70 FLRA No. 70

U.S. DEPARTMENT
OF THE AIR FORCE
AIR FORCE MATERIEL COMMAND
WRIGHT-PATTERSON AIR FORCE BASE, OHIO
(Agency/Petitioner)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO
(Union)

AT-RP-17-0007

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ORDER DENYING
APPLICATION FOR REVIEW

November 9, 2017

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Before the Authority: Patrick Pizzella, Acting Chairman, and Ernest DuBester, Member

I. Statement of the Case

In the attached decision and order (decision), Federal Labor Relations Authority Regional Director Richard S. Jones (the RD) denied the Agency's petition to clarify a consolidated unit to exclude a group of employees working at Hurlburt Field, Florida (the Hurlburt employees). The RD found that the Agency failed to demonstrate that circumstances had changed substantially since the Authority last certified the appropriateness of the relevant local bargaining units within the consolidated unit. There are two questions before us.

The first question is whether the RD failed to apply established law or committed clear and prejudicial errors concerning substantial factual matters when he determined that changed circumstances did not support granting the Agency's petition. Because Authority precedent and the record support the RD's determination, the answer is no.

The second question is whether the RD's decision not to hold a hearing shows that established law or policy warrants reconsideration, or that the RD: (1) failed to apply established law; (2) committed a prejudicial procedural error; or (3) committed clear and prejudicial errors concerning substantial factual matters. The Agency fails to identify a law or policy that warrants reconsideration. Further, the Authority's Regulations gave the RD discretion not to hold a hearing, and the Agency does not establish that the RD erred in exercising that discretion. Thus, the answer to the second question is also no.

II. Background and RD's Decision

The Union represents a nationwide consolidated bargaining unit of approximately 35,000 Air Force employees (the consolidated unit). As relevant here, within the consolidated unit are a professional unit and a nonprofessional unit, and both of those units include Hurlburt employees and employees working at Eglin Air Force Base (Eglin employees). The Hurlburt employees are part of the Air Force Special Operations Command (Special Command), whereas the Eglin employees are part of the Air Force Materiel Command (Materiel Command).

In 2011, in *U.S. Department of the Air Force, Air Force Materiel Command, Eglin Air Force Base, Hurlburt Field, Florida* (*Air Force*),[1] the Authority denied a petition by the Agency to clarify the consolidated unit by excluding the Hurlburt employees. Since then, the Materiel Command was substantially reorganized. In addition, the Air Force realigned certain installations so that they no longer report to the Materiel Command (but also do not report to the Special Command). Further, Congress required the Department of Defense (DOD) – including the Air Force – to change its performance management and appraisal system. And within the Air Force itself, some of the Materiel Command's employees are participating in a new personnel-system demonstration project, which affects evaluations, compensation, and position classifications. Moreover, both the Special and Materiel Commands have updated their physical-fitness policies. And most recently, in January 2017, Executive Order 13,760 excluded more than half of the then-Union-represented Hurlburt employees from the coverage of the Federal Service Labor-Management Relations Statute (the Statute) due to their intelligence, counterintelligence, investigative, or national-security work.

Following those events, the Agency filed the petition at issue in this case, seeking to "overturn" the decision in *Air Force* based on the changed circumstances just mentioned.[2] The RD issued an order to show cause why he should not deny the petition, asking in particular that the Agency explain "what specific impact the above[-]listed changes have had on the community of interest" that the Authority previously

[1] 66 FLRA 375 (2011).
[2] Application for Review (Application), Attach. 1, Pet. at 1.

found the Hurlburt employees shared with the rest of the consolidated unit.[3] Both parties responded to the order. The Agency filed a brief and documentary evidence, including affidavits from Eglin Air Force Base and Hurlburt Field non-bargaining-unit personnel.

After considering the parties' responses, the RD found that the Agency largely focused on differences between the Special and Materiel Commands that the Authority had already determined, back in 2011, did not render the consolidated unit inappropriate. The RD also noted that the Agency relied most heavily on the executive order to support its petition, but that "[t]he removal of some Hurlburt . . . employees from the unit has no bearing on whether the *remaining* employees share a community of interest with each other."[4] Therefore, the RD found that the cited changes were not substantial enough to render the unit inappropriate, and he denied the petition.

The Agency filed an application for review, and the Union filed an opposition.

III. Analysis and Conclusions

Under § 2422.31(c) of the Authority's Regulations,[5] as relevant here, the Authority may grant an application for review when: (1) established law or policy warrants reconsideration;[6] or (2) there is a genuine issue over whether the RD has failed to apply established law,[7] committed a prejudicial procedural error,[8] or committed a clear and prejudicial error concerning a substantial factual matter.[9] Further, the Authority has recognized that a party may not collaterally attack a previous unit certification.[10] Thus, to show that a previously certified unit is no longer appropriate, a party must demonstrate that substantial changes have altered the scope or character of the unit since the last certification.[11] Moreover, the Authority has held that disagreements with the weight that an RD ascribes to certain evidence do not show that the RD failed to apply established law[12] or committed clear and prejudicial errors concerning substantial factual matters.[13]

A. The RD did not fail to apply established law or commit clear and prejudicial errors concerning substantial factual matters in evaluating the changed circumstances.

Regarding the RD's community-of-interest analysis, the Agency's arguments that the RD failed to apply established law[14] and committed clear and prejudicial errors concerning substantial factual matters[15] focus on the details of the changed circumstances mentioned earlier.

First, the Agency contends that the RD did not properly account for post-2011 reorganizations[16] and realignments[17] within Air Force Commands. But the Agency acknowledges that the reorganizations and realignments had "utterly no impact" on the Hurlburt employees,[18] and that the Hurlburt and Eglin employees have been part of the same consolidated unit since 2006,[19] notwithstanding that they are part of separate organizational units with distinct command structures.[20] Thus, this contention provides no basis for finding that the RD failed to apply established law or committed clear and prejudicial errors concerning substantial factual matters in his community-of-interest analysis.

Second, the Agency notes that Air Force performance and personnel systems have changed since 2011 – including congressionally required changes[21] and

[3] Order to Show Cause at 3.
[4] Decision at 5.
[5] 5 C.F.R. § 2422.31(c).
[6] *Id.* § 2422.31(c)(2).
[7] *Id.* § 2422.31(c)(3)(i).
[8] *Id.* § 2422.31(c)(3)(ii).
[9] *Id.* § 2422.31(c)(3)(iii).
[10] *E.g.*, *Air Force*, 66 FLRA at 377.
[11] *See Dep't of the Interior, Nat'l Park Serv., W. Reg'l Office, S.F., Cal.*, 15 FLRA 338, 341 (1984) (rejecting agency's petition and holding that existing certified units remained appropriate where their "scope and character" had not been "substantially changed" following several reorganizations); *Dep't of the Interior, Nat'l Park Serv., Mid-Atl. Reg'l Office, Phila., Pa.*, 11 FLRA 615, 616 (1983) (rejecting agency's petition where no "substantial change [shown] in the scope and character" of the certified unit, inasmuch as a reorganization had not "significantly altered" the unit).
[12] *U.S. Dep't of the Army, U.S. Army Corps of Eng'rs, Logistics Activity Ctr., Millington, Tenn.*, 69 FLRA 436, 439 (2016) (*Army*) (citing *U.S. Dep't of the Interior, Nat'l Park Serv., Ne. Region*, 69 FLRA 89, 97 (2015)).
[13] *Id.* at 438 (citing *U.S. Dep't of the Navy, Navy Undersea Warfare Ctr., Keyport, Wash.*, 68 FLRA 416, 420 (2015); *U.S. Dep't of the Air Force, Dover Air Force Base, Del.*, 66 FLRA 916, 921 (2012); *U.S. DOD, Pentagon Force Prot. Agency, Wash., D.C.*, 62 FLRA 164, 170-71 (2007)).
[14] *E.g.*, Application at 15.
[15] *Id.*
[16] *Id.* at 6-7, 18.
[17] *Id.* at 6-7, 9-10.
[18] *Id.* at 8.
[19] *Id.* at 5 & n.2 (citing *Air Force*, 66 FLRA at 375-76 (history of the units before consolidation)).
[20] *Id.* at 5-6 (reciting argument from Agency's petition in *Air Force* that consolidated unit should not include both Eglin and Hurlburt employees because they were "not part of the same component, did not support the same mission, [and] were not subject to the same chain of command").
[21] *Id.* at 11, 29.

demonstration-project changes.[22] In this regard, the Agency asserts that because of bargaining delays, Hurlburt employees did not transition to DOD's new performance-management system at the same time as the rest of the Special Command.[23] But an affidavit from the Chief of Labor Relations for the Materiel Command states that the Hurlburt employees transitioned only two months later than the rest of the Special Command.[24] Moreover, all unit employees were working under the new performance-management system by the time that the RD issued his decision, and, under Authority precedent, the RD's decision must reflect the conditions at the time of the investigation.[25] As for the demonstration project, the Agency acknowledges that only one installation with unit employees is currently participating, and that it will be four years before the parties even consider expanding unit employees' participation beyond that installation.[26] Those possible changes are too speculative to influence the analysis here.[27] Consequently, this assertion provides no basis for finding that the RD failed to apply established law or committed clear and prejudicial errors concerning substantial factual matters in his community-of-interest analysis.

Third, the Agency asserts that the RD did not appreciate the "significant[ly]"[28] different physical-fitness policies adopted by the Special and Materiel Commands.[29] But the affidavit of a Labor Relations Officer at Hurlburt Field states that before the *Air Force* decision in 2011, Hurlburt employees experienced changes in physical-fitness policies due to their unit membership that did not apply to other Special Command employees.[30] Further, the Agency admits that "[b]efore 2009" and continuing thereafter, the Hurlburt and Eglin "employees . . . had different fitness programs . . . ."[31] In other words, at the time of the decision in *Air Force*, the Hurlburt and Eglin employees were frequently subject to disparate or inconsistent physical-fitness policies, and the policies for Hurlburt employees were not always consistent with those for the rest of the Special Command. Thus, the physical-fitness-policy differences that currently exist do not reflect a substantial change from the circumstances present in *Air Force*, and the Agency's assertion does not undermine the RD's community-of-interest analysis.

Fourth, the Agency argues that the RD "sidestepped" the "substantive impact" and importance of the executive order by focusing on the number of employees that it affected.[32] When Executive Order 13,760 issued in January 2017,[33] it excluded from the coverage of the Statute – and, thus, from the consolidated unit – those Hurlburt employees to which it applied. Importantly, however, the order did not apply to *all* of the then-Union-represented Hurlburt employees. In addition, because the executive order addressed the Special Command and not the Materiel Command, the exclusions applied to hundreds of Hurlburt employees (part of the Special Command), but none of the Eglin employees (part of the Materiel Command). Moreover, as the presidentially excluded Hurlburt employees were removed from the consolidated unit by operation of law, this case does not concern the bargaining-unit status of any of those employees to whom the executive order applied.

Thus, with regard to the Agency's fourth argument, the contested issue is whether the effects of the executive order on the still-Union-represented Hurlburt employees – whom the President expressly exempted from the reach of the order[34] – were substantial enough to render their continued inclusion in the consolidated unit inappropriate. As to these employees, the Agency's affidavits show that the President exempted them from the executive order because: (1) their work is *very similar to* that of Eglin employees – to whom the order did not apply at all; and (2) their duties do not primarily involve intelligence, counterintelligence, investigative, or national-security work.[35] Consequently, the RD did not err in his determination that the presidentially ordered exclusion of *other* Special Command employees in January 2017 has not undermined the shared community of interest between

[22] *Id.* at 11-12, 23-24, 29.
[23] *See id.* at 11.
[24] Application, Attach. 14, Aff. of Randy L. Shaw at 3 (stating that "Air Force implementation was set to begin on 1 April 2017" but that bargaining with the Union delayed implementation for the consolidated unit, including Hurlburt employees, "until 1 June 2017").
[25] *Cf., e.g., U.S. Dep't of the Navy, Commander, Navy Region Mid-Atl.*, 63 FLRA 8, 13 (2008) (*Navy*) (holding that RD's decision generally must reflect conditions at the time of the hearing).
[26] Application at 12 ("four-year test period").
[27] *See Navy*, 63 FLRA at 13; *NAGE, Local R12-35*, 8 FLRA 649, 650 n.3 (1982) (potential changes after five-year "personnel[-]system experiment" were too far in the future to influence Authority's analysis).
[28] Application at 23.
[29] *Id.* at 8, 22-23, 29.
[30] *Id.*, Attach. 13, Aff. of Daniel A. Landrum (Landrum Aff.) at 2.
[31] Application at 22-23.
[32] *Id.* at 25; *see also id.* at 12-13, 21-22, 30 (arguing that the executive order weighs strongly in favor of clarifying the consolidated unit to exclude Hurlburt employees).
[33] Exec. Order No. 13,760, 82 Fed. Reg. 5,325 (Jan. 12, 2017) (citing 5 U.S.C. § 7103(b)), *reprinted in* 5 U.S.C. § 7103 note (Exclusions From the Federal Labor-Management Relations Program).
[34] *See id.*
[35] *See* Application, Attach. 7, Aff. of Thomas B. Palenske at 2; Landrum Aff. at 4.

the *still-Union-represented* Hurlburt employees and the rest of the consolidated unit. We reject the Agency's argument to the contrary.

Finally, we note that all four of the arguments just discussed rely heavily on challenges to the weight that the RD accorded certain evidence. As stated above, those types of challenges do not show that the RD failed to apply established law or committed clear and prejudicial errors concerning substantial factual matters.[36] For all of the foregoing reasons, we reject the Agency's grounds for seeking review of the RD's community-of-interest analysis.

B. The RD had the discretion not to hold a hearing, and he did not err in exercising that discretion.

As mentioned earlier, the RD resolved the Agency's petition based on the parties' responses to his order to show cause. The Agency argues that the RD's decision not to hold a hearing shows that established law or policy warrants reconsideration,[37] and that the RD: (1) failed to apply established law;[38] (2) committed a prejudicial procedural error;[39] and (3) committed clear and prejudicial errors concerning substantial factual matters.[40]

Under § 2422.30(b) of the Authority's Regulations, 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 a reasonable cause to believe a question exists regarding unit appropriateness."[41] Further, under § 7111(b)(2) of the Statute, "*if* [the RD] has reasonable cause to believe that a question of representation exists, [then the RD] shall provide an opportunity for a hearing . . . ."[42] "Interpreting these provisions, the Authority has held that RDs have 'broad discretion' to determine whether a hearing is necessary."[43] In particular, "the RD may determine, on the basis of the investigation . . . 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.'"[44] Here, the RD exercised his statutory and regulatory discretion not to hold a hearing.[45]

With regard to the Agency's contention that law or policy warrants reconsideration, the Agency fails to identify a law or policy that the Authority should reconsider.[46] The Agency also argues, as part of its remaining three grounds for challenging the RD's decision not to hold a hearing, that a hearing would have led to a more developed record.[47] But the Agency fails to identify any evidence that it could not submit in response to the RD's order to show cause.[48] Moreover, the Authority has held that an RD need not hold a hearing merely to develop a "more complete" record.[49] As for the Agency's remaining arguments challenging the RD's decision not to hold a hearing, they amount to disagreement with the Arbitrator's evaluation of evidence,[50] which is insufficient to show that the RD erred in exercising his discretion.[51]

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[36] *See Army*, 69 FLRA at 438, 439.

[37] Application at 34 (citing 5 C.F.R. § 2422.31(c)(2)).

[38] *Id.* (citing 5 C.F.R. § 2422.30(b) (regulation concerning when an RD will issue a notice of hearing)); *id.* at 35 (citing 5 U.S.C. § 7111(b)(2) ("[I]f [the RD] has reasonable cause to believe that a question of representation exists, [then the RD] shall provide an opportunity for a hearing . . . .")).

[39] *Id.* at 36 ("demonstrably prejudicial procedural error").

[40] *Id.* at 34, 36.

[41] 5 C.F.R. § 2422.30(b); *see also U.S. Dep't of the Navy, Fleet & Indus. Supply Ctr. Norfolk, Norfolk, Va.*, 62 FLRA 497, 501 (2008) (*FISC*) (quoting and applying 5 C.F.R. § 2422.30(b)).

[42] 5 U.S.C. § 7111(b)(2) (emphasis added); *see also FISC*, 62 FLRA at 501 (quoting and applying 5 U.S.C. § 7111(b)(2)).

[43] *FISC*, 62 FLRA at 501 (citing *U.S. EPA*, 61 FLRA 417, 420 (2005); *Fed. Mediation & Conciliation Serv.*, 52 FLRA 1509, 1516 (1997) (*FMCS*)).

[44] *FMCS*, 52 FLRA at 1516 (omission in original) (quoting *USDA, Forest Serv., Apache-Sitgreaves Nat'l Forest, Springerville, Ariz.*, 47 FLRA 945, 952 (1993)).

[45] *See* Decision at 1 ("After reviewing both parties' responses to the [o]rder, I find that the changes have not rendered the . . . certified units . . . inappropriate.").

[46] *See U.S. Dep't of the Air Force, Air Force Life Cycle Mgmt. Ctr., Hanscom Air Force Base, Mass.*, 69 FLRA 483, 485 (2016) ("[T]he Union contends that established law or policy warrants reconsideration of two of the RD's findings. But the Union does not identify an established law or policy and argue that reconsideration of that law or policy is warranted." (citation omitted)).

[47] Application at 36 (arguing that hearing would have "fully develop[ed] a record").

[48] *See* Opp'n, Ex. 1 at 1 (FLRA agent's email to Agency and Union inviting them to submit "any additional arguments" that they did not include in their responses to the order to show cause); Opp'n, Ex. 2 at 1 (FLRA agent's email to Union stating that agent did not "receive anything else" from Agency following previously emailed invitation for further arguments).

[49] *U.S. Dep't of VA, VA Conn. Healthcare Sys., W. Haven, Conn.*, 61 FLRA 864, 870 & n.4 (2006).

[50] *E.g.*, Application at 36 (asserting that RD "failed to comprehend" evidence and claiming "there was no indication at all that the RD considered the affirmed statements" from the Agency's non-bargaining-unit personnel).

[51] *See Army*, 69 FLRA at 438 (insufficient to show clear and prejudicial errors concerning substantial factual matters), 439 (insufficient to show failure to apply established law); *FISC*, 62 FLRA at 501 (insufficient to show prejudicial procedural error); *see also Dep't of the Navy, Naval Resale Activity, Navy Exch., Haw.*, 27 FLRA 816, 819 (1987) (parties' desires that RD resolve dispute based on record from a hearing rather than responses to an order to show cause do not provide basis for granting review).

Consequently, we find that the Agency has not shown that the RD erred in exercising his discretion not to hold a hearing in this case.

IV. Order

We deny the Agency's application for review.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
ATLANTA REGION

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U.S. DEPARTMENT OF THE AIR FORCE
AIR FORCE MATERIEL COMMAND
WRIGHT PATTERSON AIR FORCE BASE, OHIO
(Agency/Petitioner)

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO
(Union)

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AT-RP-17-0007

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DECISION AND ORDER

I. Statement of the Case

The Agency filed the petition in this case seeking a determination that the Air Force Materiel Command (AFMC) employees assigned to Eglin Air Force Base no longer share a community of interest with employees assigned to the Air Force Special Operations Command (AFSOC) at Hurlburt Field, Florida. The Agency cited changed circumstances in support of its petition.

The Region issued an Order to Show Cause as to what specific impact the alleged changed circumstances have had on the community of interest of the employees at issue. After reviewing both parties' responses to the Order, I find that the changes have not rendered the two certified units of AFMC and AFSOC employees inappropriate.

II. Findings

A. Certifications and Background

The Union is certified as the exclusive representative of a nationwide consolidated unit of professional and nonprofessional employees in the Department of the Air Force, Air Force Material Command, as certified in Case No. 53-10177(UC)(1/13/78). Within this consolidated unit are two units of employees, as most recently certified on February 14, 2012, in Case No. AT-RP-08-0029, describing the units as follows:

First Unit:

INCLUDED: All civil service employees of the Eglin AFB complex, including tenant organizations serviced by the Eglin AFB Central Civilian Personnel Office and non-professional employees assigned to Hurlburt Field who are serviced by the Hurlburt Field Civilian Personnel Flight.

EXCLUDED: Management officials, supervisors, professionals paid from nonappropriated funds; and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7).

Second Unit:

INCLUDED: All professional employees assigned to the Eglin AFB Complex who are subject to the personnel administration authority of the Eglin AFB Commander and all professional employees assigned to Hurlburt Field who are subject to the personnel administration authority of the 16th Special Operations Wing Commander.

EXCLUDED: All non-professional employees, management officials, supervisors, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7).

The 2012 certification was issued after the Authority's decision in *U.S. Dep't of the Air Force, Air Force Materiel Command, Eglin AFB, Fla., Hurlburt Field, Fla.*, 66 FLRA 375 (2011) (*Eglin AFB*). In that case, the Agency's petition to clarify the consolidated unit by excluding the Hurlburt Field employees was denied. In part, the Agency argued that the unit was not appropriate because Eglin and Hurlburt are serviced by two different personnel offices. However, the Hurlburt personnel office was established in 2004, and the Agency failed to challenge the appropriateness of the unit in a 2006 election case. Thus, the Authority found that the appropriate unit analysis was properly limited to events that had taken place since 2006. In that regard, the Authority upheld the Regional Director's determination that the post-2006 events cited by the Agency—the introduction of new technology and the creation of a training center—were insufficient to render the consolidated unit inappropriate. Thus, the Authority denied the Agency's application for review in that case.

B. Post-2011 Changes

In support of the current petition, the Agency identifies several changes that have occurred since the

2011 *Eglin AFB* decision which the Agency contends render the units of Eglin AFB and Hurlburt Field employees inappropriate. Those changes are as follows:

1. In 2013, AFMC re-organized into a five-center construct placing Eglin AFB under the Air Force Test Center located at Edwards AFB, California.
2. In 2015, AFMC expanded its reorganization into a six-center construct.
3. On October 1, 2015, the Nuclear Enterprise Realignment, PAD 14-06, went into effect placing many AFMC units under the control of the Air Force Global Strike Command (AFGSC), which included the realignment of Kirtland AFB, New Mexico from an AFMC installation to an AFGSC installation.
4. On October 23, 2015, the AFMC announced the implementation of the Acquisition Workforce Personnel Demonstration Project (Acq Demo) and in June 2016, AFMC transitioned approximately 13,000 civilian employees to Acq Demo. The Hurlburt employees cannot be included in Acq Demo because they are assigned to AFSOC, which means they are under a different rating system.
5. On January 2, 2017, through Executive Order 13760, most Hurlburt Field employees were excluded from coverage under the Federal Service Labor-Management Relations Statute due to the nature of the AFSOC mission; no AFMC employees were affected by the executive order.

The Agency submitted several documents related to these changes and also submitted affidavits in support of the petition. The first change, which took place in 2013, involved the reorganization of AFMC into five centers, a reduction from the twelve centers it previously had. As a result of the reorganization, the number of management levels was reduced and the management of Eglin Air Force Base's test and evaluation programs was moved to the Air Force Test Center at Edwards Air Force Base, California.

The second change took place a couple of years later. AFMC was again reorganized and a sixth center was created to centralize the purchase and management of certain supplies and services to one focal point rather than having each installation handle this separately.

The third change was implemented on October 1, 2015, and involved a realignment impacting Kirtland Air Force Base.

The fourth change was AFMC's transition to Acq Demo in June 2016. However, at the time the petition was filed, Acq Demo had not been implemented for bargaining unit employees at Eglin Air Force Base.

The final change cited by the Agency was the issuance of Executive Order 13760 on January 2, which excluded 395 of 754 AFSOC employees at Hurlburt Field from the coverage of the Statute. The only AFSOC employees not excluded by the Executive Order are the employees in the Medical and Mission Support Groups. The Agency contends that this exclusion of a large number of Hurlburt Field employees illustrates the differences between AFSOC and AFMC. According to the Agency, it also means the Union will be less likely to take the interests of Hurlburt Field employees into account since they are less than 400 employees in a unit of 35,000.

III. Analysis and Conclusions

The Authority will not find any unit to be appropriate for exclusive recognition unless the unit meets all three of the criteria set out in Section 7112(a)(1). In order for a unit to be found appropriate the evidence must show that:

a) the employees in the unit share a clear and identifiable community of interest;

b) the unit promotes effective dealings with the agency; *and*

c) the unit promotes efficiency of the operations of the agency.

See, U.S. Dep't of the Navy, Fleet and Industrial Supply Ctr., Norfolk, Va., 52 FLRA 950 (1997), *citing Defense Mapping Agency, Aerospace Ctr., St. Louis, Mo.*, 46 FLRA 502 (1992). In determining whether a unit is appropriate, the Authority looks at such factors as whether employees support the same or similar missions, are part of the same organizational structure, have similar chains of command, have similar job duties, are subject to the same general working conditions, and whether they are governed by the same personnel and labor relations policies. *See U.S. Dep't of the Air Force, Air Force Material Command, Wright-Patterson Air Force Base*, 47 FLRA 602 (1993) (setting forth community of interest factors).

Once the Authority determines that a unit is appropriate and certifies an exclusive representative of

that unit, a party may not collaterally attack that past certification. *See Eglin AFB*, 66 FLRA at 377. Further, absent changed circumstances, the Authority will not alter previously certified appropriate units, *National Labor Rel. Bd., Wash. D.C.*, 63 FLRA 47, 52 n.11 (2008); *see also, Dep't of the Interior, Nat'l Park Serv., W. Reg'l Office, S.F. Cal.*, 15 FLRA 338, 341 (1984) (existing certified appropriate units remained appropriate where their "scope and character" had not been "substantially changed" following several reorganizations); *Dep't of the Interior, Nat'l Park Serv., Mid-Atlantic Reg'l Office, Phil., Pa.*, 11 FLRA 615, 616 (1983) (nature of the existing certified unit had not been "significantly altered" by a reorganization); *U.S. Dep't of Labor, Wash., D.C.*, 3 FLRA 645, 647-48 (1980) (existing certified unit remained appropriate "in the absence of any events warranting a change").

In this case, the Agency cannot collaterally attack the certification that was issued in 2012, or any of the previous certifications. Although the Agency claims that changed circumstances have rendered the 2012 certification inappropriate, the evidence does not support such a finding. The Order to Show Cause directed the Agency to identify what specific impact the post-2011 changes have had on the community of interest affecting Hurlburt Field employees. The documents the Agency has submitted in response, however, fail to do this. Rather, the Agency's proffered evidence and arguments focus entirely on the differences between AFSOC and AFMC and the difficulties presented by having two different servicing personnel offices. However, these differences were present at the time of the 2011 decision, and the Authority has already determined that these differences did not render the consolidated AFSOC and AFMC units inappropriate. At most, the post-2011 changes illustrate the differences between AFSOC and AFMC that already existed; they do not reflect that any changes have been made that would now render these units inappropriate.

During the investigation of this case, the Agency seemed to rely most heavily on the issuance of the Executive Order to support its petition. However, the Agency's argument that the consolidated AFSOC and AFMC units are inappropriate because the unit now contains less than 400 AFSOC employees is without merit. Although the Agency speculates that the Union will not be willing or able to adequately represent the remaining Hurlburt Field employees who are part of AFSOC, such contention is not supported by the evidence and is not part of the community of interest analysis. Moreover, the Agency does not cite any Authority case law that indicates that a reduction in the number of employees in a certain group within a certified unit would render that unit inappropriate. The removal of some Hurlburt Field employees from the unit has no bearing on whether the remaining employees share a community of interest with each other.

IV. Order

Because I find that the changed circumstances cited by the Agency have not rendered the certified units inappropriate, the Agency's petition is dismissed.

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 September 15, 2017, and addressed to the Chief, Office of Case Intake and Publication, Federal Labor Relations Authority, Docket 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.[1]

Dated: July 17, 2017

Richard S. Jones
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Atlanta, Georgia 30303

[1] 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.