

CASE DIGEST: *Exp.-Imp. Bank of the U.S.*, 71 FLRA 248 (2019) (Member DuBester dissenting)

This case concerned the Union’s petition requesting an FLRA Regional Director (RD) to clarify the bargaining-unit status of several Agency positions. The Union represents a bargaining unit of non-professional employees at the Agency. Before the RD, the parties stipulated that some of the positions at issue are not “professional” within the meaning of 5 U.S.C. § 7103(a)(15)(A). However, the parties disputed whether seven positions are professional or non-professional. The RD concluded that the seven positions are non-professional, and she directed the employees occupying those positions – and the other stipulated non-professional employees – to be included in the unit.

On an Agency-filed application for review, the Authority found that the RD failed to apply established law. In this regard, the record demonstrated that the employees occupying the seven positions possess the requisite judgment and knowledge to constitute professional employees under § 7103(a)(15)(A). Accordingly, the Authority directed the RD to exclude those positions from the unit. As for the stipulated non-professional employees, the Authority noted that they significantly outnumbered the employees already in the unit – calling into question the Union’s majority status. Applying the “majority standard” in this context, the Authority directed the RD to conduct an election to determine whether the affected employees desire to be represented by the Union.

Member DuBester dissented. He determined that the RD properly relied on record evidence to conclude that employees in the positions at issue were not excluded from the bargaining unit as professional employees. Additionally, Member DuBester concluded that the inclusion of employees in the disputed and stipulated positions who had previously been improperly excluded from the unit does not call into question the Union’s majority support, and therefore does not warrant directing the RD to conduct an election. Accordingly, he would deny the Agency’s petition for review.

This case digest is a summary of an order issued by the Federal Labor Relations Authority, with a short description of the issues and facts of the case. Descriptions contained in this case digest are for informational purposes only, do not constitute legal precedent, and are not intended to be a substitute for the opinion of the Authority.