rangers who are in a unit of exclusive recognition held by Local 871, National Federation of Federal Employees.

(Ag. Ex. 1).

¹ This unit only includes MKARNS employees, although AFGE Local 953 represents other units. (Tr. 67, 216). The AFGE certification certifies this unit for representation by the American Federation of Government Employees Local 3739. However, the parties’ collective bargaining agreement is with AFGE Local 953. (Ag. Ex. 3). AFGE Ex. 1 shows that AFGE 3739 merged with AFGE 953 as of March 12, 1985. AFGE Ex. 2 shows that AGFE 953 was receiving dues deducted by the Agency as far back as December 19, 1985. (Tr. 202-204). There is no evidence that the Agency received these documents to clarify this representation issue before the petition was filed in this case. (Tr. 212).

In 1995, in Case No. DA-RO-50035, IBEW was certified as the exclusive representative of a bargaining unit described as follows:²

Included: All full-time and part-time non-professional employees, Classification Act (GS) and Wage Grade employees of the Corps of Engineers, Little Rock District, including the employees of the Navigation Branch of the Russellville Resident Office.

Excluded: All professional employees and all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, supervisors, guards, temporary and casual employees, and employees of units having exclusive recognition currently as follows: NFFE LU 1679, Pine Bluff Resident Office; IBEW LU 2219 Power Plant Employees and IBEW Local 2219 Reservoir employees.

(Ag. Ex. 2).

The mission of the U.S. Army Corps of Engineers (Corps) is to “deliver vital public and military engineering services; partnering in peace and war to strengthen our nation’s security, energize the economy and reduce risks from disasters.”³ The Corps is comprised of nine divisions. One of these divisions is the Southwestern Division, which is divided into four districts, including the Little Rock District at issue in this case. (Tr. 64). The Little Rock District, headquartered in Little Rock, Arkansas, is tasked with several missions including civil works, disaster response, military missions, navigation, planning, real estate, recreation, regulation, and water levels. (Tr. 63). The Little Rock District includes approximately \$6.5 billion of infrastructure throughout the majority of Arkansas and portions of Missouri, including thirteen locks and dams, seven hydropower facilities, and hundreds of miles of navigation channel. (Tr. 63). Administratively, the District is currently divided into eight project offices,⁴ including the MKARNS Project Office, although the MKARNS, as a congressionally-authorized river system,

has existed since the early 1970s. (Tr. 63, 129). The MKARNS extends from the border of Oklahoma and Arkansas to the confluence of the Mississippi and Arkansas rivers, and is 445 miles in total. (Tr. 19, 64). The Little Rock District manages approximately two-thirds of the MKARNS, which amounts to roughly 309 miles. The value of commodities that passes through this system is approximately \$3 billion per year. (Tr. 19). The other portion of the MKARNS is managed by the Tulsa District. (Tr. 64).⁵

The MKARNS in the Little Rock District includes thirteen locks and dams along the Arkansas River in the Little Rock District, as well as two hydropower plants, two marine terminals, the navigation channel, and several parks along the river. (Tr. 19). The MKARNS in this district was divided into a north and south region based on the geography of the Arkansas river. (Tr. 54, 127; Ag. Ex. 10; Jt. Stip. ¶ 8). Prior to 2014, which is when the reorganization at issue took place, this portion of the MKARNS was composed of the Russellville Project Office on the north end of the river and the Pine Bluff Project Office on the south, which had been in operation since the 1970s. (Tr. 20, 68; Ag. Ex. 10). The Russellville region includes Trimble Lock and Dam (LD13) on the northern end of the river to Murray Lock and Dam (LD07) at the point dividing the northern and southern sections, as well as two powerhouses and pump stations. (Ag. Ex. 10). The Pine Bluff region includes Terry Lock and Dam (LD06) at the dividing point down to Montgomery Point Lock and Dam (LD99).⁶ Both Russellville and Pine Bluff have a marine terminal, which is where floating plants are normally housed. (Tr. 27). The floating plants are towboats and floating barges with cranes and other equipment that may move up and down the river for maintenance projects. (Tr. 21, 27). Each marine terminal has two floating plants. (Tr. 27). Finally, both ends of the river are responsible for maintaining a depth of nine feet so that commodities may move up and down the river. (Tr. 21). There is no specific difference in the work employees perform on the north end of the river versus the south. (Tr. 29, 136).

The project offices at Russellville and Pine Bluff were each led by an Operations Manager who independently managed the locks and dams, navigation, hydropower, and recreation on their respective segments

² This unit includes Little Rock District employees who are outside of the MKARNS area. (Tr. 67). IBEW Local 2219 also represents employees at the other seven project offices in addition to the MKARNS Project Office. (Tr. 98, 121-122; Jt. Stip. ¶¶ 3, 4).

³ <https://www.usace.army.mil/About/Mission-and-Vision/>

⁴ Project offices were formerly referred to as resident offices. The certifications at issue here still refer to resident offices. (Tr. 66).

⁵ Information included in this paragraph has been gathered from the record and from <https://www.usace.army.mil/>.

⁶ Montgomery Point is the newest lock and dam acquired by the Corps in 2004.

of the river.⁷ (Tr. 20, 30, 157). The Agency felt this management configuration created some divergence in operating processes, including assigning work, scheduling, and budgeting, so in September 2014, the Agency obtained approval to activate the MKARNS Project Office in Conway, Arkansas and downgraded Russellville and Pine Bluff to site offices once the Operations Managers at Russellville and Pine Bluff left their positions through attrition.⁸ (T. 68-69; Ag. Exs. 10, 11). This change consolidated management of the Little Rock District's portion of the MKARNS' navigation, recreation, and environmental stewardship functions to one Operations Project Manager; the Deputy Operations Project Manager was primarily responsible for natural resources management and administrative personnel. (Tr. 23, 77-78, 103-104). The Russellville and Pine Bluff site offices were then managed by Site Managers. (Tr. 45). After this management consolidation, the Russellville and Pine Bluff site offices focused mainly on natural resource management and recreation along the shoreline. (Tr. 30). The reorganization also allowed the Agency to consolidate the budget for Russellville and Pine Bluff in order to allocate resources more freely to where they are needed most. (Tr. 70, 99).

The Agency notified the Unions of the MKARNS Project Office creation on October 10, 2014 and invited bargaining over appropriate arrangements and procedures. (Ag. Ex. 12). The reorganization continued in 2017 when the Agency notified the Unions on January 20, 2017 that it intended to reassign supervisory roles by function rather than geography. (Ag. Ex. 13). At this time, the Agency created a Navigation Operations Manager, responsible for the operation of the thirteen locks and dams as well as maintenance of the navigation channel at a nine-foot depth, and a Navigation Maintenance Manager, responsible for two marine terminals in charge of major maintenance projects. (Ag. Ex. 13; Tr. 78). The Agency invited appropriate arrangements and procedures bargaining over the 2017 reorganization as well. (Tr. 36). In January 2018, as a result of the Unions' concerns, the Agency added working supervisors at each lock and dam

in order to improve on-site supervision.⁹ (Tr. 106; Ag. Ex. 14). These supervisors are managed by Lock Masters, who managed either two or three of the locks and dams themselves before the creation of the working supervisor positions. (Tr. 58, 106, 147-148). This portion of the 2018 reorganization also included assigning all operators on the south end of the river to Lock 2 so that their travel time to the lock where they would be working that day was part of their duty-time, and unmanning Montgomery Point Lock and Dam for a few hours a day. (Tr. 149-150). Further, there is now one supervisor for all four floating plants, instead of one for two plants in the north and one for two plants in the south. (Tr. 106).

The current chain of command at issue in this petition begins at the top with the District Commander and then runs to the Chief of Operations Division for the Little Rock District, then to the Deputy Chief, and then to the Operations Project Manager and the Deputy Operations Manager/Natural Resource Manager. Next in line is the Navigation Maintenance Manager who supervises the marine terminals and floating plants and the Navigation Operations Manager who supervises the locks and dams.¹⁰ (Tr. 110-117; Ag. Exs. 7, 9).

Employees affected by this reorganization included all of the Lock and Dam Operators and Mechanics at each of the aforementioned locks and dams, maintenance employees such as Electricians, Welders, and Crane Operators on the floating plants, survey crews who oversee bank stabilization and dredging, and a dive team.¹¹ (Tr. 26, 146, 153-155; Ag. Ex. 5). The work that they do has not changed nor have the rules or regulations regarding river traffic under which the employees operate. (Tr. 169, 181, 184, 199, 204-205, 233).

As part of the reorganization, the Agency created two new bargaining unit positions and altered some others, although no involuntary changes to SF-50s were made. (Jt. Stip. ¶7). The Agency created a Facilities Operations Specialist position, who works under the general supervision of the Navigation Operations Manager. (Tr. 31; Ag. Ex. 17). The major duties of this position include providing overall operational and

⁷ For example, Navigations Operations Manager (NOM) Ashly Zink, who formerly held the position of Russellville Maintenance Manager, testified that she used to supervise two fleets, a marine terminal, and one survey crew before the reorganization. (Tr. 157). During that time, her employees only worked in the Pine Bluff area during emergencies or during a dewater when all water upstream and downstream of a lock is removed so maintenance can be performed. (Tr. 158). The last dewater occurred in 2012. (Tr. 169, 196).

⁸ This change was finalized on November 2, 2014 and took effect November 8 and 9, 2014. (Tr. 75; Ag. Ex. 10, p. 1).

⁹ The supervisors began work in July or August of 2018. (Tr. 181-182).

¹⁰ Generally, the Chief of the Operations Division is considered the second step in the parties' negotiated grievance procedure, although the grievance step system is not strictly followed by either party. (Tr. 102-103).

¹¹ The majority of the locks and dams have five operators, and mechanic, and a supervisor or Lock Master. The Lock and Dam Operator position descriptions and Mechanic (non-Lead) positions are uniform throughout the MKARNS. (Tr. 146-147). There are also approximately five employees at each floating plant. (Tr. 159).

maintenance functions necessary for the internal operation and functioning of the locks and dams. The position was created to provide consistency to the locks and dams and also serves to ensure that facilities are environmentally compliant, as well as to communicate with Little Rock District over safety matters. (Tr. 31-33; Ag. Ex. 17). The other bargaining unit position created was an Engineering Technician created through a reasonable accommodation. (Tr. 34; Ag. Ex. 17). The Agency also created a Lead Welder at the Pine Bluff Marine Terminal because the Dardanelle Terminal on the Russellville side of the river had one, but Pine Bluff did not, as well as created a machinist position to fabricate parts with a duty station at the Pine Bluff Terminal. (Tr. 34). Other positions were altered for consistency or pay level, but the Agency did not require that any employees relocate. (Tr. 35, 140).

IBEW and the Agency are parties to a collective bargaining agreement (CBA) dated January 31, 2011 called the "Orange Book." (Ag. Ex. 4). AFGE and the Agency are parties to a CBA dated June 12, 2001 called the "Blue Book." (Ag. Ex. 3). The two agreements are very similar in their terms and conditions. These two agreements do not cover every term and condition of employment and the Agency generally bargains separately with the Unions, which sometimes results in different outcomes and requires more time and employee representatives than negotiations with one union would require. (Tr. 80-81). For example, in 2017, the Agency attempted to negotiate a leave policy for Lock and Dam Operators and was able to reach an agreement with IBEW, but not with AFGE because the Agency head rejected the agreement, so operators on the north end of the river take leave differently than the operators on the south end.¹² (Tr. 81; Ag. Exs. 15, 16). Although AFGE was somewhat slower to respond to the Agency's attempts to negotiate this agreement than IBEW, the terms it agreed to were identical to those of the IBEW agreement. (Tr. 83; AFGE Ex. 4). Now the two Unions are operating under different leave procedures, which makes supervising them more cumbersome and reportedly has affected employee morale. (Tr. 151, 157).

In addition to leave, IBEW and AFGE have different rules about Sunday pay and different work schedules. For example, AFGE Lock and Dam Operators work 12:00 to 12:00 and IBEW operators work 6:00 to 6:00 (or 6:30 to 6:30) due to the fact that the locks and dams must be operated 24/7. (Tr. 91-96, 151, 227). This

affects the ability of the Agency to move employees from locks on the north end to locks on the south end in order to cover for employees on leave. (Tr. 91-93, 151-152, 198). Generally, the maintenance employees do not experience these same sort of scheduling difficulties because they schedule their leave around planned activities that require many employees to be on-duty at one time. (Tr. 96). Despite these difficulties, employees and resources were sometimes detailed from one end of the river to the other even before the reorganization. (Tr. 127-128, 206, 228).

The goal of the Agency in this reorganization is to be able to share employees and resources more expediently along the river, so it would prefer the Unions to adopt the same policies and procedures. (Tr. 153-155). But, despite the fact that it is still required to deal with both of the Unions, the Agency has experienced more fluidity in assigning resources throughout the MKARNS and employees have worked on projects across the previous geographic boundaries, although the Agency generally does not assign lock and dam employees to work at duty stations far away from their normal duty station because the distance is too far. (Tr. 153-155, 158-159, 198).

Labor relations did not change as a result of the reorganization, with the exception of the first-step of the grievance procedure, which would likely be heard by the Operations Project Manager at Conway, Arkansas instead of the project managers who were formerly stationed at Russellville and Pine Bluff respectively.¹³ (Tr. 103, 135 Jt. Stip. ¶ 12). The office of legal counsel, as well as the labor relations advice received from the Civilian Personnel Advisory Center (CPAC) and the Civilian Human Resources Agency (CHRA) also did not change. (Tr. 132-133 Jt. Stip. ¶¶ 11, 12). Hiring and transfers have been made easier by the management consolidation because there are no longer vacancy postings made either on the north or south end of the river, and there are no longer two project managers who have to discuss transfers between their regions. Instead, the Navigation Maintenance Manager or Navigation Operations Manager handles all hiring and transfers for their respective functions.¹⁴ (Tr. 104-105). Performance evaluation has changed to the extent that there are fewer managers to rate employees. (Tr. 106-107, 162). But, overall, the Human Resources systems for hiring and promotion have not changed.

¹² The agreement was rejected by the Defense Civilian Personnel Advisory Service because the existing AFGE certification the Agency had still reflects Local 3739, not Local 953. This representation question caused the Agency to question whether the bargaining unit structure was still appropriate after the reorganization. (Tr. 84, 97, 211; AFGE Ex. 5).

¹³ As previously noted, the grievance filing process is not always strictly followed. (Tr. 102-103). The Chief of the Little Rock Operations Division was and is the chief negotiator for the Agency with respect to agreements with the Unions. (Tr. 101).

¹⁴ NOM Zink testified that hiring has been streamlined since the reorganization because she is now able to use one vacancy announcement and interview panel for multiple locations. (Tr. 160).

(Jt. Stip. ¶10). Training can now be arranged for both sides of the river at one time more efficiently. (Tr. 162). As for payroll, the only change was the individual who certifies time, as well as the time keeper for a smaller subset of those employees; however, the payroll continues to be processed by the Defense Financial and Accounting Services (DFAS) after the reorganization. (Tr. 131).

Analysis and Conclusions

Successorship involves a determination of the status of a bargaining relationship between an activity that acquires employees who were in a previously existing bargaining unit, and a labor organization that exclusively represented those employees prior to their transfer. The Authority will find that a gaining entity is a successor, and a union retains its status as the exclusive representative of employees who are transferred to the successor, when:

- 1) an entire recognized unit, or a portion thereof, is transferred and the transferred employees: (a) are in an appropriate unit under Section 7112(a)(1) of the Statute; and (b) constitute a majority of the employees in such unit;
- 2) the gaining entity has substantially the same organizational mission as the losing entity, with the transferred employees performing substantially the same duties and functions under substantially similar working conditions in the gaining entity; and
- 3) it has not been demonstrated that an election is necessary to determine representation.

Naval Facilities Eng'g Serv. Ctr., Port Hueneme, Cal. (Port Hueneme), 50 FLRA 363 (1995). When, as here, there are competing successorship claims, the Authority will first consider the claim that will preserve the status quo. *U.S. Dep't of the Navy, Commander, Naval Base Norfolk, Va.*, 56 FLRA 328 (2000) (*COMNAVBASE*).

With respect to the first factor used to determine successorship, it appears that all of the employees represented by IBEW and AFGE, respectively, in the units at issue on the north and south ends of the MKARNS under the supervision of the Russellville Project Office and Pine Bluff Project Office were transferred to the MKARNS Project Office. The Agency created only two new positions as a result of the reorganization, which is not a majority of the employees

at issue. (Ex. 5). Thus, the majority of the employees at issue have been transferred to the MKARNS Project Office as a result of this reorganization.

1. The Appropriate Unit Criterion

As to the appropriate unit component of the successorship doctrine, in order for a unit to be found appropriate under Section 7112(a)(1), the evidence must show that:

- a) the employees in the unit share a clear and identifiable community of interest;
- b) the unit promotes effective dealings with the activity; *and*
- c) the unit promotes efficiency of the operations of the activity.

See U.S. Dep't of the Navy, Fleet and Industrial Supply Ctr., Norfolk, Va., 52 FLRA 950 (1997) (*FISC*) (citing *Defense Mapping Activity, Aerospace Ctr., St. Louis, Mo.*, 46 FLRA 502 (1992)); *see also U.S. Dep't of Veterans Affairs, VA Conn. Healthcare System, West Haven, Conn.*, 61 FLRA 864 (2006) (*CHCS*). In determining whether a unit remains appropriate after an agency reorganization, the Authority focuses on the specific changes caused by the reorganization. *COMNAVBASE*, 56 FLRA at 332. It should be noted that in situations such this, where two appropriate units are at issue, the Authority has determined that:

we will first consider the appropriate unit claim that will most fully preserve the *status quo* in terms of unit structure and the relationship of employees to their chosen exclusive representative. If we find that a[n] existing unit continues to be appropriate, then we will not address any petitions that attempt to establish different unit structures, because the Statute requires only that a proposed unit be *an* appropriate unit, not the most, or the only, appropriate unit.

Id., citing *Dep't of the Navy, Naval Supply Ctr. Puget Sound Bremerton, Wash.*, 53 FLRA 173 at 183 n.9 (1997). With this principle in mind, I will address the appropriate unit factors separately.

a. Community of Interest

Under the first factor of the appropriate unit test, the Authority in *CHCS* explained:

“[t]he fundamental premise of the first criterion--that employees share a clear and identifiable community of interest--is to ensure that it is ‘possible for them to deal collectively [with management] as a single group.’” *FISC*, 52 FLRA at 960 (quoting *Dep’t of Transp., Fed. Aviation Admin., Southwest Region, Tulsa Airway Facilities Sector*, 3 FLRC 235, 239 (1975)). The Authority examines such factors as whether the employees in the proposed unit are a part of the same organizational component of the agency; support the same mission; are subject to the same chain of command; have similar or related duties, job titles and work assignments; are subject to the same general working conditions; and are governed by the same personnel and labor relations policies that are administered by the same personnel office. *Id.* at 960-61. In addition, factors such as geographic proximity, unique conditions of employment, distinct local concerns, degree of interchange between other organizational components, and functional or operational separation may be relevant. *Id.*

61 FLRA at 868-69.

In *CHCS*, a case similar to this one, the Authority found the agency’s combination of two hospitals into one medical system did not destroy the separate community of interests of two bargaining units at the hospitals. In *CHCS*, the VA created the Connecticut Healthcare System (CHCS) that integrated a hospital in West Haven with one in Newington. 61 FLRA at 864-865. The West Haven bargaining unit employees were represented by AFGE and the Newington employees were represented by the National Association of Government Employees (NAGE). *Id.* Prior to the reorganization, the two hospitals had separate directors and administrative offices. The reorganization resulted in the two facilities sharing a director as well as personnel, labor relations, and administrative services. The Newington hospital had no inpatient or surgery services and employed 145 NAGE bargaining unit members, whereas the West Haven hospital provided a full range of services and employed 823 AFGE bargaining unit members. *Id.* at 865. After the reorganization, some of the services offered by the new CHCS involved employees of both of the facilities, announcements were posted for both locations, some employees were required to travel to both facilities as part of their job duties, and

some were occasionally required to fill in for employees at a facility other than their main duty station. *Id.* AFGE filed the petition in that case, asserting, in part, that the CHCS was a successor employer and that AFGE was sufficiently predominate in the new organization that it should be certified as the representative of all bargaining unit employees. *Id.* Citing *FISC* and *COMNAVBASE*, the Authority agreed with the Regional Director’s (RD) findings that the organizational changes were not significant enough to eliminate the established community of interest at the Newington facility and the unit’s representation by NAGE. *CHCS* at 869. It did not find persuasive the argument that the consolidation of management and administrative functions outweighed the continued geographic separation and unchanged working conditions and duties of the employees. *Id.* Further, the Authority noted that the RD found the NAGE unit was successfully able to negotiate with the Agency over local conditions of employment, both before and after the reorganization. *Id.*

In the instant case, as in *CHCS*, there is no indication that the reorganization at issue has significantly changed any conditions of employment, working conditions, job duties, and work locations for employees in either bargaining unit. The chain of command has changed at the upper level and there are new lock supervisors at the first level, but the new chain of command is not substantially dissimilar from what it was before. Further, although employees sometimes travel up and down the river to manage maintenance projects, the record shows that there is continued geographic separation as the locks and dams are located many miles apart from each other and it is not possible for many lock and dam employees to fill in for employees located at locks and dams that are not close in proximity. The facts of this case have not established that the reorganization resulted in destruction of IBEW and AFGE’s separate community of interests.

b. Effective Dealings

Effective dealings “pertains to the relationship between management and the exclusive representative selected by unit employees in an appropriate bargaining unit. In assessing this requirement, the Authority examines such factors as: the past collective bargaining experience of the parties; the locus and scope of authority of the responsible personnel office administering personnel policies covering employees in the proposed unit; the limitations, if any, on the negotiation of matters of critical concern to employees in the proposed unit; and the level at which labor relations policy is set in the agency.” *FISC* 52 FLRA at 961.

Here, the facts indicate that both Unions are able to achieve effective dealings with the Agency after the

reorganization. AFGE has been certified as the exclusive representative of the Pine Bluff region employees since 1977 and IBEW has been certified as the exclusive representative of the Russellville region since 1995. Since that time, the parties have been able to deal with each other effectively on labor relations matters. Although the identity of the Agency's first-level response to Union grievances has changed from Operations Managers at Russellville and Pine Bluff to one Operations Manager at Conway, the second-level remains the Chief of the Operations Division for the Little Rock District. Further, the Agency relies heavily upon CPAC, CHRA, and its legal department for much of its labor relations and personnel matters, which has remained unchanged by the reorganization. And finally, while the Agency submitted evidence that AFGE was not as quick to negotiate a leave agreement for its lock and dam employees as IBEW, the ultimate failure to execute such an agreement was on the part of the Agency, not AFGE, as AFGE agreed to the same terms as IBEW. Besides this one example, the parties have a long history of stable collective bargaining with the separate Unions and have produced two labor agreements with very similar terms. Indeed, the Unions did not hold up the reorganization at issue when the Agency provided the Unions with an opportunity to bargain in 2014, 2017, and 2018. As such, there is no indication that both IBEW and AFGE are unable to negotiate over "matters of critical concern to employees" in their separate units.¹⁵

c. Efficiency of Operations

Efficiency of agency operations "concerns the benefits to be derived from a unit structure which bears some rational relationship to the operational and organizational structure of the agency. That is, a unit that bears a rational relationship to an agency's operational and organizational structure could result in economic savings and increased productivity to the agency. Consequently, factors to be examined in assessing efficiency of agency operations pertain to the effect of the proposed unit on agency operations in terms of cost, productivity and use of resources." *FISC* 52 FLRA at 961-962.

The Agency presented evidence and testimony that demonstrates that its reorganization preserves its resources and has created a more-efficient organization. The Agency urges the FLRA to find that the efficiencies it has experienced as a result of its management reorganization should extend to its relationships with the

Unions in order to maximize its operational goals. The record shows that, while the reorganization resulted in easier communication between managers in charge of navigation maintenance and operations, all that was required before the reorganization was communicating with two individuals on two sides of the river instead of one. (Tr. 54). Such communication sometimes involved trying to come to a consensus between the two managers. (Tr. 73). Now, the MKARNS managers do not have to deal with management on both sides of the river, but must still deal with the two Unions. Thus, this petition was filed in order to consolidate labor relations as well as management. The only inefficiencies identified by the Agency are the fact that managers now have to deal with two very similar union contracts when employees of the two unions are working together, and the fact that Lock and Dam Operators cannot be assigned to certain other locks and dams due to their different work schedules. This evidence does not lead to the conclusion that the existing unit structure is inefficient because, if the Agency wishes to obtain similar conditions of employment for employees on both ends of the river, it can achieve that goal through collective bargaining. In fact, the Lock and Dam Operator leave addendum shows that the Agency and Unions are able to do just that and would have been in effect for both Unions but for the Agency's questioning of AFGE's representational status. The Agency has not proven that the abolishment of one of the two Unions is necessary now that it has reorganized its management structure.

The Petitioner cites *FISC* to support its position that the two units at issue are no longer appropriate. However, reliance on *FISC* is misplaced because, although that case's successorship principles apply here, the facts of that case are distinguishable from the instant case. In *FISC*, the Department of the Navy consolidated its purchasing and supply functions by creating the Fleet and Industrial Supply Center, which was headquartered in Norfolk, Virginia and included the Cheatham Annex in Williamsburg, Virginia. Employees of both of these locations were represented by AFGE Local 53 (GS employees) and the International Association of Machinists and Aerospace Workers (IAM) Local 97 (WG employees). During a later stage of the reorganization, the Agency created three detachments and placed them under its Customer Operations Department. The Yorktown and Charleston detachments were staffed with employees administratively transferred from Naval Weapons Station Yorktown and Charleston, respectively. The Yorktown employees were represented by the National Association of Government Employees Local R4-1 and the Charleston employees were represented by AFGE Local 2998. The agency argued that the employees in the new detachments accreted to the AFGE Local 53 and IAM Local 97 units due to the reorganization. The Authority agreed with the agency,

¹⁵ The Agency requests that the FLRA clarify whether AFGE Local 953 is the exclusive representative of the bargaining unit should it find that the units remain appropriate and retain their bargaining status with the Agency. Given the documentation submitted by AFGE, the certification will be amended to reflect the technical change in local status.

specifically finding that the detachments no longer reported to the commanding officer of their respective Naval Weapons Stations. Although the employees performed much of the same work as before the reorganization, they no longer supported some functions of their former employer, some employees held different positions, and the employees dealt with a new program for their new employer. Furthermore, the positions held by the new detachment employees were similar to positions already held by their new employer's other employees, and personnel policies and labor relations were now issued by the new employer. As a result, the Authority determined the detachments no longer held a separate community of interest after being transferred to the new employer.

The present case involves the creation of the MKARNS in order to consolidate management functions of the river system. By creating the MKARNS Project Office, the Russellville and Pine Bluff locations were downgraded to site offices. However, the vast majority of employees stayed at their worksites working on the same projects they were working on before. Further, the chain of command remains very similar, with the only significant additions being the consolidation of high-level decision making in the Operations Project Manager, Deputy Operations Project Manager, and Navigation Operations and Maintenance Managers, as well as an increase in local management at the locks and dams, and the ability to reallocate the budget. Unlike in *FISC*, these employees were not transferred over to an entirely new activity from a distinctly-separate activity. Instead, the MKARNS, Russellville, and Pine Bluff all remain part of the same river system performing the same mission and functions as before. The MKARNS is simply a new system of management intended to manage the two site offices that were formerly more independent.

2. Conclusion

The record shows the Agency's mission remains unchanged after the reorganization, as have the employees' duties, functions, and working conditions. Additionally, the record has not established that there is any question of employee representation that would warrant an election. Consequently, the remaining successorship factors demonstrate that the MKARNS Project Office is a successor employer of the employees represented by IBEW and AFGE. The record also supports, and I find that the reorganization did not adversely impact the appropriateness of the current structure of two separate units. In other words, both units remain appropriate. Although a single unit would also be appropriate, Authority precedent recognizes the importance of stability particularly in longstanding relationships. With respect to effective dealings, any improvement in the current dealings is possible but likely

minimal. As noted, the Agency has had longstanding relationships with both Unions and reports only one incident where it had difficulty dealing with one but not the other. Similarly, any increase in the efficiency of operations would hardly seem significant enough to justify ridding one group of employees of their chosen representative. Therefore, I find that maintenance of two separate bargaining units is appropriate.

III. **Order**

For the foregoing reasons, **I ORDER** that the U.S. Army Corps of Engineers, Little Rock District, McClellan-Kerr Arkansas River Navigation System (MKARNS) Project Office is the successor employer of the two units of employees and that the International Brotherhood of Electrical Workers, Local 2219, AFL-CIO and American Federation of Government Employees, Local 953, AFL-CIO are the exclusive representatives of these bargaining units.

The IBEW Local 2219 unit will be certified as:

- | | |
|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Included: | All full-time and part-time non-professional employees, Classification Act (GS) and Wage Grade employees of the Corps of Engineers' Little Rock District, including the employees of the McClellan-Kerr Arkansas River Navigation System (MKARNS) Project Office in the region that was formerly the Russellville Project Office. |
| Excluded: | All professional employees and all employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, supervisors, guards, temporary and casual employees, and employees of units having exclusive recognition currently as follows: NFFE LU 1679, Pine Bluff Resident Office; IBEW LU 2219 Power Plant Employees and IBEW Local 2219 Reservoir employees. |

The AFGE Local 953 unit will be certified as:

Included: All non-supervisory, non-professional employees of the McClellan-Kerr Arkansas River Navigation System (MKARNS) Project Office, U.S. Army Engineer District, Corps of Engineers in the region that was formerly the Pine Bluff Project Office.

Excluded: Professionals; management officials; employees engaged in Federal personnel work in other than a purely clerical capacity; supervisors as defined in E.O. 11491 as amended, and Park Rangers who are in a unit of exclusive recognition held by Local 871, National Federation of Federal Employees.

IV. 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 **October 7, 2019**, 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.¹⁶

Dated: August 7, 2019

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

¹⁶ 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.