

**64 FLRA No. 64**

UNITED STATES  
DEPARTMENT OF COMMERCE  
U.S. CENSUS BUREAU  
(Activity)

and

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

and

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 1438, AFL-CIO  
(Exclusive Representative)

and

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 2782, AFL-CIO  
(Exclusive Representative)

WA-RP-09-0044

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ORDER DENYING  
APPLICATION FOR REVIEW

January 26, 2010

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Before the Authority: Carol Waller Pope, Chairman,  
and Thomas M. Beck and Ernest DuBester, Members

**I. Statement of the Case**

This case is before the Authority on an application for review (application) filed by the United States Department of Commerce, United States Census Bureau (Activity)<sup>1</sup> under § 2422.31 of the Authority's Regulations.<sup>2</sup> The Union filed an opposition.<sup>3</sup>

The Union filed a petition to consolidate seven of its local units into one national unit. The Regional Director (RD) determined that the proposed unit was appropriate and granted the petition for consolidation.

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1. The Authority's Office of Case Intake and Publication (CIP) issued a deficiency order because the Activity's application for review contained several deficiencies. The Activity timely cured the deficiencies in its application; the application, accordingly, is properly before the Authority for consideration.

For the reasons that follow, we deny the application for review.

**II. Background and RD's Decision**

**A. Background**

The Activity is a component of the United States Department of Commerce (Commerce) that collects and disseminates information regarding census data. RD's Decision at 4. The Activity is run by a Director, who is responsible for determining the Activity's policies and for overseeing the Activity's various components. *See id.* The Activity also has eight Associate Directors, who oversee various programs within the Activity. These individuals report to the Director. *Id.*

Employees at the Activity's Headquarters (Headquarters) design the methods for census data collection and analyze the data once they have been collected. *Id.* Headquarters has its own Human Resources (HR) office that provides personnel and labor relations services for its employees. *Id.* Headquarters has five bargaining units that are represented by AFGE, Local 2782: three units represent nonprofessional employees, one unit represents professional employees, and one unit represents wage grade employees. *Id.* at 2-3. All of these units are covered by the same agreement. *Id.* at 4.

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2. Section 2422.31 of the Authority's Regulations provides, in pertinent part:

(c) *Review.* The Authority may grant an application for review only when the application demonstrates that review is warranted on one or more of the following grounds:

- (1) The decision raises an issue for which there is an absence of precedent;
- (2) Established law or policy warrants reconsideration; or
- (3) There is a genuine issue over whether the Regional Director has:
  - (i) Failed to apply established law;
  - (ii) Committed a prejudicial procedural error;
  - (iii) Committed a clear and prejudicial error concerning a substantial factual matter.

3. CIP issued a deficiency order because the Union failed to serve opposing counsel at the proper address. The Union submitted a revised certificate of service to demonstrate that it had cured this deficiency; however, it also submitted a revised opposition that contained a new argument. The Union timely cured the deficiency in the original opposition; accordingly, it is properly before us. The Union, however, did not request permission to file its revised opposition under § 2429.26 of the Authority's Regulations. Accordingly, we will not consider the revised opposition. *See, e.g., NAIL, Local 6*, 63 FLRA 232, 232 n.1 (2009).

The National Processing Center (NPC) is a component of the Activity and is overseen by one of the Associate Directors. *Id.* at 4. NPC has locations in Jeffersonville, Indiana; Hagerstown, Maryland; and Tucson, Arizona. *Id.* at 5. NPC employees, among other tasks, collect the census data that are analyzed by Headquarters. *Id.* Like Headquarters, NPC has its own HR office that provides human resources and labor relations services to its employees. *Id.* The office handles personnel issues — such as hiring and classification, and labor issues — such as negotiations. The Headquarters HR office does not have any direct supervisory authority over NPC's HR office; however, Headquarters resolves grievances filed by NPC employees once they advance beyond the first step. *Id.* at 5. Jeffersonville and Tucson both have one bargaining unit comprised entirely of nonprofessional employees; the Jeffersonville unit is represented by AFGE, Local 1438, AFL-CIO, and the Tucson unit is represented by AFGE, AFL-CIO (AFGE). *Id.* at 3. The units have separate agreements, both of which were bargained for locally with no involvement from Commerce.<sup>4</sup> *See id.* at 4.

Commerce routinely issues personnel policies that are applicable to all of its employees, including those within the Activity. *See id.* at 4. Commerce also holds quarterly labor relations meetings that are attended by HR staff from Headquarters and NPC and retains Agency head approval over all negotiated agreements. *Id.* Commerce additionally provides representation for the Activity in all of its arbitration and unfair labor practice proceedings. *Id.*

Employees from Headquarters and NPC regularly coordinate their tasks to ensure that the data collected are accurate; employees at the Jeffersonville and Tucson NPC locations do the same. *See id.* at 5, 6. Employees from NPC regularly contact Headquarters for technical assistance. *See id.* at 6. The HR offices at Headquarters and NPC often contact each other after Commerce promulgates personnel policies to determine how to interpret and implement the policies. *Id.* at 4. Employees at Headquarters and NPC are in separate areas of consideration for reduction-in-force purposes. *Id.* at 6.

The Union filed a petition to consolidate the seven units described above into one national unit represented by AFGE. *See id.* at 1-2. The Activity opposed the petition, but conceded that the five Headquarters units would be appropriate for consolidation. Accordingly, through a joint exhibit, the parties stipulated that a con-

solidated unit composed solely of all five Headquarters units is an appropriate unit pursuant to § 7112(a) of the Federal Service Labor-Management Relations Statute (Statute). *Id.*; J. Ex. 1 at 3.

#### B. RD's Decision

The RD noted that, under § 7112(d) of the Statute, two or more bargaining units that are represented by the same representative may be consolidated if the larger unit is found to be appropriate. Under § 7112(a) of the Statute, a unit is appropriate if it would: (1) ensure a clear and identifiable community of interest among the employees in the unit; (2) promote effective dealings with an agency; and (3) promote efficiency of the operations of an agency. RD's Decision at 7 (citing *U.S. Dep't of the Navy, Fleet & Indus. Supply Ctr., Norfolk, Va.*, 52 FLRA 950 (1997) (*FISC*)).

The RD concluded that the employees in the proposed unit share a clear and identifiable community of interest. *See id.* at 8, 10. The RD found that, because the employees are all part of the Activity, they contribute and support the same interrelated mission even though they perform different duties. *Id.* at 8. The RD also found that all of the employees in the proposed unit ultimately report to the Director and are, therefore, subject to the same chain of command. *Id.* The RD further found that, although the employees in the proposed unit have different duties, the duties are nevertheless similar; moreover, the employees routinely interact with each other to perform these duties. *Id.* at 9. The RD additionally found that the employees share some of the same general working conditions because: (1) they are subject to policies that are established by Commerce; and (2) the separate HR offices often confer with each other when they implement these policies. *See id.*

The RD rejected the Activity's argument that employees at Headquarters and NPC do not share a community of interest because the former is staffed primarily with white-collar employees whereas the latter is staffed primarily with blue-collar employees. *See id.* The RD noted that the Activity stipulated that a consolidated unit at Headquarters would be appropriate even though it would include white- and blue-collar employees; the RD, accordingly, found that it was only logical that a consolidated unit consisting of all seven units would be appropriate even if it contained both types of employees. *See id.*

The RD also concluded that the proposed unit would promote effective dealings. *See id.* at 10. The RD acknowledged that personnel and labor relations, as well as negotiations, occurred at the local level of recog-

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4. The NPC employees at Hagerstown, Maryland are not represented and are therefore not at issue. *See* RD's Decision at 5.

nition. *See id.* The RD, however, found that Commerce sets certain governing personnel policies for the Activity; retains approval over all collective bargaining agreements; provides personnel and labor relations support to all units; and represents the Activity in all unfair labor practices and arbitrations. *See id.* The RD also noted that Headquarters and NPC often work together to interpret and implement new Commerce policies and that Headquarters resolves NPC grievances that advance beyond the first step. *See id.* Based on the foregoing facts, the RD concluded that Commerce's role outweighed the fact that the administration of personnel and labor relations occurred at the local level. *See id.* The RD rejected the Activity's assertion that consolidation of the proposed units would make personnel and labor relations difficult, noting that the Activity had failed to provide specific evidence to support this assertion. *Id.* at 11. The RD was not persuaded by the Activity's argument that consolidation would require the creation of a new HR structure; the RD stated that, even if this assertion were true, the Activity failed to establish that such a structure would "impede" effective dealings. *Id.*

Finally, the RD concluded that the proposed unit would promote efficient operations. *See id.* The RD found that the unit would bear a rational relationship to the Activity's operational and organizational structure because all employees are in a direct chain of command to the Director. The RD also found that the proposed unit would reduce unit fragmentation. *Id.* The RD rejected the Activity's claim that consolidation would increase costs because the Activity failed to sufficiently support this assertion. *Id.* The RD again rejected the Activity's claim concerning the creation of a new HR structure on the basis that it had failed to prove that the structure would impede operations. *See id.* at 11-12.

The RD concluded, based on the foregoing findings, that the proposed unit was appropriate. *Id.* at 13. The RD ordered an election so that the professional employees could vote on whether they wanted to be included in the consolidated unit.<sup>5</sup>

### III. Positions of the Parties

#### A. Activity's Application for Review

The Activity asserts that the RD failed to apply established law when he concluded that the proposed consolidated unit was appropriate. *See Application*

at 11. The Activity alleges that the RD's analysis of all three appropriate unit criteria was flawed.

The Activity contends that the employees in the proposed unit do not share a community of interest. *See id.* The Activity claims that the RD erred by relying primarily on the fact that employees at Headquarters and NPC are part of the Activity and support the same mission. *See id.* at 11. According to the Activity, the fact that the employees perform different functions undermines the RD's finding that they share the same mission. *See id.* at 12. The Activity also asserts that the RD failed to consider that the proposed unit would contain employees with a variety of different occupations. *Id.* at 13. The Activity also contends that the RD did not consider that NPC is geographically and organizationally isolated from Headquarters. *See id.* at 14. The Activity further argues that the RD's community of interest analysis is flawed because he did not properly consider where the locus and scope of personnel authority resided. *See id.* The Activity asserts that it has no centralized personnel and labor relations authority; rather, according to the Activity, Headquarters and NPC administer policies for their respective offices. The Activity, therefore, contends that the RD placed undue emphasis on Commerce's role in issuing personnel policies. *See id.* at 15.

The Activity also argues that the proposed unit would not promote effective dealings. *See id.* at 17. According to the Activity, no history of nationwide bargaining exists; rather, all bargaining has occurred at the local level. *See id.* at 18. Additionally, the Activity argues that labor relations policy always has been set at the local level and neither Headquarters nor NPC has the authority to govern the other's labor policies. *See id.* The Activity contends that the RD's reliance on the role of Commerce is misplaced because Commerce does not negotiate for the Activity, administer policies, or limit the scope of negotiations. *See id.* at 19. The Activity further argues that the fact that Commerce has the authority to approve or disprove collective bargaining agreements does not mean that the proposed unit would promote effective dealings. *Id.* at 20. The Activity further asserts that conditions of employment for employees in the proposed unit are governed by the different personnel offices and that the proposed unit is ineffective because it would require the creation of a new labor relations structure to coordinate negotiations with the unit. *Id.* at 22-23.

The Activity further alleges that the proposed unit would not promote efficient operations. *See id.* at 23-24. The Activity contends that the proposed unit would not bear a rational relationship to the Activity's organi-

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5. As neither party challenges this aspect of the RD's Decision, we will not address it further.

zational structure because the unit would cut across organizational lines. *See id.* at 24. According to the Activity, it makes little sense to create a unit containing Headquarters and NPC employees because NPC employees do not report to Headquarters. *See id.* The Activity also alleges that the proposed unit would be inefficient because it would require the creation of a new labor relations structure. *See id.* at 25.

#### B. Union's Opposition

The Union asserts that the Authority should deny the Activity's application for review because the Activity is simply rearguing two of the claims it presented to the RD. *See Opposition* at 1-2. The Union specifically contends that the Activity is rearguing its rejected assertions that: (1) the separate assignments and missions of employees at Headquarters and NPC weigh against a finding that they share a community of interest, *see id.*; and (2) the lack of a nationwide HR office and labor relations policy weigh against a finding that the proposed unit would promote the effectiveness and efficiency of the Activity's operations. *See id.* at 2.

According to the Union, the RD thoroughly examined the record and correctly concluded that the employees in the proposed unit share a community of interest because their work is integrated across bargaining unit lines and they regularly interact with each other. *See id.* at 2 (quoting RD's Decision at 6). The Union also claims that, contrary to the Activity's assertion, employees in a proposed unit may share a community of interest even though they perform different duties or functions. *See id.* at 3 (citing *U.S. OPM, Atlanta Reg'l Office of Fed. Investigations, Atlanta, Ga.*, 48 FLRA 1228 (1993)).

The Union also rejects the Activity's assertion that the RD did not properly consider the lack of a nationwide HR office and labor relations policy. *See id.* at 4. The Union concedes that the Activity lacks a nationwide HR office and labor relations policy. *See id.* However, the Union contends that the RD correctly found that the Activity did not prove how either of these facts would impede the effectiveness and efficiency of the Activity's operations if the units were consolidated. *See id.* Moreover, the Union asserts that the Activity fails to present any arguments which rebut the RD's finding. *See id.* The Union further contends that several cases that the Activity relies upon are factually distinguishable from this case. *See id.* at 4-5 (citations omitted).

#### IV. Discussion and Analysis

The Activity asserts that the RD failed to apply established law because he erroneously concluded that

the proposed consolidated unit was appropriate. As stated by the RD, a unit may be deemed to be appropriate under § 7112(a) of the Statute only if it will: (1) ensure a clear and identifiable community of interest among the employees in the unit; (2) promote effective dealings with the agency involved; and (3) promote efficiency of the operations of the agency involved. *See FISC*, 52 FLRA at 959. A proposed unit must meet all three criteria in order to be found appropriate. *See U.S. Dep't of the Air Force, Lackland Air Force Base, San Antonio, Tex.*, 59 FLRA 739, 741 (2004) (*USDAF*) (citation omitted). Determinations as to each of these criteria are made on a case-by-case basis. *Id.* The Authority has set out factors for assessing each criterion, but has not specified the weight of individual factors or a particular number of factors necessary to establish an appropriate unit. *Id.*

#### A. Community of Interest

As stated by the RD, when the Authority examines the first appropriate unit criterion — whether employees share a clear and identifiable community of interest — it examines such factors as geographic proximity, unique conditions of employment, distinct local concerns, degree of interchange between other organizational components, and functional or operational separation. *See FISC*, 52 FLRA at 961 (citations omitted). In addition, the Authority considers factors such as whether the employees in the proposed unit are a part of the same organizational component of the agency; support the same mission; are subject to the same chain of command; have similar or related duties, job titles and work assignments; are subject to the same general working conditions; and are governed by the same personnel office. *See id.* at 960-61.

The Activity asserts that the RD's community of interest analysis is flawed because he relied primarily on the fact that the employees in the proposed unit support the same mission, rather than on the fact that they perform different duties. Employees can, however, share a community of interest and still perform separate duties. Under Authority precedent, to establish a shared community of interest, employees in a proposed unit need only perform duties that are "similar[.]" *U.S. Dep't of the Air Force, Air Force Material Command, Wright-Patterson Air Force Base, Ohio*, 55 FLRA 359, 363 (1999) (*AFMC*) (citation omitted). The Activity does not contend that the employees in the proposed unit do not perform similar duties. Nor does the Activity contend that the employees do not share a similar mission. Accordingly, the Activity has not established that the RD's analysis is flawed in this respect. *See id.*

The Activity also contends that the RD's analysis is flawed because he did not consider the employees' different occupations. The Authority has never held that appropriate units must include only employees who share functions or occupations, particularly in activity-wide units. *See USDAF*, 59 FLRA at 742. Moreover, when employees are organizationally and operationally integrated, the fact that some of the employees have specialized functions does not compel a finding that they do not share a community of interest. *See U.S. Dep't of Homeland Sec., Bureau of Customs & Border Prot.*, 61 FLRA 485, 496 (2006). Based on the foregoing precedent, the fact that employees in the proposed unit have different occupational undertakings does not undermine the RD's community of interest finding. *See USDAF*, 59 FLRA at 742. Moreover, as the RD noted, the Activity stipulated that a consolidated unit consisting of all Headquarter units would be appropriate even though such a unit would contain a mixture of employees with different occupations. RD's Decision at 9. Because a consolidated unit at Headquarters would be appropriate, despite the inclusion of different occupations, it logically follows that a consolidated unit of Headquarters and NPC employees similarly would be appropriate despite containing employees with different occupational undertakings.

The Activity also contends that the RD failed to consider properly the organizational and geographical isolation of NPC. The Activity has not offered any evidence in support of its assertion that NPC is organizationally and/or geographically isolated; moreover, the Activity does not dispute the RD's findings that NPC has regular contact with Headquarters. This argument, therefore, does not militate against a finding that the employees in the proposed unit share a community of interest. *See U.S. Dep't of the Navy, Fleet Readiness Ctr. Sw., San Diego, Cal.*, 63 FLRA 245, 252 (2009) (unsupported assertion failed to establish that the RD's appropriate unit analysis was flawed).

The Activity also argues that, because no centralized policy-making authority exists within the Activity, the RD did not properly analyze the locus and scope of personnel authority. This argument, however, is contrary to Authority precedent. For purposes of a community of interest analysis, the Authority examines whether personnel and labor relations policy is *consistent* with the proposed consolidation, not whether such policy is *centralized*. *See AFMC*, 55 FLRA at 363.

Thus, none of the Activity's arguments establishes that the RD's community of interest analysis was erroneous. Moreover, the Activity does not dispute the RD's findings that employees in the proposed unit:

(1) share the same chain of command; and (2) have regular interaction with one another. *See* RD's Decision at 10.

Based on the foregoing, we find that the RD correctly determined that employees in the proposed unit share a community of interest.

#### B. Effective Dealings

In assessing the effective dealings criterion, the Authority examines such factors as the past collective bargaining experience of the parties; the locus and scope of authority of the responsible personnel office administering personnel policies covering employees in the proposed unit; the limitations, if any, on the negotiation of matters of critical concern to the employees in the proposed unit; and the level at which labor relations is set by the agency. *See FISC*, 52 FLRA at 961.

The RD found, and the Activity does not dispute, that Commerce promulgates personnel policies that establish some of the working conditions for Activity employees. The Activity also does not dispute the RD's findings that Commerce retains approval over all collective bargaining agreements and provides legal representation to the Activity in personnel and labor matters. In addition, the Activity does not dispute the RD's finding that Headquarters and NPC routinely consult each other over labor and personnel matters. Finally, it is undisputed that employees at Headquarters and NPC are within the same chain of command. These facts, taken together, weigh in favor of finding that consolidation would promote effective dealings.

The Activity argues that the proposed unit would be ineffective because there is no history of national bargaining and the locus and scope of administration for personnel policies resides at the local level. Although both of these factors weigh against a conclusion that a proposed unit would promote effective dealings, these factors alone do not provide a basis for finding that the RD's analysis was erroneous. *See, e.g., Dep't of the Navy, U.S. Marine Corps*, 8 FLRA 15, 23 (1982) (*Marine Corps*) (proposed unit promoted effective dealings even though labor and personnel activities occurred at local level because national level retained ultimate authority).<sup>6</sup>

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6. The Activity asserts that *Marine Corps* is inapplicable because, in direct contrast to this case, the national level authority resided with one position, i.e., the Commandant of the Marine Corps. Even if this fact was true, the Activity has not cited any language in *Marine Corps* that indicates that this fact was dispositive of the Authority's effective dealings analysis. The Activity's argument, therefore, is unpersuasive.

The Activity also asserts that the proposed unit is ineffective because it would require the creation of a new labor relations structure. The RD did not specifically decide whether the proposed unit would require a new labor relations structure.<sup>7</sup> RD's Decision at 11. However, the creation of a new labor relations structure is only one of the factors the Authority considers in assessing effective dealings. *See, e.g., AFMC, 55 FLRA at 364.* As discussed above, the RD made several un rebutted findings to support his conclusion that the proposed unit would promote effective dealings. These findings are sufficient to support his conclusion that the proposed unit would promote effective dealings. *See Marine Corps, 8 FLRA at 23.*

Based on the foregoing, we find that the RD correctly determined that the proposed unit would promote effective dealings.

### C. Efficient Operations

As stated by the RD, the criterion of efficiency of agency operations concerns "the degree to which the unit structure bears a rational relationship to the operational and organizational structure of the agency." RD's Decision at 11. In assessing this criterion, the Authority examines the effect of the proposed unit on operations "in terms of cost, productivity, and use of resources." *Id.* (citations omitted).

The Activity asserts that the proposed unit would cut across organizational lines and, therefore, lacks a rational basis to the Activity's structure. Application at 24. The Activity does not dispute the RD's finding that NPC employees share the same chain of command as the other employees in the proposed unit. The unit, accordingly, bears a rational relationship to the operational and organizational structure of the Activity. *Cf. U.S. Dep't of the Navy, Commander, Naval Base, Norfolk, Va., 56 FLRA 328, 333 (2000)* (Chairman Wasserman concurring in part and dissenting in part) (Authority stated that placing employees in separate chains of command could be evidence that proposed

consolidation would not bear a rational relationship to agency's structure).

The Activity also asserts that the proposed unit would not promote efficiency of operations because it would require the creation of a new labor relations structure. The Activity, however, does not dispute the RD's finding that consolidation would improve the efficiency of operations by reducing unit fragmentation, which in turn would allow for the possibility of reducing costs and the use of resources. *See* RD's Decision at 11. This supports a finding that the unit would promote efficient operations. *See, e.g., AFMC, 55 FLRA at 364* (reducing unit fragmentation promoted efficient operations and therefore supported consolidation). This finding, in conjunction with the finding that the proposed unit bears a rational relationship to the Activity's structure, sufficiently overcome the Activity's assertion that a new labor relations structure is required.

Based on the foregoing, we find that the RD correctly determined that the proposed unit would promote efficient operations.

### V. Order

The Activity's application for review is denied.

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7. Member Beck notes that the RD's finding that the Activity failed to establish that a new labor relations structure, even if necessary, would "impede effective dealings" does not appear to reflect a technically precise application of Authority precedent. RD's Decision at 11. Authority precedent examines only whether consolidation would require the creation of a new agency structure, not, as the RD found, whether the creation of such a structure would hamper effective dealings. *See, e.g., AFMC, 55 FLRA at 364.* Member Beck nevertheless agrees with the conclusion of the opinion that the remainder of the RD's findings are sufficient to support his conclusion that the proposed unit would promote effective dealings.