

71 FLRA No. 225

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
(Petitioner)

0-PS-48

DECISION ON
REQUEST FOR GENERAL STATEMENT
OF POLICY OR GUIDANCE

December 11, 2020

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

I. Background

In accordance with § 2427.2 of the Authority’s Regulations,¹ the Department of Veterans Affairs (Petitioner) requests a general statement of policy or guidance on the following topic: “What is the scope of coverage for the term ‘management official’ under 5 U.S.C. § 7103(a)(11) in the context of bargaining unit determinations?”²

Under § 7112(b)(1) of the Federal Service Labor-Management Relations Statute (the Statute), a bargaining unit “shall not be determined to be appropriate . . . if it includes . . . any management official or supervisor.”³ The Statute defines “management official” as “an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency[.]”⁴

In its request, the Petitioner summarizes Authority precedent interpreting the definition of “management official”⁵ and asks that we issue a general statement of policy or guidance that would clarify the meaning of this term to encompass a broader category of

employees.⁶ In support of its request, Petitioner asserts that under the Authority’s existing interpretation, “essentially only individuals in leadership roles can qualify” as management officials, thereby “creat[ing] a significant overlap with the definition of ‘supervisor’” in § 7103(a)(10) of the Statute.⁷ Petitioner contends that because the Statute “indicates that an individual need only meet one of the terms ‘formulate,’ ‘determine,’ or ‘influence’ to meet the definition [of management official],” the Authority should interpret this definition to include “an individual who performs agency-related duties in excess of 25% of the time, whether via formulating policy, determining policy, or influencing such policy.”⁸

II. Decision

Upon careful consideration of the Petitioner’s request, we find that it is not appropriate for resolution through the issuance of a general ruling.⁹ In our view, the questions posed by this request would most appropriately be addressed in the context of the facts and circumstances presented by parties involved in an actual dispute.¹⁰ Accordingly, we deny the request.

III. Order

We deny the Petitioner’s request.

¹ 5 C.F.R. § 2427.2.

² Petitioner’s Request (Request) at 1.

³ 5 U.S.C. § 7112(b)(1).

⁴ *Id.* § 7103(a)(11).

⁵ Petitioner may also find the Authority’s recent decision where we addressed and clarified, in part, the definition of management official instructive. *U.S. DOJ, Exec. Office for Immigration Review*, 71 FLRA 1046, 1048 (2020) (Member DuBester dissenting).

⁶ Request at 2-9.

⁷ *Id.* at 2 (citing 5 U.S.C. § 7103(a)(10)). On this point, Petitioner additionally contends that the Authority “has applied the concept or terms related to ‘independent judgment’ to the analysis of whether individuals are management officials, further conflating management officials with supervisors” even though, “unlike the definition of supervisor under the Statute, the definition of management official makes no reference to ‘the consistent exercise of independent judgment.’” *Id.* at 8 (citing 5 U.S.C. § 7103(a)(10), (11)).

⁸ *Id.* at 5.

⁹ 5 C.F.R. § 2427.5.

¹⁰ *E.g.*, *Gen. Counsel*, 51 FLRA 409, 412 (1995) (citing *Order Denying Request for Gen. Ruling*, 14 FLRA 757, 758 (1984); *Order Denying Request for a Gen. Ruling*, 9 FLRA 823, 824 (1982)).

Member DuBester, concurring:

I agree with the Decision to deny the Petitioner's request.