71 FLRA No. 85

U.S. DEPARTMENT OF THE ARMY
FORT WAINWRIGHT LAW CENTER
FORT WAINWRIGHT, ALASKA
(Petitioner)

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO
(Exclusive Representative)

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 1712, AFL-CIO
(Exclusive Representative)

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
LOCAL 1834, AFL-CIO
(Exclusive Representative)

SF-RP-19-0020
SF-RP-19-0021
SF-RP-19-0022
SF-RP-19-0023
SF-RP-19-0024
SF-RP-19-0025
SF-RP-19-0026
SF-RP-19-0027
SF-RP-19-0028
SF-RP-19-0029

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ORDER GRANTING APPLICATIONS FOR REVIEW AND REMANDING TO THE REGIONAL DIRECTOR

December 12, 2019

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

I. Statement of the Case

In the attached decision and order (decision), Federal Labor Relations Authority Regional Director John R. Pannozzo (the RD) denied twelve agency-filed petitions, to the extent that they sought representation elections in twelve certified bargaining units. The petitioner based its election requests on its alleged good-faith doubts that the exclusive representatives continued to represent a majority of the employees in their respective certified units, but the RD found that the petitioner's doubts were unsubstantiated.[1] The petitioner filed ten applications for review (applications) challenging the RD's denials of representation elections for ten of the twelve certified bargaining units that were at issue in the petitions.[2]

In all the applications, the petitioner argues that the RD rejected its asserted good-faith doubts without examining the totality of the circumstances that were relevant to each of the ten challenged bargaining units. Because the RD's findings are insufficient to support his rejections of the petitioner's good-faith-doubt claims regarding the ten challenged units, the applications raise a genuine issue about whether the RD failed to apply established law. Therefore, we grant the applications and remand the portions of the decision concerning the ten challenged units to the RD for further findings consistent with this decision.

II. Background and RD's Decision

As relevant here, AFGE, AFL-CIO (AFGE, National); AFGE, Local 1712, AFL-CIO (Local 1712); and AFGE, Local 1834, AFL-CIO (Local 1834) are the certified exclusive representatives of twelve bargaining units in Alaska,[3] and the employees in those bargaining units are primarily located at three Army installations.[4] The petitioner, on behalf of an assortment of Army activities and commands, filed twelve representation petitions asserting good-faith doubts that the exclusive representatives were supported by the majority of the

[1] In addition, the petitioner sought updates to eight unit descriptions, and the RD granted those updates because they were appropriate and uncontested.

[2] The petitioner did not challenge the RD's denials of representation elections in Case Nos. SF-RP-19-0018 and SF-RP-19-0019.

[3] Local 1712 is the certified exclusive representative of the units in Case Nos. SF-RP-19-0019 and SF-RP-19-0020, and Local 1834 is the certified exclusive representative of the units in Case Nos. SF-RP-19-0026 and SF-RP-19-0028. AFGE, National is the certified exclusive representative of the remaining eight units. However, AFGE, National delegates authority to Local 1712 and Local 1834 to carry out representational functions in the units for which AFGE, National is the certified exclusive representative.

[4] These installations are Fort Wainwright, Fort Greely, and Joint Base Elmendorf-Richardson.

employees in each of their respective bargaining units.[5] The RD consolidated the twelve petitions for the purposes of his investigation and decision.

As to all of the bargaining units, the petitioner contended that a combination of factors – such as a low percentage of dues-paying union members, a lack of formal grievances being filed, the infrequency (or absence) of negotiations, or the dearth of union officers and stewards – supported the petitioner's good-faith doubts that the exclusive representatives were supported by a majority of the employees in each of their respective units. Although the twelve petitions were similar in many ways, the petitioner tailored its arguments about each unit to reflect the ways in which that unit – and any representational activities concerning that unit – differed from the others.

The RD examined the petitioner's contentions. First, he made findings regarding circumstances that undermined the petitioner's good-faith-doubt claims. In connection with each of these findings, the RD provided several examples. But he did not explain how the examples related to particular units, except for the examples that he credited as evidence of representational activity in all twelve units. Specifically, the RD found that: (1) all of the units were covered by collective-bargaining agreements; (2) Local 1834's president (president) and Local 1712's trustee (trustee) communicated regularly with the human-resources officials tasked with labor relations; (3) the president and trustee lobbied Congress about employees' concerns; (4) "the [u]nion has negotiated over matters that impacted all of the employees in all of the bargaining units at issue here," such as a new Department of Defense performance-management system;[6] (5) human resources regularly notified "the [u]nion" when employees from seven of the units "request[ed] . . . an alternate work schedule";[7] (6) the trustee conducted six "'lunch and learns' . . . at a variety of locations";[8] (7) the president "has represented employees subject to discipline,"[9] and the trustee "has filed grievances on behalf of employees" facing discipline;[10] (8) the president raised a number of "informal grievances" with human-resources officials;[11] and (9) Local 1834 has three vice presidents and between thirteen and fifteen stewards.[12]

The RD also made findings regarding circumstances that supported the petitioner's good-faith-doubt claims. In particular, he found that: (1) regarding one unit with only two employees – neither of whom was a dues-paying union member – a former supervisor testified that the employees had not engaged in any "discernable union activity," and the supervisor was previously unaware that they were part of a bargaining unit;[13] and (2) the percentage of dues-paying union members for two bargaining units was "0%," and other units had percentages of "5%, 6%, 8%, 9%, 13%, 13%, 16%, 20%, 22%, and 32%."[14] The RD did not identify the particular units to which the percentages related, and he did not explain which percentages he credited as evidence that would bolster a good-faith doubt about an exclusive representative's majority support. However, he characterized these percentages as the "[p]etitioner's strongest argument."[15]

The petitioner argued that the RD should consider additional circumstances as evidence that supported the good-faith-doubt claims – such as contract articles that provided the exclusive representatives with rights that the representatives never exercised, and the length of time that had passed since the bargaining units were certified. But the RD discounted those circumstances because the Authority had not examined them – or had expressly disclaimed reliance on them – when determining whether good-faith doubts existed in previous decisions. The petitioner also cited the number of times that the exclusive representatives did not respond to, or did not request to bargain concerning, notifications about changes affecting unit employees. But the RD found that the local unions "look[ed] into these situations," even if the unions did not request to bargain concerning them; and that the president and trustee "engaged in negotiations when it mattered."[16]

Considering all the evidence and arguments, the RD found that "the [u]nion has demonstrated substantial

[5] The petitioner represents the Army activities and commands that are listed as the employers on the certifications of representatives for the bargaining units at issue in this case. Consequently, all references to the petitioner's actions should be understood as actions taken on behalf of those Army activities and commands.
[6] Decision at 7.
[7] *Id.* The petitioner's documentation "show[ed] notifications sent to the union . . . for seven of the twelve bargaining units involved." *Id.*
[8] *Id.* at 8.
[9] *Id.*
[10] *Id.* at 9.
[11] *Id.* The RD stated that "informal grievances" did not invoke the formal mechanisms of a negotiated grievance procedure. *Id.* at 5, 9.
[12] The petitioner's witness and the president provided conflicting testimony regarding the number of stewards at Fort Wainwright, and the RD did not address that conflict. Between nine and eleven of the stewards are at Fort Wainwright – depending on whose testimony is credited – and four stewards are at Fort Greely.
[13] Decision at 4.
[14] *Id.* at 11.
[15] *Id.* at 19.
[16] *Id.* at 18.

representational activity that benefits all the employees . . . represent[ed] in all the bargaining units."[17] For support, he cited the president's and trustee's lobbying efforts "on behalf of all federal employees . . . and for provisions benefitting all Army employees in the bargaining units here";[18] the president's role in developing the performance-management system "applicable throughout [the Department of Defense], not just [to] employees of the Army or those in Alaska";[19] the "substantial number of matters that have been informally resolved";[20] and the unions' "represent[ation of] individual employees when called upon."[21] He added that "the [u]nion is not at all dormant," and "no employees from any of [the units at issue] have sought to decertify the union."[22]

As to the petitioner's "strongest argument" in support of its good-faith-doubt claims – the percentage of dues-paying union members in each unit – the RD found that the percentages could be misleading in small units.[23] As an example, the RD stated that if one of the employees in the two-person unit began paying dues, the unit would go from 0% to 50% dues-paying members.[24] He found that relying on the dues-payment rates was "cherry-picking that unfairly disadvantage[d] the [u]nion under all the relevant circumstances, particularly in light of the many other things the [u]nion [did] . . . to benefit all employees."[25]

For the foregoing reasons, the RD rejected all of the petitioner's good-faith-doubt claims. However, the RD granted uncontested updates to eight unit descriptions.

The petitioner filed ten applications for review challenging the RD's determinations concerning ten of the twelve units that were at issue in the decision, and the exclusive representatives filed an opposition to the petitioner's applications.[26]

III. Analysis and Conclusion: We remand the decision, in part, due to a genuine issue about whether the RD failed to apply established law concerning good-faith doubts.

Under § 2422.31(c)(3)(i) of the Authority's Regulations,[27] the Authority may grant an application for review when there is a genuine issue over whether the RD has failed to apply established law.[28] The petitioner argues that the RD failed to apply established law when he rejected the good-faith-doubt claims about the ten units in Case Nos. SF-RP-19-0020 through SF-RP-19-0029.[29] In particular, the petitioner notes that the Authority has stated that an evaluation of good-faith-doubt claims depends on considering the totality of the relevant circumstances affecting each unit.[30] But, according to the petitioner, the RD's analysis relied so heavily on national-level activities that it would allow any national union that lobbied Congress to effectively immunize all of that union's local affiliates from good-faith-doubt challenges, regardless of the

[17] *Id.* at 17.
[18] *Id.* at 18.
[19] *Id.*
[20] *Id.*
[21] *Id.* at 19.
[22] *Id.* at 2, 16.
[23] *Id.* at 19-20.
[24] *Id.* at 20.
[25] *Id.*

[26] The exclusive representatives request leave to file a motion to dismiss the applications on the ground that the petitioner's choice to "break[] up" the RD's decision "into ten separate . . . [a]pplications . . . confounds the purpose of consolidation and undermines" the RD's determination to resolve the petitions in a single decision. Mot. to Dismiss at 4 (citing 5 C.F.R. § 2429.1). And the exclusive representatives reiterate the same argument in their opposition. Opp'n at 8. We need not decide whether to grant leave to file a motion to dismiss because, even if we did, we would deny the motion. *See AFGE, Local 1547*, 68 FLRA 557, 558 (2015). Regarding the contention that the petitioner improperly presents its arguments in multiple applications rather than a single application, we note that the merits of the petitioner's arguments remain the same no matter the number of documents submitted.
[27] 5 C.F.R. § 2422.31(c)(3)(i).
[28] *Id.*
[29] Appl. for Review in SF-RP-19-0020 at 4; Appl. for Review in SF-RP-19-0021 at 4; Appl. for Review in SF-RP-19-0022 at 4; Appl. for Review in SF-RP-19-0023 at 4; Appl. for Review in SF-RP-19-0024 at 4; Appl. for Review in SF-RP-19-0025 at 4; Appl. for Review in SF-RP-19-0026 at 4; Appl. for Review in SF-RP-19-0027 at 4; Appl. for Review in SF-RP-19-0028 at 4; Appl. for Review in SF-RP-19-0029 at 4.
[30] Appl. for Review in SF-RP-19-0020 at 4-5; Appl. for Review in SF-RP-19-0021 at 4-5; Appl. for Review in SF-RP-19-0022 at 4-5; Appl. for Review in SF-RP-19-0023 at 4-5; Appl. for Review in SF-RP-19-0024 at 4-5; Appl. for Review in SF-RP-19-0025 at 4-5; Appl. for Review in SF-RP-19-0026 at 4-5; Appl. for Review in SF-RP-19-0027 at 4-5; Appl. for Review in SF-RP-19-0028 at 4-5; Appl. for Review in SF-RP-19-0029 at 4-5.

absence of "activity or representation . . . at the local level."[31]

The Authority has recently addressed the manner in which it evaluates good-faith-doubt claims. The evaluation does not turn on any single factor.[32] Instead, "the issue of whether an employer has questioned a union's majority in good faith cannot be resolved by resort to any simple formula. It can only be answered in the light of the totality of all the circumstances involved in a particular case."[33] And "factors asserted to support a good[-]faith doubt . . . must be viewed both in their context and in combination with each other."[34] Because a union must have majority support in every bargaining unit for which it is the certified exclusive representative,[35] the Authority assesses good-faith-doubt claims based on the particular circumstances that apply to each unit, even if multiple units share the same certified exclusive representative.[36]

Further, the Authority recently clarified[37] that "employees' right to self-determination" is an "essential tenet" of the Statute.[38] Consequently, in order to trigger a representation election, an employing agency must demonstrate, based on objective criteria,[39] "that a reasonable doubt exists that a union continues to represent a majority of employees" or "that a majority of eligible employees voting in an election . . . would vote in favor of continuing the union as their exclusive representative."[40]

Here, the RD's decision lacks the particularized findings necessary for the Authority to determine whether and how the RD evaluated the evidence of majority support for each certified bargaining unit.[41] For example, many of the RD's findings relate to the activities of the president and trustee. But it is not clear whether the RD credited the actions of both individuals as evidence of majority support in *all* of the contested bargaining units, or only some of the units.[42] If the RD credited the actions of both individuals as evidence relevant to all of the units, then the decision lacks any explanation about why the

[31] Appl. for Review in SF-RP-19-0020 at 5; Appl. for Review in SF-RP-19-0021 at 5; Appl. for Review in SF-RP-19-0022 at 5; Appl. for Review in SF-RP-19-0023 at 5; Appl. for Review in SF-RP-19-0024 at 5; Appl. for Review in SF-RP-19-0025 at 5; Appl. for Review in SF-RP-19-0026 at 5; Appl. for Review in SF-RP-19-0027 at 5; Appl. for Review in SF-RP-19-0028 at 5; Appl. for Review in SF-RP-19-0029 at 5.

[32] *Exp.-Imp. Bank of the United States*, 70 FLRA 907, 909 (2018) (*Exp.-Imp. Bank*) (Member DuBester concurring).

[33] *Id.* (quoting *Overseas Private Inv. Corp.*, 36 FLRA 480, 484 (1990)).

[34] *Id.* (quoting *Overseas Private Inv. Corp.*, 36 FLRA at 484).

[35] *Cf.* 5 U.S.C. §§ 7105(a)(2)(B) ("The Authority shall . . . supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit."), 7111(a) ("An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election."), 7111(b)(1)(B) (Authority must investigate a representation petition concerning an "appropriate unit for which there is an exclusive representative" when thirty "percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit"), 7111(d) ("A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.").

[36] *See U.S. Dep't of the Interior, Bureau of Indian Affairs, Navajo Area, Gallup, N.M.*, 31 FLRA 1306, 1308 (1988) (*Interior*) (explaining its decision to remand cases concerning two bargaining units represented by the same exclusive representative, the Authority cited the RD's specific findings regarding the first affected unit, and then cited the RD's distinct findings regarding the second affected unit).

[37] Member Abbott notes that the Authority's decision in *Exp-Imp. Bank* issued on October 18, 2018. In that case, the Authority clarified that "employees' right to self-determination" is an "essential tenet" which is as important as and to be given equal weight as all other factors in good-faith disputes. 70 FLRA at 909. The Regional Director's decision here was rendered on August 16, 2019 (nearly ten months after *Exp-Imp. Bank*), but the Regional Director gives barely a mention of, and no consideration at all to, the significance of employee self-determination in rejecting the Petitioner's good-faith doubt claims. It is worth noting that Regional Directors are "delegated" the authority to address representational matters, *see* 5 U.S.C. § 7105(e), and thus are not free to simply ignore considerations established by the Authority in longstanding or recent precedent. Whether the failure here was due to oversight or to ignore the importance placed on employee self-determination by the Authority in *Exp-Imp. Bank*, it alone would warrant remand.

[38] *Exp.-Imp. Bank*, 70 FLRA at 909.

[39] *See id.* ("[A]n order [to conduct an election] impacts those employees' right to self-determination. Consequently, it should not be easier for an agency to bring about an election by establishing doubt regarding the status of the exclusive representative than it is for employees to petition for an election on their own behalf.").

[40] *Id.* (quoting *Overseas Private Inv. Corp.*, 36 FLRA at 484-85).

[41] The exclusive representatives' opposition does not persuade us otherwise because it addresses the units collectively, rather than as distinct entities. *E.g.*, Opp'n at 17 ("The [u]nion has filed grievances and represented employees."), 18 ("These units are represented, and the evidence and testimony indicated that this support is ongoing and extensive.").

[42] *E.g.*, Decision at 4-5 (while Local 1834 has several local elected officials and stewards, Local 1712 has neither local elected officials nor stewards, and the decision does not discuss the weight, if any, attributed to those differing circumstances).

RD found that approach suitable for all circumstances.[43] As another potential indication that the RD considered all of the evidence collectively rather than assessing the evidence's significance to each unit, the decision frequently refers to "the union," even though there are three distinct exclusive representatives at issue in these cases.[44] Thus, throughout the decision, we cannot determine if the RD's findings are limited to particular units or exclusive representatives, or if the findings are intended to apply to all units and all three exclusive representatives.

Although the RD had the discretion to consolidate these cases if "necessary to effectuate the purposes of the Federal Service Labor-Management Statute or to avoid unnecessary cost or delay,"[45] the RD failed to consider "all [of] the circumstances" of each one of the ten distinct bargaining units.[46] While the RD gave several examples to support his overly broad findings that might undermine the petitioner's claims, he did not identify the unit or units from which he drew those examples – in matters such as disciplinary actions,[47] grievances,[48] or dues-payment rates[49] – or consider the "context and . . . combination" of the "factors asserted to support [or undermine] a good[-]faith doubt" as to each unit.[50] And when examining the petitioner's "strongest argument" about dues-payment rates,[51] the RD did not explain which percentages he credited as evidence that would bolster a good-faith doubt about an exclusive representative's majority support in each unit.[52]

Notwithstanding the foregoing discussion, some consideration of circumstances of potential relevance to all units may be warranted, but specific evidence that shows continued majority support at one unit does not necessarily establish majority support for the exclusive representative of all bargaining units, or other individual units.[53]

Therefore, we grant the petitioner's applications because there are insufficient findings in the RD's decision to conclude that he properly applied established law.[54] Accordingly, we remand the good-faith-doubt claims for all challenged units to the RD for further findings consistent with this decision.[55] However, we do not disturb the uncontested unit-description updates, or the RD's determinations regarding the two unchallenged

[43] We recognize that the trustee was also an AFGE, National representative, and in that latter role, his actions may be relevant to all of the units here. But the RD discussed many of the trustee's actions that do not appear related to being a national representative. *E.g.*, Decision at 8 (lunch and learns). As for the president of Local 1384, aside from his work on the new department-wide performance-management system, it is not clear why his actions would be relevant to the majority support from employees in Local 1712's units. On remand, the RD should address these issues.

[44] *E.g., id.* at 7 (discussing negotiations by "the [u]nion" on matters of interest to all bargaining units, and referring to notifications sent to "the [u]nion" about work schedules), 17 (finding that "the [u]nion has demonstrated substantial representational activity").

[45] 5 C.F.R. § 2429.2 ("Regional Directors may consolidate cases within their own region . . . .").

[46] *Exp.-Imp. Bank*, 70 FLRA at 909.

[47] Decision at 8-9.

[48] *Id.*

[49] *Id.* at 19.

[50] *Exp.-Imp. Bank*, 70 FLRA at 909. Moreover, while the findings section of the decision discusses many circumstances that may be of particular relevance to some units and not others, Decision at 7-8, the analysis section largely eschews reliance on any circumstances that would be relevant only to certain units, *id.* at 18 (discussing lobbying activities that benefited "all federal employees," and involvement with the performance-management system that benefited all Department of Defense civilian employees). Consequently, it is unclear whether the RD's legal conclusions relied on findings from both of these sections, or only the latter section.

[51] Decision at 19.

[52] We reiterate that dues-payment rates, like all other factors asserted to support a good-faith doubt, "must be viewed both in their context and in combination with each other." *Exp.-Imp. Bank*, 70 FLRA at 909 (quoting *Overseas Private Inv. Corp.*, 36 FLRA at 484). *Compare U.S. Dep't of the Interior, Bureau of Indian Affairs, Navajo Area, Gallup, N.M.*, 33 FLRA 482, 486, 490-91 (1988) (denying application for review concerning good-faith-doubt claim as to unit in which five of 200 employees were dues-paying union members), *with Dep't of the Interior, Nat'l Park Serv., W. Reg'l Office, S.F., Cal.*, 15 FLRA 338, 341 (1984) (finding circumstances supported good-faith-doubt claim as to unit in which five of 200 employees were dues-paying union members).

[53] *Exp.-Imp. Bank*, 70 FLRA at 909 (requiring an evaluation of the "totality of all the circumstances involved in [each] *particular case*" (emphasis added)).

[54] *See, e.g., U.S. Dep't of the Army, Army Materiel Command Headquarters, Joint Munitions Command, Rock Island, Ill.*, 62 FLRA 313, 319 (2007) (Chairman Cabaniss dissenting) (remanding decision based on failure to apply established law because the RD did not "make specific factual findings . . . to properly make an efficiency[-]of[-]operations determination"); *U.S. DOD, Pentagon Force Prot. Agency, Wash., D.C.*, 62 FLRA 164, 172 (2007) (remanding decision based on failure to apply established law because the RD did not make specific findings about the duties of five different categories of employees); *Dep't of the Navy, Naval Comput. & Telecomms. Area, Master Station-Atl. Base Level Commc'ns Dep't, Reg'l Operations Div. Norfolk, Va., Base Commc'ns Office-Mechanicsburg*, 56 FLRA 228, 230 (2000) (remanding decision based on failure to apply established law where RD's findings were insufficient to support his assessment of the "totality of the circumstances").

[55] The RD may, in the exercise of his discretion on remand, "order a hearing, conduct further investigations[,] or use any means at his disposal to secure the information required." *Interior*, 31 FLRA at 1308.

units,[56] because none of the applications objected to those aspects of the RD's decision.[57]

IV. Order

We remand the decision – to the extent that it rejected the petitioner's good-faith-doubt claims in Case Nos. SF-RP-19-0020 through SF-RP-19-0029 – for further findings by the RD.

[56] The unchallenged units are those that were before the RD in Case Nos. SF-RP-19-0018 and SF-RP-19-0019.

[57] As we are remanding for further findings, we do not address the petitioner's additional arguments. *See U.S. DHS, Fed. Law Enf't Training Ctr., Glynco, Ga.*, 70 FLRA 219, 221-22 (2017) (citing *U.S. Dep't of the Interior, Bureau of Ocean Energy Mgmt. & U.S. Dep't of the Interior, Bureau of Safety & Envtl. Enf't, New Orleans, La.*, 67 FLRA 98, 100 (2012)) (finding it premature to address arguments that could become moot after remand).

Member DuBester, concurring:

I concur in the decision to remand the Agency's petitions to the Regional Director (RD). However, I write separately to emphasize several unique aspects of this case, and to express my views on how they are appropriately handled on remand.

The petitions required the RD to resolve the Agency's good-faith doubt claims with respect to twelve bargaining units encompassing more than 1,000 employees throughout the state of Alaska. This presents a formidable task. The Authority has explained that, "[b]y its very nature, the issue of whether an employer has questioned a union's majority in good faith cannot be resolved by resort to any simple formula."[1] Instead, Authority precedent requires the RD to consider the "totality of all the circumstances involved in a particular case."[2] Moreover, these factors "must be viewed both in their context and in combination with each other."[3]

The RD extensively examined factors that the Authority has traditionally relied upon to decide good-faith doubt petitions. For instance, he considered the degree to which the unions at issue in the petitions have engaged in legislative activities on behalf of bargaining unit members;[4] the unions' efforts to negotiate on behalf of the unit members;[5] the unions' representation of individual employees in disciplinary matters, investigatory examinations, and grievances;[6] the percentage of union membership in the bargaining units;[7] and additional relevant factors.[8] Based on this examination, and applying Authority precedent, the RD concluded the Agency failed to establish that a reasonable doubt exists regarding the unions' representative status.

The majority remands the RD's decision because it "lacks the particularized findings necessary" to determine "whether and how the RD evaluated the evidence of majority support for each certified bargaining unit."[9] To the extent that there is additional record evidence from which more particularized findings regarding each bargaining unit may be made, I agree that the RD should endeavor to do so on remand.

But in reviewing these findings, we must be mindful of several practical considerations governing the RD's analysis. As the RD noted, all of the bargaining units at issue in the petitions are represented by only three exclusive representatives.[10] Moreover, the represented employees are generally located at only three Army installations across the state of Alaska, and are covered by only two bargaining agreements.[11] It is therefore neither surprising nor unusual that the bargaining units are primarily serviced by only two union representatives.[12] In fact, as the RD also noted, the Agency has only two management officials "handling all the labor relations for the entire state of Alaska."[13]

Given these circumstances, many of the RD's findings relate to actions taken by the two representatives on behalf of multiple bargaining units. That some of these actions were not explicitly devoted to the exclusive benefit of a particular unit does not necessarily diminish their relevancy to a good-faith doubt analysis. Nor should the unions suffer in our analysis because they are efficiently managing their labor relations activities.

Indeed, some of the representational activities described in the RD's decision – for instance, the unions' lobbying initiatives and their enforcement of single contracts covering multiple units – arguably *necessitate* coordinated efforts by the unions on behalf of their bargaining units. The RD's findings should not be faulted for simply reflecting these practical realities.

Nevertheless, to the extent that evidence exists regarding the particular unit or units for which the RD made other findings relevant to the good-faith doubt analysis – including the dues-payment rates and the particular disciplinary actions for which the unions provided representation – I agree that the RD's findings should be supplemented on remand with this information.

[1] *Overseas Private Inv. Corp.*, 36 FLRA 480, 484 (1990) (quoting *Celanese Corp.*, 95 NLRB 664, 673 (1951)).
[2] *Id.*
[3] *Id.*
[4] Decision at 5-6.
[5] *Id.* at 7-8.
[6] *Id.* at 8-10.
[7] *Id.* at 11.
[8] *Id.* at 8, 10-11 (noting that one of the unions conducted "lunch and learns" at an Agency facility, while another union corresponded with the Agency regarding "town hall" meetings).
[9] Majority at 7.
[10] Decision at 3.
[11] *Id.*
[12] *Id.* at 4.
[13] *Id.*

UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
SAN FRANCISCO REGION

U.S. DEPARTMENT OF THE ARMY
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DECISION AND ORDER

I. Statement of the Case

The Petitioner, on behalf of various Army activities or commands, filed twelve similar and related petitions on April 18 and 24, 2019. In each case, the Petitioner claims there is a good faith doubt that the Union continues to represent a majority of its bargaining unit employees. In addition, eight of the petitions have an additional objective, to make slight updates to existing unit descriptions. These are all minor technical or uncontested updates.

The Unions involved all designated a single representative from AFGE National to respond to all the petitions. The Region consolidated the petitions and conducted an investigation of this matter pursuant to section 2422.30 of the Authority's Regulations.

The Petitioner submitted a letter with attachments on May 13, 2019, and certain additional information thereafter upon request. A stipulation regarding the unit updates was provided to the parties, which both of them signed. In addition, the Region took affidavits from two AFGE officials and three witnesses offered by the Petitioner. Both parties were afforded the opportunity to provide additional evidence for the Region's consideration. The parties were also given an opportunity to provide final position statements, and both did so.

All responses, affidavits, and evidence submitted during the investigation have been shared with both parties and were considered in rendering this decision. There has been no further response or rebuttal from the parties regarding the evidence obtained through this investigation, and I find no material issues of fact are in dispute.

In short, the investigation uncovered substantial Union representation affecting all the bargaining units at issue. Thus, all the good faith doubt claims must be dismissed. There is ample evidence that the Union has actively represented employees in all the bargaining units. The Petitioner's own witnesses confirmed various interactions with Union representatives over an extended period of time. And the Petitioner's witnesses corroborated other evidence of representation that the Union provided. Accordingly, the Union is not at all dormant, and the Petitioner has failed to demonstrate adequate objective considerations as required to establish a good faith doubt.

As far as the Petitioner's secondary objective, I find that the uncontested updates to eight existing unit descriptions sought are warranted as specified in the stipulation both parties signed. To this limited extent only, eight of the petitions will be granted in part. All updates are specified at the end of this decision.

II. Findings

A. Overview of the Bargaining Units

Considering all employees in Alaska who are represented under the 12 separate bargaining unit certifications involved here, it comes to about 1,059

employees in total. The largest employee groups are part of either the Medical Command (MEDDAC) or what is now the U.S. Army Installation Management Command (IMCOM), with about 383 employees and 296 employees respectively. The remaining Army commands with bargaining unit employees are much smaller, the smallest consisting of only two employees at the present time. Employees are in units certified to AFGE National, AFGE Local 1712, and AFGE Local 1834.

The employees are generally located at three Army installations across Alaska. Fort Wainwright (near Fairbanks) has the highest concentration, about 700 employees. Fort Greely (about 90 miles south of Fairbanks) has about 160. What used to be Fort Richardson (in Anchorage) and is now known as Joint Base Elmendorf-Richardson (JBER), has nearly 200 employees.

Each Army base hosts various tenant commands. Two bargaining units are consolidated and include multiple commands, while other units have only one command. AFGE Local 1834 handles representation for employees at Fort Wainwright and Fort Greely, where Bill Ward is the Local President and has been for a number of years. AFGE Local 1712 handles JBER, and since 2018, David Owens has served as trustee.

Back when many of the bargaining units were originally organized, the Army had far more civilian employees in Alaska, but two developments led to overall reductions. The first was an A-76 study conducted in the 1990s. The Army lost that competition, and about 400 blue collar employees had their functions contracted out to the private sector.

Then in 2010, when JBER was established, about 500 or 600 Army employees were organizationally transferred to the U.S. Air Force. But not all Army employees were transferred to JBER when it was formed. Those that remain are still part of the existing bargaining units involved here, though these units are generally diminished in size.

One of the Petitioner's witnesses, Lisa Davis, who works for the Army's Civilian Human Resources Agency Alaska (CHRA), explained that back when she started in 1990, she was responsible for 900 blue collar workers in the Public Works Department alone. But now, there are only about 2,000 unit employees in all the commands she services. That total includes employees of the Army Corps of Engineers, who are not involved in any of these petitions. Ms. Davis explained that due to the A-76 study and the JBER transfer, "we are basically down to 20% or less" of the workforce that they used to have.

B. Labor Relations is Generally Conducted Between Two People for Each Side

Even though there are 12 separate bargaining units, the parties have only two collective bargaining agreements for all of them. These are multi-unit, and even multi-union, agreements. One is between two AFGE locals, AFGE Locals 1712 and 1834, and covers employees at Fort Wainwright and the former Fort Richardson (now JBER). This contract was executed in 2004 and was automatically renewing until it was reopened for negotiations this year.

The other contract is for employees at Fort Greely. It was signed in 2006, and was also automatically renewing until it was reopened earlier this year. Ms. Davis characterized both contracts as "virtually identical." I note that as part of the Petitioner's final argument, the Army's attorney claimed that there is no contract covering certain employees at Fort Greely, but this appears at odds with Ms. Davis' sworn testimony, where she states that there is one contract that "covers all the commands with bargaining units at Fort Greely." And the Army's attorney was present during that interview.

The Army has two CHRA employees handling all the labor relations for the entire state of Alaska. Jacquelyn Steele and Ms. Davis. The two of them are responsible for administering the labor relations responsibilities for all the bargaining units at issue here. These were the Army's primary witnesses.

Ms. Steele only started handling labor relations at the end of 2017, though she has been responsible for all disciplinary actions for about the last ten years. She now administers four bargaining units in total, two at MEDDAC, and two more for DENTAC (Dental Command). Each command has a separate bargaining unit at both Fort Wainwright and JBER.

Ms. Davis has been involved in labor relations since 2010. She is responsible for the remaining eight bargaining units here, including employees of IMCOM, the 59th Signal Battalion, the Logistics Readiness Center, and the U.S. Army Alaska (USARAK). But Ms. Steele and Ms. Davis also cover for each other when necessary.

The Army's additional witness, Glen Ranes, was an IMCOM supervisor for just over two years, as part of the Army Education Center. He had two subordinate employees. His testimony was brief and is easily summarized. He said there was no discernable union activity among the two employees he supervised while he was there, and he personally was unaware that they were covered by the Union. He is now in stationed in Korea.

The Union's side also has two individuals primarily responsible for all representational matters for the Army in Alaska, Bill Ward and David Owens. Mr. Ward is currently an employee at Fort Wainwright and has been the President of AFGE Local 1834 for the last ten years.

Mr. Owens was an employee at Elmendorf Air Force Base, which is now part of JBER, and he had been the AFGE Local President there until he retired several years ago. In addition, he has served as AFGE's Legislative Coordinator in Alaska from 1996 to the present. Then in 2017, he became an AFGE National Representative as well. In March 2018, AFGE appointed him as Trustee for AFGE Local 1712, when that Local's last remaining officer could no longer continue in that role for medical reasons. Mr. Owens provided uncontroverted testimony that the day he was appointed trustee, he sent Ms. Davis an introductory email and then met with her in person within a week.

Management is well aware that these are the Union's primary representatives. Both Ms. Davis and Ms. Steele acknowledged that they deal with Mr. Ward for issues involving Fort Wainwright and Fort Greely, and Mr. Owens for JBER. There is written evidence of a cordial working relationship between these parties, reflected in email correspondence between Ms. Steele and Mr. Ward in February 2019. They were discussing a temporary change of duty station for a bargaining unit employee at the time, and Ms. Steele closed by telling him:

> Next time I make banana bread, I'll bring a loaf in for you!

Mr. Ward added that she has also brought in muffins for the Union on occasion.

C. Extensive Union Activity, Much Handled Informally

Mr. Ward explained that he believes resolving matters at the lowest level is the most efficient method, and provides a benefit to the government when matters are quickly resolved. That is what he believes the Statute requires when it refers to behaving in a way that promotes an efficient and effective government. Thus, he is proud of the fact that he has resolved so many issues informally without the need to file formal grievances very often. He disputes the notion that a small number of formal grievances is indicative of a lack of representational activity. Ms. Steele corroborated this, stating that "Bill Ward always tells me that he believes in resolving things at the informal level." This includes occasionally threatening to file a ULP over something unless it is otherwise resolved. Ms. Steele stated that such calls from him are happening less often, because she started training new supervisors about their obligation to notify the Union before making changes to conditions of employment.

Ms. Davis confirmed that in addition to Mr. Ward, there are nine Union stewards or officials at Fort Wainwright. Mr. Ward stated that he has four stewards at Fort Greely and ten or eleven at Fort Wainwright. He also has three Unit Vice Presidents for his three main employee groups, Fort Wainwright, Fort Greely, and the Commissary. At JBER, Mr. Owens has been serving as an appointed trustee since 2018, and he has been actively engaged in representation as well.

i. Substantial Legislative Activities

Both Mr. Ward and Mr. Owens have been in contact with Congressional representatives to address employee concerns. As AFGE's Legislative Coordinator in Alaska, Mr. Owens has been actively lobbying members of the Alaska Congressional delegation on behalf of all the employees in Alaska that AFGE represents over 20 years, including Senators and Congressional Representatives. His uncontroverted evidence is that he has lobbied for provisions impacting all the bargaining units at issue here, and in some cases matters affecting all federal employees. He periodically travels to Washington, D.C. as part of these efforts.

Many issues that Mr. Owens has lobbied for or against would be of interest to all federal employees, not just those in Alaska. Every year he lobbies for a cost of living increase for all federal employees. On occasion, particularly in 2017 and 2018, he lobbied against pending legislation as well, including pay freezes, cuts to federal employees' health benefits, and proposed changes to the federal retirement system. Specific retirement issues he has addressed include proposals that would increase the percentage that federal employees must contribute to their retirement, changing from a high three to high five years for retirement calculations, and a proposal to eliminate retirement cost of living adjustments altogether.

In 2015, Mr. Owens spearheaded an effort to eliminate the 10% tax penalty for Thrift Savings Plan withdrawals for firefighters and other positions that have a mandatory retirement age of 57. Mr. Ward has also worked with the Army's Assistant Secretary for Manpower and Reserve Affairs on the issue of special retirement for law enforcement employees, similar to what firefighters receive.

The Union has engaged in lobbying efforts that were specific to Alaska employees as well. Mr. Owens was successful in ensuring that their wage grade employees receive the same cost of living allowance that

general schedule employees receive. Another issue that affected all federal employees in Alaska, not just those in the Army and represented by AFGE or one of the locals here, was legislation providing locality pay to general schedule employees in Alaska, along with those in Hawaii and the U.S. Territories, similar to what exists in the Continental United States.

Mr. Ward was also involved in this particular effort, meeting with both Alaska Senators and Congressman Don Young. And this year, following the pay freeze and subsequent retroactive increase, all general schedule employees in Alaska received debt letters, because tax on their additional locality pay was due. Mr. Ward has been working with Senator Murkowski on this matter, requesting debt forgiveness for all civilian employees in Alaska.

In addition, Mr. Owens, along with some Union officials working with him, conducted surveys of doctors regarding difficulties with workers compensation cases, leading to Congressional attention being paid to this issue and some improvements to the Department of Labor's processes benefitting employees that the Union represents.

In 2019, Mr. Owens lobbied against eliminating a ban on outsourcing through additional A-76 studies, of the type that led to previous reductions of Army Alaska employees mentioned above. Another proposal that came out at the same time, and which he opposed on AFGE's behalf, was one to turn all civilians of the Department of Defense into an "at will workforce." And in 2015, he lobbied against an Army restructuring proposal that would have led to a 30% reduction in the number of civilian positions throughout Alaska.

ii. Significant Bargaining has Occurred

The Army's own witnesses confirmed that in recent years, the Union has negotiated over matters that impacted all of the employees in all of the bargaining units at issue here. The issue of perhaps the most critical importance was the development of the Defense Performance Management Appraisal Program (DPMAP). This new performance appraisal system applies to all civilians of the Department of Defense (DoD) worldwide, including everyone in Alaska involved here.

Mr. Ward played a substantial role in DPMAP from its inception. During the initial development stage, he was on a temporary duty assignment (TDY) that lasted one year, spending three weeks at a time in Washington, D.C. as part of the performance management workgroup. During this one-year period, his Commander in Alaska paid all his travel and salary costs. In the end, his workgroup submitted 99 recommendations to DoD, and 85 of those went to Congress for approval.

Following that part, Mr. Ward was one of three DoD employees on the implementation working group, which developed Department of Defense Instructions (DODIs) addressing various aspects of the new performance system. He was able to complete most of that work remotely, only traveling to Washington, D.C. about once a quarter, but the implementation took three years. Chuck Hagel, then Secretary of Defense, recognized Mr. Ward's efforts, presenting him with a challenge coin. Even now, Mr. Ward remains on the DPMAP post-implementation workgroup.

Given Mr. Ward's extensive background with DPMAP, when it was time to complete local negotiations over its implementation, AFGE and both locals here designated him to handle that. Ms. Steele and Ms. Davis confirmed that these negotiations occurred for all commands in 2017, notwithstanding representations made by the Army's attorney in the Petitioner's final position statement, that some commands were somehow left out. Mr. Ward handled the negotiations, which also included the Army's legal counsel (the predecessor to the attorney that filed all the petitions here). It took them three days to reach complete agreements.

Mr. Ward provided evidence regarding Union communications to all in Alaska regarding the 2018 furlough prepared by a private labor attorney, and the demand to bargain he sent to Ms. Steele on this matter. As far as other issues that might lead to bargaining, Ms. Davis and Ms. Steele track the notifications of proposed changes that they send to the Union in a database. Ms. Davis explained that "about 99%" of the notifications she sends to the Union involve employees requesting to change to an alternate work schedule (AWS). She provided a spreadsheet that shows notifications sent to the union, but only for seven of the twelve bargaining units involved here. Some commands, the larger ones, had more notifications. For example, from 2017 to 2019, 99 notifications involved MEDDAC employees. And as stated by Ms. Davis, work schedule issues are the primary topic. IMCOM at Fort Wainwright was similar, with 64 notifications over the last three years and with comparable issues. For some of the bargaining units, like the 59th Signal Battalion at Fort Wainwright, they only issued five notifications in 2017, and none since then.

Mr. Ward stated that when he receives these kinds of notifications, he will contact the employees involved to confirm they want the AWS. He estimated that "99% of the time," the Union will concur, because they are in favor of AWS in general. Mr. Ward stated that saying no to an AWS request would be "very rare." He

provided numerous written examples of AWS notifications and his responses.

As far as any instances where the Union does not respond to notifications, both Mr. Owens and Mr. Ward stated, and this was confirmed by Ms. Davis and Ms. Steele, that everyone understands that a failure to respond to a notification within 10 days indicates concurrence. Thus, when the Union concurs, a response is not technically necessary. In addition, Mr. Ward provided certain email exchanges about office moves, showing that sometimes, supervisors notify him directly about proposed changes, rather than going through Ms. Steele or Ms. Davis.

Mr. Owens has negotiated over an AWS request involving several employees of the Medical Clinic at JBER. As background, within four months of him being appointed as trustee in March 2018, he began conducting "lunch and learns" at JBER. He conducted six of them between July and December 2018 at a variety of locations. He provided unrefuted evidence that in each instance, he advised Ms. Davis, and she gave him the name of the supervisor at each location to make all arrangements, which included the location and schedule of employees, so that he was available during their non-duty time. The AWS negotiations arose because of a lunch and learn, where employees brought their concerns to him. The end result was not a new AWS, but the supervisor did agree to a 30-minute lunch period which satisfied the employees' concerns.

In addition, as confirmed by Ms. Steele in the fall of 2018, when an earthquake in Alaska damaged a building and resulted in asbestos exposure to employees, Mr. Owens negotiated over language placed into employees' personnel records documenting the incident. Although this was not a contested matter, Mr. Owens viewed the outcome as very significant. Ms. Steele did not recall any additional negotiations with him, but Mr. Owens also dealt with Ms. Davis regarding an office move. In this instance, he agreed with management's proposal. But recently, in July of this year, he filed an unfair labor practice charge concerning a refusal to negotiate over a new lunch schedule for employees at one of the commands at JBER.

iii. The Union has Represented Individual Employees

Ms. Steele, who has been handling disciplinary actions for about the last nine or ten years, confirmed that Mr. Ward has represented employees subject to discipline throughout that time. When discipline is proposed, she typically receives an email from him indicating that he is serving as the employee's representative. And sometimes Mr. Ward requests additional information, either in writing or over the telephone. After that, she receives a response to the proposed discipline. As she has dealt with Mr. Ward for so many years, she is very familiar with his communication style and can tell when he wrote the response, even if it bears the employee's name on it instead. Mr. Ward provided some such responses, including one he submitted for an employee on February 17, 2017. Once the response is submitted, the next thing that happens is a meeting where the deciding official actually presents the employee with a decision letter. Ms. Steele stated that "most of the time" the Union does not attend those meetings.

If employees in either of the two commands Ms. Steele services do receive discipline, she stated that the Union has not generally filed formal written grievances challenging them. She did recall one instance in 2018 where the Union filed a grievance over a MEDDAC employee with a performance appraisal complaint. Ms. Steele was not directly involved in that matter; it was handled by the Army's prior labor attorney.

As confirmed by Ms. Davis, as trustee at JBER, Mr. Owens has filed grievances on behalf of employees. Mr. Owens provided the specific names of those involved in the grievances he has filed since he became trustee last year. There have been three formal grievances.

Mr. Ward also provided written examples demonstrating his involvement in a variety of informal grievances, including one for a USARAK employee in March 2018. Another incident in June 2018 involved a USARAK employee at Fort Greely with an appraisal issue, specifically that he would not be rated for a 14-month period. An additional example concerned DENTAC and a dispute about breaks. Mr. Ward sent Ms. Steele a request for information in April 2018, and she responded in September 2018. During this same period Mr. Ward interceded in a training dispute involving a supply technician at MEDDAC. He provided 54 separate examples of informal issues he was involved in just for MEDDAC alone.

Mr. Ward also provided some examples that concerned the Contracting Command. In January and February 2018, Mr. Ward raised concerns about telework and inclement weather, requesting all applicable policies for bargaining purposes. He also provided evidence concerning a change to the dress code for the 413th Contracting Support Brigade, including evidence showing that he sought input from affected employees in January 2019. Mr. Ward also interceded in a reasonable accommodation dispute in August 2018 for an IMCOM employee. Ms. Steele recalled another informal resolution with Mr. Ward, where an Army Birthday Run would have resulted in the closure of one of the main entry gates. They were able to resolve this by opening a

different gate for employees, but again, no formal filing was required.

In addition to these methods of informal resolution, both Ms. Steele and Mr. Ward talked about the Joint Resolution Panel, an optional alternative dispute resolution process established in the parties' collective bargaining agreements as part of the Grievance article. The contract establishes a set schedule for panel meetings, but they have not been occurring as frequently as the contract provides.

Evidence indicates that these meetings were occurring only on an as needed basis, and several years ago, in 2012, the Union took issue, claiming that the Army had deviated from what the contract requires. The Army's labor relations specialist at the time averred, arguing that a contrary past practice in place "for a significant period of time" modified the contract's actual provisions.

Nonetheless, according to Ms. Steele, the panel meetings used to occur fairly regularly until about three years ago. The last one that was scheduled was in 2016, but due to family emergencies on both sides, it was mutually postponed. When Mr. Ward tried to revisit it about three months later, Ms. Steele told him it was too late. For his part, Mr. Ward said he began resolving matters that would have gone through the panel process informally, dealing directly with the Army's prior labor attorney instead.

The investigation revealed that the Union has represented employees during investigatory examinations periodically. Ms. Davis stated that employees only request representation "once or twice a year" for all eight bargaining units she administers, and really those come from one department, Emergency Services, where police and firefighters are located. The Petitioner added that unfair labor practices have also been filed concerning this group of employees.

Ms. Steele stated that she was not personally aware of any employees requesting Union representation at all for the entire time she has held her position, though she does not attend these examinations herself. She relies on reports from supervisors, and her records reflect 94 disciplinary actions took place in the last three years, so investigatory examinations may have taken place that many times.

But Mr. Ward stated that he has represented employees during investigatory examinations. He named the employee involved for the most recent one, and the date, which was in April 2019. He also noted that many times, employees are asserting the *Weingarten* right when it does not really apply. Still, he estimated that in the last two years, he participated in approximately 15-18 actual investigatory examinations. He provided the names of other Union stewards who participated in these examinations and approximate dates in certain instances. His information in this regard was not contested by the Army after it was provided.

iv. Other Matters

Mr. Ward provided numerous documentary examples of additional representational activity as part of his submission. This includes correspondence between him and Ms. Davis about attending town hall meetings. On October 1, 2018, Mr. Ward wrote to her, stating that he attended one at Fort Wainwright, where he learned that additional town hall meetings were taking place at JBER and Fort Greely, but the Union was not notified. Ms. Davis replied the next day, reiterating the need to keep CPAC apprised so that the Union can be formally notified in the future. This evidence is somewhat inconsistent with a statement Ms. Davis made in her affidavit, that she was informed that the Union does not attend town hall meetings.

In its initial submission, the Petitioner provided listings enumerating between 26 to 49 separate items that the collective bargaining agreements allow for, but that the Union has failed to invoke over the last several years for each of the bargaining units involved here. These include a lack of quarterly safety meetings, no active Union bulletin board, and a lack of requests to use government phones for labor-management relations purposes, among other things. A lack of website or social media page for AFGE Local 1712 in particular was also noted.

More importantly, the Petitioner provided information regarding Union membership in each of the bargaining units, stating that membership has been increasing in some cases since the petitions were filed, but before that, had been decreasing since about 2010, which is about the same time many Army employees were transferred to the Air Force when JBER was created. In any event, the Union did not refute the information that the Army supplied to calculate the membership percentages for each bargaining unit. I find the percentages as of April 2019 were: 0% (for a unit with only two employees at the present time), 0% (for a unit of 7 employees), 5%, 6%, 8%, 9%, 13%, 13%, 16%, 20%, 22%, and 32%.

The unit of two employees are professionals of IMCOM at JBER. Regional records, including the tally of ballots from that election, which took place in 2007, show that back then, there were approximately 27 professional employees eligible to vote. The Army's other witness, Glen Ranes, was the supervisor of these

two employees, education services specialists, who provide college counseling for soldiers, veterans, and military spouses. As noted previously, it was Mr. Ranes who said that he saw no union activity and was not even aware that his employees were in a bargaining unit at all while he was there.

D. Minor Updates to Eight Unit Certifications

Several unit descriptions require updates, and the parties stipulated all are necessary. I commend the parties for resolving these issues cooperatively. Six certifications require updates simply because JBER was established, but existing descriptions refer to the former Fort Richardson which no longer exists. These, along with all the other updates requested, are described below.

i. Replace Fort Richardson with JBER

The certifications that reference Fort Richardson that need to be amended to reflect JBER instead are: SF-RP-90020; SF-RP-02-0036; SF-RP-04-0022; SF-RP-04-0023; SF-RP-07-0016; and SF-RP-07-0019.

JBER is a United States military facility in Anchorage, the largest city in Alaska. It is an amalgamation of the United States Air Force's Elmendorf Air Force Base and the United States Army's Fort Richardson, which were merged in 2010. The adjacent facilities were officially combined by the 2005 Base Closure and Realignment Commission (BRAC). JBER holds the distinction of being one of 12 Joint Bases that were then created through BRAC.

The Army has provided documentation showing that effective October 1, 2010, employees were realigned pursuant to Permanent Order 272-2, dated September 29, 2010, from the U.S. Army Garrison, Fort Richardson, Alaska to JBER. A Mass Transfer action was effectuated pursuant to Joint Basing under Defense Base Closure effective October 10, 2010. No evidence has been presented to suggest that there are any employees remaining at Fort Richardson, as it no longer exists as a separate activity.

JBER's mission is to support and defend U.S. interests in the Asia Pacific region and around the world by providing units ready for worldwide air power projection and a base that is capable of meeting PACOM's (U.S. Indo-Pacific Command) theater staging and throughput requirements. JBER as an installation hosts the headquarters for the United States Alaskan Command, 11th Air Force, U.S. Army Alaska, the Alaskan North American Aerospace Defense Command Region, and other Tenant Units.

ii. The 59th Signal Company Name Change

The Army provided documentation showing that effective August 6, 2017, pursuant to a Memo dated June 20, 2017, the 59th Signal Battalion eliminated the reference to the 507th Signal Company from the name of the Activity, but kept the reference to the 59th Signal Battalion intact. Eliminating the 507th Signal Company was a simple name change that did not affect the composition of the bargaining unit in Alaska.

iii. Army Contracting Command Changes

Another minor name change concerned the Army Contracting Command. The Army provided documentation showing that effective December 7, 2008, pursuant to Permanent Order 249-1, the Army renamed the U.S. Army Contracting Agency, making it the U.S. Army Contracting Command. Changing the designation from the Contracting Agency to the Contracting Command was a simple name change that did not affect the composition of the bargaining units in Alaska. Additional documentation shows that some of these employees are located at Fort Wainwright and what was then Fort Richardson, now JBER.

Effective December 2, 2012, the Army Contracting Command (ACC) realigned two of its contracting offices that serve overseas customers. ACC realigned the ACC Planning Cell-Miami, Florida, and the Mission and Installation Contracting Command-Fort Wainwright, Alaska, from the Mission and Installation Contracting Command (MICC) to the Expeditionary Contracting Command. MICC-Fort Wainwright became the Regional Contracting Office-Alaska, part of ECC's 413th Contracting Support Brigade, Fort Shafter, Hawaii. The 413th supports mission operations, provides operational contract support planning and day-to-day installation contracting support to U.S. Pacific Command, U.S. Army Pacific, and Army installations in Alaska. As the Contracting Command is now based out of Fort Wainwright, it is no longer necessary to refer separately to a Contracting Command unit at Fort Richardson.

iv. MEDDAC changes at Fort Greely and Fort Wainwright

In 1995, Fort Greely underwent BRAC. Most of the lands associated with Fort Greely were transferred to the operational control of US Army Alaska. In 2001, Fort Greely was partially removed from the BRAC list, in order to support the nation's strategic objective of missile defense. Today, Fort Greely proudly serves as the primary support base for a host of tenants that support the Ground-based Midcourse Defense (GMD) initiative.

Bassett Army Community Hospital (BACH) at Fort Wainwright is the primary medical treatment facility for soldiers, family members and retirees and their families. A number of civilian hospitals and civilian specialists augment the military facilities to provide complete medical care for personnel in Alaska. Fort Wainwright operates a clinic at Fort Greely, and at various times, Fort Wainwright medical personnel will staff the clinic at Fort Greely for operational reasons on a temporary basis.

v. IMA to IMCOM

Turning to this name change, on October 24, 2006, the Army activated the U.S. Army Installation Management Command (IMCOM), formerly known as the U.S. Army Installation Management Agency (IMA). The Army provided documentation showing that effective June 10, 2008, employees were realigned pursuant to an IMA Memo dated June 29, 2004 from the U.S. Army Garrison, Alaska to IMCOM. The change from IMA to IMCOM was a re-designation that did not affect the composition of the bargaining units in Alaska.

vi. IMCOM and the Logistics Readiness Center Realignment

As background here, in 2013, as part of a decision in Case No. SF-RP-13-0006, this office issued a certification regarding Logistics Readiness Center (LRC) employees at Fort Greely who were realigned from IMCOM. This October 2012 realignment also affected employees at Fort Wainwright and JBER. It is not clear why no party petitioned us to resolve these other locations at the same time, as they were all affected similarly to those at Fort Greely. But this was uncontested then as it is now.

The Army provided a Memorandum of Agreement between the United States Army Material Command (AMC) and IMCOM documenting the transfer of IMCOM Directorate of Logistics (DOL) Employees to AMC. The Army also provided a Memorandum outlining the transfer of IMCOM DOL employees at JBER and Fort Wainwright to AMC effective October 2012. Additional documentation shows that effective October 7, 2012, pursuant to a Memorandum from the Secretary of the Army dated March 28, 2012, certain employees were realigned from IMCOM's DOL to the U.S. Army Sustainment Command's LRC. The division remained essentially intact throughout, as both before and after this realignment, the organization was still the Maintenance Division, General Equipment Maintenance Branch, Fort Wainwright, Alaska. The same organizational change took place at JBER, and the Army provided documentation regarding it.

The AMC oversees ten major subordinate commands, including the Sustainment Command, IMCOM, and the Contracting Command. These organizations provide materiel life-cycle management for AMC and the Army. Together, these organizations encompass the backbone of AMC's materiel readiness mission, helping to synchronize and integrate the collective might of the Army Materiel Enterprise. The Commanding General of USARAK has the authority to assume control over all Army operations in Alaska, but otherwise is not normally in direct command of most of the supporting commands, such as those under AMC.

The U.S. Army Sustainment Command (ASC) sustains Army and joint forces around the world in support of Combatant Commanders. ASC bridges the national sustainment base to the Soldiers in the field, bringing together the capabilities of AMC's subordinate units to provide the Soldier with the right equipment at the right place and time in the right condition. LRCs, like the ones in Alaska, manage materiel and support services to Army units, performing tasks such as ammunition management, equipment maintenance, hazardous materials operations, central issue facilities, bulk fuel, personal property, transportation, food service and demand supported supply.

The bargaining units represented by AFGE remained appropriate units after the transfer of logistics employees from IMCOM to the ASC's LRCs at JBER and Fort Wainwright. The realignment resulted in the administrative movement of employees without significant physical or functional movement. The employees at issue maintained their titles, grades, and positions and continued to perform substantially the same job duties and functions under substantially similar working conditions as they had before the reorganization. They generally report to the same first and second level supervisors. They continue to share common occupational undertakings and objectives in accomplishment of duties, pay classifications, benefits and hours of work.

Labor relations and human resources functions for the employees transferred from IMCOM to ASC continue to be handled by the Civilian Personnel Advisory Center, CHRA, Alaska, which means by Ms. Davis and Ms. Steele. Grievances continue to be processed in general accordance with past practice and the terms of the applicable collective bargaining agreement. All eligible LRC employees share geographic proximity and, in most instances, are co-located. All of the employees support the overall mission through functions being performed in support of AMC.

The parties agree that adding the LRC employees to the AFGE consolidated units at Fort

Wainwright and JBER promotes efficient and effective dealings and an appropriate bargaining unit structure. The AFGE employees transferred to the ASC LRCs at Fort Wainwright and JBER from IMCOM constitute the majority of LRC employees at each location. All parties agree that the LRCs at Fort Wainwright and JBER are successors to the transferred IMCOM employees from Fort Wainwright and JBER. No other union claims to represent any of these ASC LRC employees that would disturb successorship findings in favor of AFGE 1834 for the group of LRC employees at Fort Wainwright, and AFGE 1712 for the LRC group at JBER.

III. Analysis and Conclusions

A. All Requested Unit Updates are Approved

The Army's re-designation of activities, specifically within the 59th Signal Battalion, IMCOM, and JBER, and the operational changes to the Contracting Command and at MEDDAC, did not alter the bargaining relationship between the parties in terms of the updates sought here. Almost from its inception, the Authority has held that nominal changes to the name or location of an activity are appropriate to conform to existing circumstances.[1]

Turning to the 2012 LRC reorganization, this office addressed that precise matter in 2013 with respect to employees at Fort Greely, but was never asked to address those who were similarly affected at Fort Wainwright and JBER at the same time, even though we noted then that this was an Army-wide development. In any event, there is no reason that the outcome here should not be exactly the same as it was there. Back then, we found successorship had occurred at Fort Greely. It also occurred elsewhere in Alaska at the same time. The same 2012 reorganization is again being analyzed, but this time for its effect on employees of Fort Wainwright and JBER rather than Fort Greely. I find it was essentially the same.

The crucial factor to understanding this matter is that it was change at a higher level Army command, the Army Materiel Command (AMC). The AMC encompasses both IMCOM and the Sustainment Command. Thus, when logistics employees were transferred from IMCOM to the Sustainment Command in 2012, they still remained part of AMC. The LRCs are simply a part of the Sustainment Command rather than IMCOM. But otherwise, the employees' duties and functions remained substantially similar following this transfer, and they continue to support AMC's overall mission.

The name of their department did not even change based on this minor reorganization. It remained the Maintenance Division both before and after the transfer, and the represented employees were in the majority at both locations after the transfers. And their first and second level supervisors stayed the same as well. Moreover, the existing consolidated bargaining units already include other AMC components, namely IMCOM and the Contracting Command. Thus, the addition of LRC comports with the Army's organizational structure as well, as all of these divisions are part of AMC overall.

In addition, the Army has treated these employees as represented by the Union for the last seven years even without having filed a petition to bring this to our attention until now. This provides strong evidence that not only do the LRC employees have a community of interest, but the last seven years offer a proven history that these units promote effective dealings and efficient operations and are therefore appropriate. The parties stipulated that the administration of labor relations and human resources did not change, and the same collective bargaining agreement has been applied to them all along. Ms. Davis and Ms. Steele, the ones who would know firsthand if dealing with these employees collectively caused any problems in this regard, failed to articulate any. Indeed, the Army stipulated to this outcome.

For all these reasons adding the LRC groups at Fort Wainwright and JBER to the existing consolidated units is appropriate based on successorship, just as it was six years ago in the petition involving Fort Greely based on the same reorganization. From the perspective of the employees, their duties and functions did not change, and they have substantially similar working conditions. As they constitute the majority of those transferred, with no other unions involved, no election is required to find successorship here. Accordingly, there is sufficient evidence to approve the parties joint request. I find that the Authority's successorship test is fully satisfied for the LRC employees at both Fort Wainwright and JBER.[2]

B. The Petitioner Has Not Met its Burden of Establishing a Good Faith Doubt

In support of its good faith doubt claim, the Petitioner has asked me to consider and adopt novel criteria that the Authority has never endorsed, such as the notion that new elections are warranted simply because of the passage of time. I decline this invitation. It is unnecessary, as the right of employee self-determination is already preserved by the Statute and our existing processes which guarantee employees the right to petition

[1] *Dep't of Energy, Bonneville Power Admin., Portland, Or.*, 2 FLRA 654, 656-7 (1980).

[2] *U.S. Dep't of the Navy, NAVFEC Mid-Atl., Norfolk, Va.*, 70 FLRA 263, 265-6 (2017).

for a decertification election if they so choose. And, it would not promote stability in labor-management relations if elections were simply automatically ordered in the absence of an actual demand by a sufficient number of employees to do so. There are 12 bargaining units at issue here, and I note no employees from any of them have sought to decertify the union, though that option is certainly available if they so desire.

i. The Authority Recently Addressed Good Faith Doubt Standards

Less than one year ago, the Authority rendered a comprehensive good faith doubt decision which provides clear guidance and criteria to be applied.[3] In this regard, it is important to consider what generally constitutes a good faith doubt. In its most recent decision, the Authority uses the terms "mostly dormant" and "inactive" when describing the union and a situation where a good faith doubt might be present.[4] By contrast here, the Petitioner's two primary witnesses, the labor relations professionals whose job it is to deal with the Union, know exactly who their labor counterparts are. Furthermore, there is substantial evidence of an effective working relationship between the parties, including exchanges of home-baked bread and muffins in the course of their dealings. This is a far cry from establishing sufficient doubt by management that the Union actually exists.

In addition, the Petitioner raises issues that the Authority has expressly stated are not relevant, such as the use of a trustee for JBER starting in 2018. As the Authority stated in its recent decision, "the Authority has long recognized, and still does today, the prerogative and necessity of federal unions to select their own officials," which includes the prerogative of appointing a trustee to fulfill a union's representational responsibilities when necessary.[5]

When Mr. Owens was so appointed, he immediately notified Ms. Davis, and then followed that up with a face-to-face meeting within a week, proceeding to schedule lunch and learn meetings in various departments only a few months thereafter, to ensure that employees knew that the Union was still active. And he represented employees who brought their concerns to him as a result. He has been more than a figurehead.

The Petitioner also presented what may fairly be characterized as a lengthy laundry list of rights under the collective bargaining agreements that the Union has allegedly failed to avail itself of, such as requiring quarterly safety meetings in each unit, and many more negotiated benefits. The Petitioner ultimately conceded in its final position statement that these were no more than "optional rights," such as the ability to use a government phone rather than a commercial one. In addition, the Petitioner faults the Union for its alleged failure to represent employees in MSPB and adverse actions, though these too are optional for the Union as they are not matters exclusively determined through collective bargaining.[6] I see no basis for holding the Union's failure to exercise discretionary rights against it; nor do I find the Union's failure to undertake representation on matters outside its duty of fair representation weighs adversely against the Union in this good faith doubt analysis.

The Petitioner's claims in general about what the Union has not done are overly myopic in light of all the evidence demonstrating the Union's representational activity. The Union has been doing many things, even if not availing itself of every possible option available. But, doing everything that is possible is not now, nor has it ever been, the good faith doubt standard.

ii. The Union has Engaged in Substantial Representation

Turning to what the Authority actually endorsed as relevant good faith doubt criteria, I find that the Union has demonstrated substantial representational activity that benefits all the employees they represent in all the bargaining units. Accordingly, the Petitioner has not met its prerequisite burden that would be required before I would order elections.

Legislative lobbying efforts are a valid consideration, and the record here is replete with examples, more so in fact than were present in the recent Authority decision.[7] Both Mr. Owens and Mr. Ward, but Mr. Owens in particular, have lobbied on behalf of all federal employees, all employees in Alaska, and for provisions benefitting all Army employees in the bargaining units here. It can hardly be argued that matters related to pay raises and pay freezes, changes to health and retirement benefits, cost of living increases, the addition of locality pay, more efficient workers compensation case processing, and preventing further reductions of the Army's civilian positions at Fort Greely, Fort Wainwright, and JBER, would be matters of critical concern to the employees the Union represents. The Union's uncontroverted testimony is that it lobbied for its employees concerning all of these topics and more,

[3] *Export-Import Bank of the U.S.*, 70 FLRA 907 (2018) (*Ex-Im Bank*).
[4] *Ex-Im Bank* at 908-9.
[5] *Ex-Im Bank* at 909, 913.
[6] *See e.g. AFGE Local 1857, SALC, N. Highland, Cal.*, 46 FLRA 904 (1992); *NTEU v. FLRA*, 800 F.2d 1165, 1171 (D.C. Cir. 1986).
[7] *Ex-Im Bank* at 908.

working through Alaska's Senators and Congressional representatives on their behalf.

The Authority has also endorsed the extent of negotiations over changes in policy as a valid good faith doubt consideration.[8] The Union has been active in this arena, both formally and informally. In terms of formal negotiations, the contributions of Mr. Ward regarding not just negotiating, but the actual development of DPMAP, cannot be discounted. Petitioner has attempted to minimize Mr. Ward's involvement in DPMAP by focusing only on the local negotiations over implementation, but he was actively involved in its actual development for a significant amount of time. It is difficult to fathom how his one-year detail that the Army paid for, and his ongoing efforts since then do not amount to substantial representational activity concerning a significant change in policy that was applicable throughout the DoD, not just employees of the Army or those in Alaska.

Also, the Petitioner initially tallied up all the notifications of changes sent to the Union over a period of time and asserted that the Union failed to negotiate most of them. But the investigation revealed, including the consistent testimony of both Petitioner and Union witnesses, that 99% of the time, these notifications were nothing more than employee requests to obtain alternate work schedules, something the Union generally supports. Moreover, the evidence indicates that the Union did look into these situations, confirming the requests with employees, and responding often. This was so even though responses are not strictly necessary, given the parties history of dealings, which is that proposed changes are automatically agreed to if not contested in ten days. And both Mr. Owens and Mr. Ward have engaged in negotiations when it mattered. After all, the Statute only requires that management provide the union with notice and *an opportunity* to bargain; a union is not required to bargain over every matter that comes before it.[9]

A related category, but one revealed by the investigation here, is the substantial number of matters that have been informally resolved. There is no reason to discount this type of representational activity or treat it as somehow inferior simply because it does not lead to an extensive number of formal grievances and arbitrations. Rather, the parties should be commended for resolving so many employment complaints that the Union brings to the attention of Ms. Davis and Ms. Steele without the need for an excessive number of formal contested proceedings. Though the evidence shows that both Mr. Ward and Mr. Owen have filed some formal grievances on occasion, the record also demonstrates the existence of a mature and effective relationship as most disputes do not rise to that level. The parties have resolved them more informally here, during the course of literally breaking bread with each other.

In a related matter, I also cannot fault the Union for not consistently invoking its option to use the Joint Resolution Panel as an alternate means of addressing employee discipline. Although the contract permits it, there is unrefuted evidence that the Army declined to return to a strict adherence to the contract after the Union asked that they do so. The parties have simply employed this process on an as-needed basis for a number of years, though not recently. And Mr. Ward explained that was because he found other avenues, such as direct discussions with the Army's prior labor attorney.

There is also evidence that the Union has represented individual employees when called upon, including assisting them with matters of discipline, even at the proposal stage, which they are not required to do, and during investigatory examinations on request. This was all confirmed by the Petitioner's own witnesses.

Finally, turning to the issue of the percentage of dues-payers, this is likely the Petitioner's strongest argument. But I find it is not enough to overcome all the other relevant factors that are present here demonstrating representational activity. As the Authority has stressed, the good faith doubt inquiry is not "decided on one single indicator." The Authority added that this question "can only be answered in the light of the totality of all the circumstances involved in a particular case, and factors asserted to support a good faith doubt must be viewed both in their context and in combination with each other."[10]

Considering the three Army bases in Alaska that are involved here necessarily requires taking into account the generally diminished size of the bargaining units over time, resulting from organizational changes, the A-76 study, and the creation of JBER. According to Ms. Davis such things led to the bargaining units generally decreasing to 20% of their previous size. In that context, the small size of certain bargaining units cannot fairly be held against the Union. In particular, what is now a two-person bargaining unit that Mr. Ranes testified about had 27 people when it was originally organized, and that was before the BRAC that established JBER. Plus looking at the percentages that the Authority recently cited shows that when percentages of dues-paying members was considered most important, it was in the context of a low

[8] *Ex-Im Bank* at 908.

[9] *U.S. Army Corps of Eng'rs, Memphis Dist., Memphis, Tenn.*, 53 FLRA 79, 81 (1997)

[10] *Ex-Im Bank* at 909 [internal quotations and punctuation omitted].

percentage relative to a high number of employees in the bargaining unit in general, for example five dues-payers out of 200, rather than simply an absolute percentage.[11] For instance, in the two-person bargaining unit, if one person joins, the percentage would go from zero to 50%.

Another consideration is the nature of how all the bargaining units here are administered by both sides. Each side generally has two representatives for all of them, Ms. Davis and Ms. Steele for management, and Mr. Ward and Mr. Owens for the Union. Two multi-unit contracts have been sufficient to cover everyone, and there are already two units that are at least partially consolidated. And I note in this particular context, no party has sought to "unconsolidate" existing units, though the Petitioner attempted to argue something along those lines in its final position statement, by presenting a breakdown of dues-paying members by the number of employees within various parts of the same consolidated unit. This attempt, along with overly focusing on units that are now very small with no or few dues-paying members, is an exercise in cherry-picking that unfairly disadvantages the Union under all the relevant circumstances, particularly in light of the many other things the Union has been doing to benefit all employees, including those in the smaller units. It is for all these reasons that I must reject all the Petitioner's good faith doubt claims.

IV. Order

The good faith doubt claims are all hereby dismissed. As the petitions in SF-RP-19-0019; SF-RP-19-0023; SF-RP-19-0024; and SF-RP-19-0025 only contained good faith doubt claims and no unit updates, these petitions are dismissed outright. But the requested updates to various unit descriptions found in the remaining petitions are hereby approved. The updated portions of the unit descriptions that will result are identified below by the most recent certification to be updated and the corresponding current petition.

SF-RP-90020	SF-RP-19-0018
Included:	All nonprofessional employees of the 59th Signal Battalion, Department of the Army, Joint Base Elmendorf–Richardson, Alaska.
SF-RP-04-0023	SF-RP-19-0020 [Consolidated Unit]
Included:	All nonprofessional employees of the U.S. Army Alaska (USARAK) located at Joint Base Elmendorf–Richardson, Alaska.
Included:	All nonprofessional employees of the U.S. Army Installation Management Command, Joint Base Elmendorf–Richardson, Alaska.
Included:	All nonprofessional employees of the U.S. Army Logistics Readiness Center, Joint Base Elmendorf– Richardson, Alaska.
~~Included:~~	~~All nonprofessional employees employed by the U.S. Army Contacting Agency, Fort Richardson, Alaska.~~
SF-RP-07-0016	SF-RP-19-0021
Included:	All professional employees of the U.S. Army Installation Management Command, Joint Base Elmendorf–Richardson, Alaska.
SF-RP-07-0019	SF-RP-19-0022
Included:	All nonprofessional employees of the U.S. Army, Dental Activity, Joint Base Elmendorf– Richardson, Alaska.
SF-RP-04-0022	SF-RP-19-0026 [Consolidated Unit]
Included:	All nonprofessional employees of the U.S. Army Alaska (USARAK) located at Fort Wainwright, Alaska.
Included:	All nonprofessional employees of the U.S. Army Installation Management Command, Fort Wainwright, Alaska.
Included:	All nonprofessional employees of the U.S. Army Logistics Readiness Center, Fort Wainwright, Alaska.
Included:	All nonprofessional employees of the U.S. Army Contacting Command, Fort Wainwright, Alaska.
SF-RP-02-0036	SF-RP-19-0027
Excluded:	All professional employees, management officials, supervisors, and employees described in 5 U.S.C. §7112(b)(2), (3), (4), (6), and (7), and Dental Activity employees at Joint Base Elmendorf–Richardson, Alaska.
9-RO-90009	SF-RP-19-0028
Included:	All professional and nonprofessional employees of the Department of the Army, Medical Department Activity (MEDDAC), Fort Wainwright, Alaska.
SF-RP-07-0015	SF-RP-19-0029
Included:	All nonprofessional employees of the U.S. Army, 59th Signal Battalion, Fort Wainwright, Alaska.

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 **October 15, 2019**, and addressed to the Chief, Office of Case Intake and Publication, Federal Labor Relations Authority, Docket

[11] *Ex-Im Bank* at 909, ftnt. 22

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.[12]

Dated: August 16, 2019

John R. Pannozzo
Regional Director
Federal Labor Relations Authority
San Francisco Region

[12] 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.