64 FLRA No. 1

UNITED STATES
DEPARTMENT OF THE AIR FORCE
TRAVIS AIR FORCE BASE, CALIFORNIA
(Activity)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1764
(Labor Organization/Incumbent)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO
(Labor Organization/Petitioner)

SF-RP-08-0055

ORDER DENYING
APPLICATION FOR REVIEW

August 25, 2009

Before the Authority: Carol Waller Pope, Chairman, and Thomas M. Beck and Ernest DuBester, Members [1]

I. Statement of the Case

This case is before the Authority on an application for review filed by the Activity under § 2422.31 of the Authority's Regulations. [2] The Labor Organization/Petitioner (the Union) filed an opposition to the Activity's application for review.

After determining that the Union had standing to file a petition for consolidation and that a hearing was not required, the Regional Director (RD) granted the Union's petition for consolidation. For the reasons that follow, we deny the Activity's application for review.

II. Background and RD's decision

The Union filed the petition requesting consolidation of five bargaining units of nonprofessional employees at Travis Air Force Base (AFB) for which AFGE Local 1764 holds exclusive recognition. [3] RD's Decision at 1. The Activity filed a motion for a hearing, which the RD denied. *Id.* at 2. Instead, the RD directed an investigation, during which the parties attempted, but were unable, to agree on a stipulation of facts. *Id.* Subsequently, the RD closed the record and directed that briefs be filed no later than March 30, 2009. *Id.* at 2-3. The Activity filed its brief on March 31, but provided an advance copy on March 30. *Id.* at 3. The RD ruled that he would consider the Activity's brief because it was: (1) the Activity's sole opportunity to take a position on the issues; and (2) necessary for consideration of the petition. In addition, he found no harm to the Union in considering the brief. *Id.*

Next, the RD rejected the Activity's claim that the Union did not have standing to file the petition. *Id.* at 16. In so doing, the RD concluded that a petition seeking consolidation concerns a "matter relating to representation" within the meaning of § 7111(b)(2) of the Federal Service Labor-Management Relations Statute (Statute), that the Union meets the statutory definition of a "person" entitled to file a petition under § 7111(b)(2), and that § 7112(d) should be read in light of § 7111(b)(2). [4] *Id.* In addition, the RD noted that the Union filed the petition "as the parent organization" of Local 1764, which "was a party to and actively participated in the proceedings[.]" *Id.* According to the RD, dismissing the petition on the basis that it was not filed

1. Member Beck's dissenting opinion is set forth at the end of this Order.

2. Section 2422.31 of the Authority's Regulations provides, in pertinent part, that the Authority may grant an application for review when the application demonstrates that review is warranted because:

> (1) The decision raises an issue for which there is an absence of precedent;
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> (2) Established law or policy warrants reconsideration; or
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> (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. The Union requested to include in the proposed consolidated unit the existing units of all wage grade employees (WG unit), all general schedule employees (GS unit), all firefighters (firefighter unit), all nonappropriated fund employees (NAF unit), and all security guards (National Security Personnel System (NSPS) unit). RD's Decision at 3.

4. Section 7111(b)(2) addresses petitions filed "by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation[.]" Section 7112(d) provides:

> Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated . . . if the Authority considers the larger unit to be appropriate.

by Local 1764 "would be nothing more than form over substance." *Id.* The RD cited *Internal Revenue Service,* 6 FLRC 288 (1978) (*IRS*), which he found applicable under § 7135 of the Statute [5] , and *United States Department of the Navy, Commander, Navy Region Se., Jacksonville, Florida*, 62 FLRA 11 (2007) (*CNRSE*).

On the merits, the RD noted that the employees of the proposed consolidated unit are part of the 60th Air Mobility Wing (AMW), which is the host unit of the Activity, or are part of either the 349th AMW or the 15th Expeditionary Mobility Task Force (EMTF), which are tenant activities of the Activity. *Id.* at 5. The RD also noted that, to be appropriate, the proposed consolidated unit must ensure a clear and identifiable community of interest among employees and promote effective dealings with and efficiency of operations of the Activity. *Id.* at 18.

As to community of interest, the RD stated that the Authority examines such factors as whether employees in the proposed unit: (1) are part of the same organizational component of the agency; (2) support the same mission; (3) are subject to the same chain of command; (4) have similar or related duties, job titles, and work assignments; (5) are subject to the same general working conditions; and (6) are governed by the same personnel and labor relations policies that are administered by the same personnel office. *Id.* at 18 (citing *United States Dep't of the Navy, Fleet and Industrial Supply Ctr., Norfolk, Va.*, 52 FLRA 950, 960-61 (1997) (*FISC*)). The RD also stated that, in regard to proposed consolidated units, the Authority has identified additional factors: (1) the degree of commonality and integration of the mission and function of components involved; (2) the distribution of employees throughout the organizational components of the agency; (3) the degree of similarity of occupational undertakings of the employees in the proposed unit; and (4) the locus and scope of personnel and labor relations authority and functions. *Id.* (citing *United States Dep't of the Air Force, Air Force Materiel Command, Wright-Patterson Air Force Base, Ohio*, 55 FLRA 359 (1999) (*AFMC*); *United States Dep't of Justice*, 17 FLRA 58, 62 (1985)).

Examining these factors, the RD concluded that the proposed consolidated unit would ensure the necessary community of interest. *Id.* at 20. In reaching this conclusion, he noted that the proposed consolidated unit would include all unit-eligible employees of the Activity, who are located throughout the Activity and who work to support the mission of the Activity. He also noted that the Authority has held that the separate missions of separate components need only "bear a relationship" to one another to warrant consolidation. *Id.* at 18. (quoting *Dep't of the Navy, United States Marine Corps*, 8 FLRA 15, 22 (1982)). He further found that, with the exception of the employees of the 349th AMW and the 15th EMTF, the employees in the proposed unit are part of the same overall command. As to the employees of the 349th AMW and the 15th EMTF, he emphasized that they have been included in the existing WG and GS units for decades. *Id.* at 18-19. In addition, he found that the commander of the 60th AMW sets policies that apply to all employees in the proposed consolidated unit and that there is a high degree of commonality and integration of mission among all Activity components. *Id.* at 19.

The RD rejected the Activity's argument that the inclusion of the NAF unit and the NSPS unit is not appropriate because they are subject to different pay and personnel systems. *Id.* He explained that the employees of the NSPS unit: (1) receive personnel and payroll services from the same sources as the employees of the other units; (2) are subject to the same chain of command, overall supervision, base-wide policies, and general working conditions; and (3) interact daily with the other employees through their duties controlling access to the installation. *Id.* Likewise, he explained that the NAF employees are part of the same overall organization, work side-by-side with GS employees, and interact with employees from the other units. *Id.*

The RD stated that the criterion of effective dealings pertains to the relationship between management and the exclusive representative in a proposed unit. He stated that, in assessing this criterion, the Authority examines such factors as: (1) past collective bargaining experience; (2) the locus and authority of the office administering personnel policies; (3) any limits on negotiation of matters of critical concern; and (4) the level at which labor relations policy is set. *Id.* at 21 (citing *FISC*, 52 FLRA at 961). Examining these factors, the RD concluded that the proposed consolidated unit would promote effective dealings. He noted that labor and employee relations policy is formulated locally in two personnel offices, which are part of the same Activity organization. *Id.* In addition, the RD noted that the Activity has a long history of joint negotiations for three of the units proposed to be consolidated. The RD found nothing showing that a consolidated unit would impair

5. Section 7135 provides that "policies" established by the Federal Labor Relations Council interpreting Executive Order (E.O.) 11491, as amended, "shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of [the Statute] . . . ."

the effective collective bargaining relationship with respect to these units or the NAF unit or would impair the parties' ability to negotiate agreement terms applicable to the NSPS unit. In addition, the RD found that, insofar as the Activity claimed that a consolidated unit must improve labor relations, the claim was contrary to Authority precedent. *Id.* at 21-22 (citing *AFMC*, 55 FLRA at 364).

The RD stated that the criterion of efficiency of agency operations pertains to the "benefits to be derived from a unit structure which bears some rational relationship to the operational and organizational structure of the agency." *Id.* at 22 (quoting *FISC*, 52 FLRA at 961). He stated that, in assessing this criterion, the Authority examines cost, productivity, and use of resources and, following his examination, he concluded that the proposed unit would promote efficiency of agency operations. He found no showing that the proposed unit would increase costs and stated that it was possible that it would reduce costs. *Id.* In addition, he concluded that the proposed consolidated unit bears a rational relationship to the Activity's structure because it is consistent with the base-wide operation and would consist of all eligible nonprofessional employees at the Activity. *Id.*

Based on the foregoing, the RD determined that the proposed consolidated unit is appropriate under 7112 of the Statute and ordered the units consolidated. *Id.*

III. Positions of the Parties

A. Application for Review

The Activity disputes the RD's ruling that the Union has standing to file the petition, claiming that there is an absence of precedent on this issue. Application at 57-59. The Activity acknowledges that the RD relied on *IRS*, but claims that such reliance was misplaced because the language of E.O. 11491, as amended, is not identical to the Statute. *Id.* at 60-62. The Activity also argues that the RD failed to apply established law in ruling that the Union has standing because, according to the Activity, § 7112(d) of the Statute requires that "the labor organization bringing the petition *must represent all of the bargaining units sought to be consolidated*." *Id.* at 59 (emphasis in original).

The Activity also disputes the RD's refusal to conduct a hearing, alleging that a hearing is required when, as here, there is a question concerning representation and an issue of unit appropriateness. Consequently, the Activity argues that reconsideration of the RD's ruling is warranted under § 2422.31(c)(2) of the Authority's Regulations. *Id.* at 63. The Activity also argues that the failure to conduct a hearing resulted in "substantial factual errors." *Id.*

On the merits, the Activity contends that the RD erred in finding that employees in the proposed unit share a community of interest. *Id.* at 74. In this regard, the Activity claims that the fact that the security guard unit and the firefighter unit are each confined to one squadron precludes finding a community of interest with employees of the other units. *Id.* at 75. The Activity also maintains that the RD erred in finding that all of the employees work in some way to support the "same overall mission[.]" *Id.* at 74 (quoting RD's decision at 18). The Activity asserts that the different components "each have their own mission and set of responsibilities." *Id.* at 75. Similarly, the Activity argues that the RD erred in finding that, except for the employees in the 349th AMW and the 15th EMTF, affected employees are in the same chain of command. *Id.* at 79.

The Activity also contends that there is no community of interest because affected employees do not "share similar or related duties, job titles, or work assignments." *Id.* In addition, according to the Activity, interchange between the NAF unit and the other units and between the security guard unit and the other units "is nonexistent." *Id.* at 90. The Activity similarly contends that the RD erred when he found that all affected employees are "subject to the same general working conditions applicable to the entire Travis installation." *Id.* at 84 (quoting RD's decision at 19). In particular, the Activity claims that hours of work vary significantly across the installation and that the RD ignored the significant difference in working conditions applicable to the NAF unit. *Id.* The Activity also claims that the employees are subject to three different personnel systems. *Id.*

As to effective dealings, the Activity contends that the RD committed a clear and prejudicial error concerning a substantial factual matter by disregarding "the significant differences in pay, performance management, and personnel systems" applicable to the affected employees. *Id.* at 93. The Activity argues that these significant differences make it "virtually impossible . . . to negotiat[e] . . . contract provisions that will be applicable to the members of the current five bargaining units." *Id.* at 94. In addition, the Activity disputes the RD's reliance on past bargaining history because, according to the Agency, "multi-unit bargaining is . . . a matter of convenience and not a matter of right." *Id.* at 95. Finally, the Activity claims that it did not argue

that it was necessary to find that the consolidated unit would improve labor relations. Instead, according to the Activity, it argued that "the Regional Director should look hard at the evidence . . . to determine whether the effectiveness of labor relations would be improved by vastly altering and restructuring what has heretofore been an effective and longstanding bargaining relationship." *Id.* at 95-96 (quoting RD's decision at 21; hearing brief at 69).

As to efficiency of operations, the Activity contends that the RD committed a clear and prejudicial error concerning a substantial factual matter by disregarding the differences in pay, performance management, and personnel systems applicable to the affected employees and ignoring "the fact that no Air Force bargaining unit has ever combined appropriated fund and non-appropriated fund employees." *Id.* at 97. In this regard, the Activity argues that the proposed consolidated unit bears no relationship to the operational and organizational structure of the Activity because it ignores the history of treating the NAF and NSPS units separately. *Id.* The Activity claims that consolidating the units will increase costs because the Activity's contract negotiators have no experience negotiating contract provisions that will be applicable to all of the personnel systems involved and because the consolidated unit will increase the use of official time. *Id.* at 98-100. The Activity also argues that the proposed unit does not bear a rational relationship to the operational and organization structure of the Activity on the basis that it consists of all bargaining unit employees at Travis AFB because the proposed unit does not include a unit of nurses. *Id.* at 98-99.

B. Opposition

As a preliminary matter, the Union contends that "the Authority should not consider the arguments raised in the Activity's application for review" because the application is a restatement of the Activity's brief to the RD, which according to the Union, was not timely filed. Opposition at 2. The Union asserts that the RD's finding that consideration of the Activity's brief would not harm the Union does not establish the extraordinary circumstances required by the Authority's Regulations to waive the time limit established by the RD for filing briefs. *Id.* at 3-4 (citing § 2429.23(b) of the Authority's Regulations).

The Union also contends that the RD followed established law in determining that the Union had standing to file the petition because the RD correctly relied on *IRS*, which the Authority has cited approvingly. *Id.* (citing *CNRSE*). In addition, the Union argues that no review is warranted of the RD's refusal to conduct a hearing. *Id.* at 6. The Union maintains that there were no material facts in dispute warranting a hearing. *Id.*

On the merits, the Union contends that the Activity fails to demonstrate that review of the RD's decision is warranted. *Id.* at 8. As to community of interest, the Union argues that the RD's decision is supported by the record. *Id.* Among other things, the Union claims that, contrary to the Activity's argument, "all employees from all five units proposed for consolidation share a chain of command[.]" *Id.* Further, the Union reiterates its assertion to the RD that inclusion of employees under different pay and personnel systems in a single bargaining unit is not novel, referencing its consolidated bargaining unit at the Department of Veterans Affairs. *Id.* at 8-9.

As to effective dealings, the Union contends that the RD's decision is supported by the record and is based on application of Authority case law. *Id.* at 9-10. In this regard, the Union notes that he found that the commander of the 60th AMW establishes labor relations policy for all the employees proposed to be consolidated, that the 60th Force Support Squadron provides personnel support for all five bargaining units, and that bargaining history showed success in bargaining across unit lines. *Id.* at 10. As to efficiency of operations, the Union again contends that the RD's decision is supported by the record. *Id.* at 11. The Union asserts that the RD correctly found that the proposed consolidated unit would promote the efficiency of agency operations because it relates to the structure of Travis AFB, even without the inclusion of the nurses unit. *Id.* & n.11.

IV. Preliminary Matter

The representation process before a regional director is a non-adversarial investigatory proceeding in which all parties are afforded the opportunity to present evidence and arguments. *E.g., Walter Reed Army Med. Ctr.*, 52 FLRA 852, 855 n.3 (1997) (*Med. Ctr.*). Further, broad discretion is granted regional directors under § 2422.30 of the Authority's Regulations to investigate a representation petition "as the Regional Director deems necessary." The RD explained that he would consider the Activity's brief because the Activity had timely provided an advance copy, because the brief was the Activity's sole opportunity to take a position on the record, and because it was necessary for an appropriate consideration of the petition. In addition, he found no harm to the Union in considering the brief, a finding that

is not disputed by the Union. As such, we consider the application.

V. Analysis and Conclusions

A. The application for review fails to demonstrate that review is warranted of the RD's ruling that the Union had standing to file the petition.

The Activity asserts that, under § 7112(d) of the Statute, a labor organization must represent all bargaining units sought to be consolidated to have standing to file a petition. However, even assuming that is true, nothing in § 7112(d) prohibits the parent organization of such labor organization from filing a petition on behalf of its constituents, particularly where, as here, the constituent (Local 1764) agreed with the petition, was a party to the proceedings, and actively participated therein.

Moreover, the Activity's assertion is contrary to the precedent on which the RD relied. In *CNRSE*, the Authority viewed AFGE to be a labor organization within the meaning of § 7112(d) when it "indicated its intent to serve as exclusive representative of the proposed consolidated unit" even though some of the certified exclusive representatives were AFGE locals. 62 FLRA at 12 n.2, 14. Likewise, in *IRS*, a national union had standing to file a petition to consolidate bargaining units including units where its constituent local chapters were the certified exclusive representatives. The Activity claims, but fails to establish, that *IRS* is distinguishable based on wording differences between the executive order under consideration in that case and the Statute. In these circumstances, as the RD found, dismissing the petition because it was not filed by Local 1764 "would be nothing more than form over substance." RD's decision at 15.

Accordingly, the Activity fails to demonstrate that review of the RD's decision is warranted on this ground.

B. The application for review fails to demonstrate that established law or policy warrants reconsideration within the meaning of § 2422.31(c)(2) of the Authority's Regulations.

An assertion that established law or policy warrants reconsideration states a ground on which the Authority may grant an application for review under § 2422.31(c)(2). *E.g., United States Dep't of Agric., Office of the Chief Info. Officer, Info. Tech. Servs.*, 61 FLRA 879, 883 (2006) (*CIO*). For review to be granted, the application must identify an established law or policy warranting reconsideration. *Id.* In this case, the Activity contends that reconsideration of the RD's ruling not to conduct a hearing is warranted under § 2422.31(c)(2). Application at 63. However, the Activity does not contend that any established law or policy should be reconsidered. As such, the Activity fails to demonstrate that review of the RD's decision is warranted on this ground. *See CIO*, 61 FLRA at 883.

C. The application for review fails to demonstrate that the RD erred in ruling not to conduct a hearing.

The Activity contends that the RD erred in refusing to conduct a hearing because, according to the Activity, a hearing was required as there is a question concerning representation and there is an issue of unit appropriateness. Section 7111(b) of the Statute requires a hearing when there is reasonable cause to believe that a question concerning representation exists. However, the petition in this case was filed under § 7112(d) of the Statute, and, by definition, a unit consolidation petition does not raise a question concerning representation because it does not question whether the exclusive representative will continue as such. *Nat'l Border Patrol Council, AFGE, AFL-CIO*, 23 FLRA 106, 108 (1986). Although the proposed consolidated unit must be appropriate to be consolidated under § 7112(d), nothing in § 7112(d) either explicitly or implicitly requires a hearing regarding the proposed consolidation. With no mention of a hearing in § 7112(d), any requirement to have provided a hearing is governed by § 2422.30(b) of the Authority's Regulations.

Under § 2422.30(b), an RD "will issue a notice of hearing to inquire into any matter about which a material issue of fact exists, and any time there is reasonable cause to believe a question concerning representation exists regarding unit appropriateness." Under this provision, RDs have "broad discretion" to determine whether a hearing is necessary. *United States Dep't of the Navy Fleet and Industrial Supply Ctr., Norfolk. Va.*, 62 FLRA 497, 501 (2008) (quoting *United States Envtl. Prot. Agency*, 61 FLRA 417, 420 (2005)). In exercising this discretion, the RD may determine that "there are sufficient facts not in dispute to form the basis for a decision or that, even where some facts are in dispute, the record contains sufficient evidence on which to base a decision." *Id.* (quoting *United States Dep't of Agric., Forest Serv., Apache-Sitgreaves Nat'l Forest, Springerville, Ariz.*, 47 FLRA 945, 952 (1993)). Although *Navy Fleet* did not involve a consolidation petition, it did involve a determination of the appropriateness of the units involved, and the Authority specifically held that

the regional director did not err by failing to conduct a hearing.[6] *Id.*

In denying the Activity's motion for a hearing, the RD directed an investigation during which the parties attempted, but failed, to reach a stipulation of facts. RD's decision at 2. After providing both parties additional opportunity to provide evidence, the RD provided the opportunity for filing briefs. In addition, the RD considered the Activity's brief over the objection of the Union as necessary to appropriately resolve the petition. *Id.* at 3. The Authority's Regulations require the RD to make such investigation as the RD "deems necessary[.]" § 2422.30(a). This is what the RD did in this matter. Moreover, Authority precedent requires only that there be sufficient undisputed facts to form the basis for decision. *E.g., United States Dep't of Veterans Affairs, VA Connecticut Healthcare Sys., West Haven, Conn.*, 61 FLRA 864, 870 (2006).

Consequently, the Activity fails to establish that a hearing was required either under the Statute or § 2422.30(b) of the Authority's Regulations and fails to show how the record in this case was insufficient for the RD to resolve the petition. Accordingly, we conclude that the application for review does not demonstrate that the RD failed to apply established law or committed a clear and prejudicial error concerning a substantial factual matter in failing to conduct a hearing.

D. The application for review fails to demonstrate that the RD erred in concluding that the proposed unit would ensure a community of interest.

The fundamental premise of the criterion of community of interest is to ensure that employees can deal collectively with management as a single group. *E.g., FISC*, 52 FLRA at 960. As set forth above, the RD examined the relevant factors and concluded that the proposed consolidated unit would ensure a clear and identifiable community of interest.

In claiming that there is no community of interest among the employees of the proposed consolidated unit, the Activity disputes a number of the RD's findings and assessments, but does not demonstrate that the RD failed to apply established law or committed a clear and prejudicial error on a substantial factual matter. In this regard, the Activity contends that the RD erred because the different components to which the affected employees are assigned have their own missions and much of the integration of functions found by the RD was merely incidental contact. However, as acknowledged by the RD, to warrant consolidation, the separate missions of components need only bear a relationship to one another and functions need only be similar. *E.g., AFMC*, 55 FLRA at 362. The Activity fails to demonstrate that the asserted separate missions do not bear a relationship to one another and/or that the functions and duties of employees are not sufficiently similar. Furthermore, the Authority has never held that appropriate units must include only employees who share functions or occupations, particularly in Activity-wide units. *See United States Dep't of the Air Force, Lackland Air Force Base, San Antonio, Tex.*, 59 FLRA 739, 742 (2004) (citing *Dep't of the Navy, Naval Station, Norfolk, Va.*, 14 FLRA 702, 704 (1984)). 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 United States Dep't of Homeland Sec., Bureau of Customs & Border Prot.*, 61 FLRA 485, 496 (2006).

The Activity also disputes the RD's finding that, with the exception of the employees of the 349th AMW and the 15th EMTH, the employees of the proposed consolidated unit are part of the same overall command. However, the Activity concedes that all of the employees of the units proposed for consolidation are ultimately under the command of the 60th AMW. Thus, although employees work for separate components, with individual component heads, all employees are ultimately under the control of the 60th AMW commander. Moreover, as § 7112(a) of the Statute expressly contemplates an "appropriate unit . . . established on an . . . installation . . . basis," the Activity's chain of command arguments do not demonstrate that the differences will affect the ability of employees to deal with management as a consolidated unit. *See United States Dep't of the Navy, Commander, Naval Base, Norfolk, Va.*, 56 FLRA 328, 332 (2000) ("As agencies can have . . . different chains of command, the fact that the Statute provides for the possibility of agency-wide units implies that employees who work for the same agency, but are in different chains of command, are not automatically precluded from constituting a single appropriate unit.").

The Activity further disputes the RD's finding that the employees of the proposed consolidated unit are

6. We note that, with respect to unit appropriateness, although a consolidation petition cannot properly be granted unless the consolidated unit is appropriate, unit appropriateness is not always contested. E.g., United States Dep't of Def., Def. Logistics Agency, 63 FLRA 473 (2009) (showing of interest to seek election regarding unit consolidation disputed before RD); Sheppard Air Force Base, Wichita Falls, Tex., 57 FLRA 148 (2001) (standing to file consolidation petition disputed before RD).

subject to the same general working conditions. However, the Activity concedes that the commander of the 60th AMW sets policies and general working conditions for the entire installation. In addition, the Activity disputes the RD's finding that NAF and appropriated fund employees receive payroll services from the same sources. However, the RD found that the NSPS unit, not the NAF unit, receives such payroll services. RD's decision at 20.

Finally, the Activity claims that the employees do not share a community of interest because they are subject to three different personnel systems and there is no single set of personnel rules applicable to all employees. The RD acknowledged the differences in pay and personnel systems, but found that overall the employees still share a community of interest. As set forth by the RD, no single factor in assessing community of interest is dispositive. *E.g., United States Dep't of the Army, Army Materiel Command Headquarters, Joint Munitions Command, Rock Island, Ill.*, 62 FLRA 313, 318 (2007). In addition, the Authority has not specified the weight to be accorded the various factors; determinations are made on a case-by-case basis after examining the totality of the circumstances. *United States Dep't of the Army, Military Traffic Command, Alexandria, Va.*, 60 FLRA 390, 394 (2004); *Med. Ctr.*, 52 FLRA at 857-58.

In sum, the application for review fails to demonstrate that the RD erred in concluding that the proposed unit would ensure a community of interest.

E. The application for review fails to demonstrate that the RD erred in concluding that the proposed unit would promote effective dealings.

The criterion of effective dealings pertains to the relationship between management and the exclusive representative in a proposed unit. *E.g., FISC*, 52 FLRA at 961. In concluding that the proposed unit would promote effective dealings, the RD specifically examined the past collective bargaining experience of the parties and whether authority over personnel and labor relations policy is consistent with the proposed unit. He found that labor and employee relations policy is formulated locally in two personnel offices, which are both part of the same Activity organization, and that the Activity has a long history of joint negotiations for three of the units proposed for consolidation.

The Activity does not dispute that labor and employee relations policy is formulated locally in offices that are part of the same Activity organization. Instead, the Activity contends that the RD disregarded the significant differences in pay, performance management, and personnel systems applicable to the affected employees. The Activity claims that it will be "virtually impossible" to negotiate contract provisions that will apply to all employees in the proposed consolidated unit. Application at 94. However, the Authority rejected a similar claim in *National Labor Relations Board,* 63 FLRA 47, 52-53 (2008), finding that there is no obligation in a consolidated unit to negotiate contract provisions that apply to all employees in the consolidated unit. In so doing, the Authority found that the agency failed to substantiate its claim that "with a consolidated unit, it would not be able to negotiate separate conditions of employment for [employees] within each component." *Id.* at 53. The Activity fails to substantiate its similar claim here.

The Activity also fails to substantiate its claim that, since the Union is the filing party, the RD erred in relying on bargaining history between the Activity and Local 1764. Consistent with our previous determination, the circumstances in this case demonstrate that the Union is properly acting on behalf of the Local. Furthermore, the RD's conclusion is consistent with Authority precedent holding that reducing unit fragmentation tends to promote effective dealings. *See United States Sec. & Exchange Comm'n, Wash., D.C.*, 56 FLRA 312, 317 (2000) (citing *Library of Congress*, 16 FLRA 429, 431 (1984)) (*SEC*). Finally, the Activity fails to demonstrate that the RD erred in rejecting a claim by the Activity that, to promote effective dealings, a consolidation must improve labor relations. In this regard, the Activity concedes that it argued that the RD must "determine whether the effectiveness of labor relations would be improved[.]" Application at 95-96.

Accordingly, we conclude that the application for review does not demonstrate that the RD erred in concluding that the proposed consolidated unit would promote effective dealings.

F. The application for review fails to demonstrate that the RD erred in concluding that the proposed unit would promote efficiency of agency operations.

The criterion of efficiency of agency operations pertains to the benefits to be derived from a unit structure that bears some rational relationship to the operational and organizational structure of the agency. *E.g., FISC*, 52 FLRA at 961. In concluding that the proposed consolidated unit would promote efficiency of agency operations, the RD found that the proposed consolidated unit bears a rational relationship to the Activity's structure because it is consistent with the base-wide operation and would consist of all of the eligible

nonprofessional employees at the Activity. The fact that the Air Force currently does not have a unit with both appropriated and non-appropriated fund employees fails to demonstrate any clear and prejudicial error by the RD. In addition, as the eligible employees of the proposed consolidated unit consist only of nonprofessionals, the existence of a professional nurses unit does not preclude a finding that the proposed unit has a rational relationship to the Activity's organization and structure.

As set forth above, in assessing efficiency of agency operations, the Authority examines the effect of the proposed unit on agency operations in terms of cost, productivity, or use of resources. *Id.* at 962. In examining these factors, the RD rejected the Activity's claim that negotiation costs would increase and found it possible that a consolidated unit would actually reduce costs. The Activity disputes the RD's suggestion that consolidation possibly would reduce negotiation costs, but fails to demonstrate that the RD committed a clear and prejudicial error on a substantial factual matter. *See United States Dep't of the Navy, Naval Facilities Eng'g Command, Se., Jacksonville, Fla.*, 62 FLRA 480, 488 (2008); *SEC*, 56 FLRA at 318 (Authority rejected claim of increased costs because it was unclear how a nationwide unit would be more costly than the alternative of multiple units with multiple collective bargaining agreements). Finally, the Activity fails to demonstrate what relevance the differences in pay, performance management, and personnel systems have to the RD's conclusion on this criterion.

Accordingly, we conclude that the application for review does not demonstrate that the RD erred in concluding that the proposed consolidated unit would promote efficiency of agency operations.

VI. Decision

The Activity's application for review is denied.

Dissenting Opinion of Member Beck:

I agree with the majority that the Union has standing to file the petition seeking consolidation. However, I disagree with the conclusion of my colleagues that it was appropriate for the Regional Director ("RD") to grant the Union's petition for consolidation without holding a hearing.

Our regulations state that:

> [T]he Regional Director will issue a notice of hearing . . . any time there is reasonable cause to believe a question exists regarding unit appropriateness.

5 C.F.R. § 2422.30(b). This language is mandatory. The regulation contemplates no exercise of discretion by the Regional Director in determining whether to hold a hearing. The majority cites *United States Department of the Navy, Fleet and Industrial Supply Center, Norfolk, Virginia*, 62 FLRA 497 (2008) (*Navy-Norfolk*) for the proposition that "RDs have 'broad discretion' to determine whether a hearing is necessary." Decision at 8. In that case, the RD elected not to hold a hearing in response to a petition alleging accretion and seeking unit clarification under 5 U.S.C. § 7111(b). In contrast, the instant petition seeks to consolidate existing units, and therefore proceeds under § 7112(d). *See* Regional Director's Decision and Order at 15, 17 (referring to the applicability of § 7112(d) to the petition seeking consolidation). To the extent that *Navy-Norfolk* and other Authority decisions appear to stand for the proposition that RDs have broad discretion in determining whether to hold a hearing in response to a petition arising under § 7112(d), those cases are inconsistent with the above-quoted regulation.

Section 7112 of the Statute expressly relates to "[d]etermination of *appropriate* units" (emphasis added). Section 7112(d) instructs that units may be consolidated "if the Authority considers the larger unit to be *appropriate*" (emphasis added). Consequently, I must conclude that any petition seeking consolidation under § 7112(d), by definition, constitutes "reasonable cause to believe a question exists regarding unit appropriateness." § 2422.30(b). Our regulation mandates that, when such a question exists, the Regional Director will hold a hearing. By failing to hold a hearing when a petition raised a question of unit appropriateness, the RD acted in a manner inconsistent with the pertinent regulation. Even with the discretion that the majority imputes to the RD under *Navy-Norfolk*, I am unable to conclude that the RD's discretion was properly exercised. This petition seeks to consolidate five units that include dif-

ferent personnel systems, the record is voluminous, and the parties were unable to stipulate to facts. All of these factors demonstrate that, at the very least, "there is reasonable cause to believe a question exists regarding unit appropriateness."

Given the fundamental procedural defect in the RD's handling of the petition, all other factual conclusions by the RD, as well as his final decision, must be discounted. Therefore, I would grant the Application for Review and remand the matter to the RD with instructions to hold a hearing and engage in a *de novo* consideration of the matters raised by the petition for consolidation.