

70 FLRA No. 50

UNITED STATES
DEPARTMENT OF THE NAVY
COMMANDER, NAVY REGION NORTHWEST
FIRE AND EMERGENCY SERVICES
SILVERDALE, WASHINGTON
(Agency)

and

INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS
LOCAL F-282, AFL-CIO
(Petitioner/Exclusive Representative)

SF-RP-15-0042

ORDER DENYING
APPLICATION FOR REVIEW

June 1, 2017

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

I. Statement of the Case

The Petitioner/Exclusive Representative (Union) filed an application for review of the attached decision of Federal Labor Relations Authority Regional Director (RD) John R. Pannozzo. As relevant here, the Union petitioned the RD to clarify the bargaining-unit status of several firefighters (captains). The RD found that the captains are confidential employees under § 7103(a)(13) of the Federal Service Labor-Management Relations Statute (the Statute)¹ and, thus, that they should be excluded from the bargaining unit that the Union represents.

The question before us is whether the RD failed to apply established law. Because Authority precedent supports the RD's decision, and the Union does not otherwise demonstrate how the decision conflicts with established law, the answer is no.

II. Background and RD's Decision

As relevant here, the Union filed a petition seeking to clarify the bargaining-unit status of the captains, whom the Agency claimed were excluded from

the unit because they are confidential employees under § 7103(a)(13) of the Statute.

Before the RD, the parties stipulated that the Agency's regional fire chief (the chief) "is an individual who formulates or effectuates management policies in the field of labor-management relations within the meaning of [§] 7103(a)(13) of the Statute."²

The RD observed that the captains attend weekly "management staff meetings"³ that the chief holds and that, at these meetings, the chief often provides a "summary of the status of ongoing issues" related to labor relations.⁴ The RD also noted that the chief sometimes discusses, and provides attendees with "advance notice" of,⁵ labor-management matters. For instance, the RD found that the chief has discussed with attendees: "what management was preparing for [an upcoming] arbitration";⁶ "management's stance" on grievances;⁷ and upcoming changes in working conditions, that had not been disclosed to the bargaining unit, "with instructions [to attendees] not to divulge th[at] information to . . . unit employees."⁸ The RD also found that, at one of the meetings, the chief acknowledged to attendees that the Agency may have committed an unfair labor practice by failing to notify the Union of a change in conditions of employment.

Based on that evidence – and applying the Authority's established legal standards (discussed further below) – the RD concluded that the captains are confidential employees under § 7103(a)(13) of the Statute. Accordingly, the RD found that the captains should be excluded from the bargaining unit.

In response to the RD's decision, the Union filed the application for review at issue here.

III. Analysis and Conclusion: The RD did not fail to apply established law.

The Union argues that "the RD failed to apply established law in applying existing preceden[t]."⁹ Under § 2422.31(c)(3)(i) of the Authority's Regulations, the Authority may grant an application for review when the application demonstrates that the RD has failed to apply established law.¹⁰

² RD's Decision at 2.

³ *Id.*

⁴ *Id.* at 7.

⁵ *Id.* at 3.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 7.

⁹ Application for Review (Application) at 4 (citing 5 C.F.R. § 2422.31(c)(3)(i)).

¹⁰ 5 C.F.R. § 2422.31(c)(3)(i).

¹ 5 U.S.C. § 7103(a)(13).

Under § 7112(b)(2) of the Statute, a bargaining unit cannot properly include a “confidential employee.”¹¹ Section 7103(a)(13) of the Statute defines a “confidential employee” as “an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.”¹² As the RD noted, the Authority has held that an individual is a confidential employee when: (1) there is evidence of a confidential working relationship between the employee and an agency representative; and (2) that agency representative is significantly involved in labor-management relations.¹³

Here, the parties stipulated that the chief is significantly involved in labor-management relations within the meaning of § 7103(a)(13) of the Statute.¹⁴ Thus, the RD focused on whether a confidential working relationship exists between the captains and the chief.¹⁵

The RD noted that, under these circumstances, the Authority considers whether the employee:

- (1) obtains advance information of management’s position regarding contract negotiations, the disposition of grievances, and other labor[-]relations matters; (2) attends meetings where labor-management matters are discussed; (3) because of physical proximity to their supervisor, overhears discussions of labor[-]management matters; [or] (4) has access to, prepares, or types materials related to labor-management relations, such as bargaining proposals and grievance responses.¹⁶

As noted above, the RD found that the captains – based on their attendance at the chief’s management meetings – have access to, and sometimes receive “advance knowledge of,” information related to labor-management matters.¹⁷ Accordingly, the RD determined that the captains are in a confidential

relationship with the chief and, thus, should be excluded from the bargaining unit.¹⁸

The Union asserts that the RD failed to apply established law.¹⁹ However, the Union does not cite any Authority precedent, or any other law, with which the RD’s decision allegedly conflicts.²⁰ To the contrary, the RD correctly applied the Authority’s standards for determining whether individuals are confidential employees.²¹ And he cited pertinent Authority precedent holding that firefighters who received advance knowledge of management’s labor-relations positions by attending management meetings – similar to the captains here – were confidential employees.²² Thus, the RD’s analysis supports a conclusion that he did not fail to apply established law.

The Union alleges that the management meetings are routine and simply “inform[] the attendees of things going on within the department.”²³ The RD found, however, that although some meetings are limited to a “summary of the status of ongoing issues,”²⁴ the meetings frequently address specific labor-management matters.²⁵ The Union does not provide any evidence to contradict these factual findings. Thus, there is no basis to find that the RD erred.²⁶

For the above reasons, we find that the Union has not demonstrated that the RD failed to apply established law in determining that the captains are confidential employees under § 7103(a)(13) of the

¹¹ 5 U.S.C. § 7112(b)(2).

¹² *Id.* at § 7103(a)(13); *see, e.g., NASA, Glenn Research Ctr., Cleveland, Ohio*, 57 FLRA 571, 573 (2001) (*NASA*).

¹³ RD’s Decision at 6 (citing *NASA*, 57 FLRA at 573); *see also U.S. Dep’t of the Air Force, Air Force Materiel Command*, 67 FLRA 117, 121 (2013) (*Air Force*) (citing *NASA*, 57 FLRA at 573).

¹⁴ RD’s Decision at 6-7.

¹⁵ *See id.* at 7.

¹⁶ *Id.* at 6 (citing *U.S. DOL, Wash. D.C.*, 59 FLRA 853, 855 (2004) (*DOL*)).

¹⁷ *Id.* at 7; *see also id.* at 3 (finding that the chief provides “advance notice of” information affecting working conditions).

¹⁸ *Id.* at 7 (citing *Air Force*, 67 FLRA at 122-23; *DOL*, 59 FLRA at 855).

¹⁹ Application at 3-4.

²⁰ *See, e.g., U.S. Dep’t of the Air Force, Joint Base Langley-Eustis, Va.*, 66 FLRA 752, 756 (2012) (holding that there was no basis to find that an RD failed to apply established law, in part, because the challenging party did not identify any Authority precedent with which the decision allegedly conflicted).

²¹ RD’s Decision at 6-7.

²² *Id.* at 7 (citing *Air Force*, 67 FLRA at 122-23).

²³ Application at 4.

²⁴ RD’s Decision at 7.

²⁵ *Id.* at 3, 7.

²⁶ *See Army & Air Force Exch. Serv., Dall., Tex.*, 55 FLRA 1239, 1241 (2000) (holding that there was no basis to find that an RD committed a clear and prejudicial error concerning a substantial factual matter because the challenging party failed to provide evidence demonstrating that the RD’s factual findings were erroneous).

Statute.²⁷ Accordingly, we deny the Union's application for review.

IV. Order

We deny the Union's application for review.

²⁷ See *U.S. Dep't of the Army, U.S. Army Aviation Ctr., Fort Rucker, Ala.*, 60 FLRA 771, 772 (2005) (finding an RD's determination that employees were confidential consistent with Authority precedent that holds that "an individual is a confidential employee if the employee obtains advance information of management's positions with regard to the disposition of grievances and other labor[-]relations matters") (citing *DOL*, 59 FLRA at 855)).

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DECISION AND ORDER

I. Statement of the Case

The International Association of Fire Fighters, Local F-282, AFL-CIO (Union) filed the petition in this case on August 31, 2015 seeking to clarify the bargaining unit status of Captains and the Assistant Training Chief positions currently excluded from its bargaining unit. The Agency contends that Captains and its Training Chief are excluded from the Union's bargaining unit because employees occupying those positions are supervisors as defined by section 7103(a)(10) and confidential employees under section 7103(a)(13) of the Statute.

The Region held a hearing on this matter on February 3, 2016 and the Agency and Union filed briefs, which I have fully considered. Based on the entire record of this proceeding, I find that Agency Captains are not supervisors, but they are confidential employees. Also, I find that the Assistant Training Chief is both a supervisor and a confidential employee. Accordingly, I will clarify the Union's bargaining to exclude Captains and the Assistant Training Chief.

II. Findings

The Union is the certified exclusive representative of a bargaining unit of fire department employees at the Agency described as follows:

Included: All employees of the Puget Sound Federal Fire Department, Commander Navy Region Northwest, Silverdale,

Washington, including, fire protection specialists, fire communication operators, emergency vehicle dispatchers, supervisory fire protection inspectors, GS-09, and supervisory firefighters, GS-08 and below.

Excluded: All professional employees, management officials, supervisors, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6), and (7) and any employees represented by another labor organization.

The GS-9 Supervisory Firefighters (Captains) and the GS-11 Fire Protection Specialist (Assistant Training Chief) at issue in this petition are employees of the Puget Sound Federal Fire Department. The Fire Department consists of 11 fire stations manned by three battalions servicing Navy facilities in the Puget Sound area. Battalion 1 covers Naval Base Kitsap - Bremerton and Jackson Park; Battalion 2 covers Naval Base Kitsap - Bangor, Naval Base Kitsap - Keyport, and Naval Magazine Indian Island, and Battalion 3 covers facilities in the Northeast Sound area, Naval Air Station Whidbey Island, Naval Air Station Whidbey Island Seaplane Base, and Naval Station Everett. Battalion 3 mans outlying Field Coupeville's part-time fire station as well.

The Fire Department is headed by Kurt Waeschle, the Regional Fire Chief for Navy Region Northwest Fire and Emergency Services. Chief Waeschle is responsible for effectuating Navy Region Northwest Fire and Emergency Services policies and procedures, and ensuring that the Fire Department fulfills its mission of providing a full range of fire and emergency services to protect "fleet, fighter, and family", and supporting its mutual aid partners in neighboring communities. Chief Waeschle's duty location is Keyport, Washington. There are three levels of supervision between the Fire Chief and the Captains: the Deputy Fire Chief, Assistant Chiefs of Operations (Assistant Chiefs), and Battalion Chiefs. The Assistant Training Chief's chain-of-command runs to the Deputy Chief and then to the Fire Chief.

In 2010, the Agency promoted ten GS-8 Firefighter Captains to newly-created GS-9 Firefighter Captain positions to address an Inspector General report finding that it lacked adequate supervision in geographically-separated locations. The promoted employees had previously held GS-8 supervisory firefighter positions included in the Union's bargaining unit.

The parties stipulated that Chief Waeschle is “an individual who formulates or effectuates management policies in the field of labor-management relations” within the meaning of section 7103(a)(13) of the Statute. Waeschle conducts Monday morning staff meetings with the Deputy Fire Chief, Chiefs of Operations, including the Assistant Training Chief, Battalion Chiefs and the Captains. Three bargaining unit GS-10 Training Battalion Chiefs attend these meetings as well.¹

Chief Waeschle uses weekly situational reports as agendas for the Monday morning management staff meetings. Chief Waeschle addresses each pre-established topic on the report, providing or requesting updates on matters pertinent to the subject. “Labor Relations” is a standing topic on the situational report, with each battalion listed. Under this topic, Chief Waeschle updates meeting attendees on the status of various labor relations issues. If a battalion has no issues to report this appears on the situational report. Under the “labor relations” topic, Chief Waeschle has addressed notifications of changes in working conditions to the Union and grievances. For grievances, Chief Waeschle discusses the status and management’s “stance” in the dispute. In a case that went to arbitration, the parties’ positions and what management was preparing for arbitration were discussed at the meeting. Chief Waeschle may also provide advance notice of information affecting working conditions at these meetings. For example, Waeschle informed meeting attendees of a plan to bring military firefighting personnel in to help alleviate overtime prior to implementing the plan. He informed all present that the information should not be disclosed to bargaining unit employees. Also, regarding an unfair labor practice case notification from the Union, a Captain’s failure to notify the Union of the change in working conditions at issue in the potential charge was discussed at the meeting.

A. Fire Station Operations

Not surprisingly, the record reveals that all the Agency’s fire stations’ daily operations are relatively the same. All Captains supervise 4-9 employees. Firefighters, including the Captains, work a 72-hour workweek. They work 48 hours, and then they are off for three days, continuing this pattern throughout the 144-hour pay period. Their “active duty” hours during the 48-hour shifts are 8am-4pm daily, though employees may

on occasion work outside regular duty hours during their shifts.²

Captains oversee the daily operations of the station, including vehicle and fire station maintenance, training, and equipment inspections. The Captains determine rig (truck) assignments based upon either their assessment of firefighters’ qualifications and certifications on their crew or established procedures. They formulate a training schedule based upon the Assistant Training Chief’s plan and Navy and Fire Department training protocols. They also address “taskers”, special work assignments handed down to them from their Battalion Chiefs. The Captains may perform the work required by the taskers themselves or they may assign the work required to accomplish the task based upon their assessment of the knowledge and skills of staff available to complete the task.

At shift turnover, the Captains review pertinent shift information, such as daily assignments and leave. Excluding alarms, a typical shift includes daily assignment review, station and equipment maintenance, training, exercise, special projects, and break periods. Special projects include program activities, such as ladder and hose testing and maintenance, building inspections, safety walk-throughs, ship assessments and tours, and drilling with boats. The Captains ensure the work tasks are completed as required. Captains may or may not be present while daily work assignments such as station and equipment maintenance are performed. All Captains perform administrative tasks in their offices at some point during the day, reviewing and responding to e-mails, certifying time and attendance and addressing taskers. Many of the job duties and tasks performed by the firefighters during the day are established by the Fire Chief, local Standard Operating Guidelines (SOGs), the training calendar, weekly station and equipment maintenance schedules, special task assignments, and Navy Regulations.

Captains also perform Program Coordinator job duties in their offices. All Captains serve as the Program Coordinator for various Fire Department mission-related functions or equipment. Firefighters in each station are designated as assistants to each program. They are responsible for coordinating their station’s compliance with the program. For example, the Program Coordinator in charge of the rescue and apparatus program would contact the station assistant with inquiries about the station’s compliance with the program.

¹ The bargaining unit status of these employees is not at issue in these proceedings. Accordingly, I make no finding on this position. In addition, the Hearing Officer’s rulings at the hearing are free from prejudicial error and are affirmed.

² Where Captains testified that they regularly extended their work days past these hours, I have adjusted their active work hours accordingly.

The Fire Department's Emergency Scene Management SOG establishes emergency scene management procedures. Under the SOG, an Incident Commander (IC) maintains situational awareness and overall control of the scene. The Captains serve as the IC for incidents where their crews report and they are the initial reporting officers. If a higher-ranking officer reports to an emergency, such as a Battalion Chief, then the higher ranking officer may assume the IC role. Even if Captains are not the IC on a scene, they maintain responsibility for their crews, and may assign tasks to them.

All Captains evaluate the performances of their subordinate employees. They draft the employees' midterm and final performance evaluations and meet with employees to discuss their evaluations. They are the Rating Official on all firefighters' performance appraisals. The Battalion Chiefs approve the Captains' ratings as Senior Rating Officials. The Captains recommend employees for annual performance awards based on their appraisals. All awards are decided by the Agency's Performance Award Review Board (PARB). The PARB relies upon employees' appraisal in determining awards. If the PARB has questions about an award a Captain has recommended, a PARB member contacts the Captain directly for clarification.

The record demonstrates and the parties stipulated that the Captains also have the authority to grant leave. However, they must comply with leave and minimum staffing SOGs in doing so. The same is true for overtime assignments. Therefore, leave and overtime decisions are based on staffing levels and established procedures.

The Fire Department uses an "Assessment Center" for GS-9 Captain promotions. The Assessment Center panel members review applications and rate each candidate. Captains on an Assessment Center panel are one of nine panel members rating a particular applicant. The selecting official reviews the recommendations, but retains ultimate authority to make the selection. Two Captains have participated on Assessment Center panels.

Most Captains have reviewed resumes of applicants for lower-graded firefighter positions. They sorted through the resumes, and then forwarded the resumes of qualified applicants to their Battalion Chiefs. Some Captains called applicants and discussed their qualifications. Other than a possible discussion with their Battalion Chiefs about the resumes they forwarded, the Captains had no further involvement in the selection process. Battalion Chiefs submitted qualified applicants' resumes to Assistant Chiefs who along with the Deputy Chief recommended a candidate to

Chief Waeschle. In all instances, Chief Waeschle made the final selection.

Regarding discipline, Captains have the authority to issue disciplinary actions without consultation with a higher management official up to proposing suspensions. This includes verbal and written counselings, letters of cautions, and written reprimands. All Captains, save one, have issued one or more of these forms of discipline without permission from a higher-level manager.

Under the parties' collective bargaining agreement, the Battalion Chief "or his/her designee" decides first-step grievances. The Agency has not designated Captains to serve as the first-step deciding official on grievances.³ Captains and Union representatives who work in the same station discuss workplace issues that arise in the station. Neither has bargaining authority.

B. Training Operations

Training is an integral part of the Fire Department's day-to-day operations. Assistant Training Chief Paul Snider manages the Fire Department's training program. He is responsible for the implementation and evaluation of all aspects of the fire protection and prevention program. Snider develops the Department's training plan based upon the DOD Firefighter Certification Program. He designs and implements all necessary training programs to ensure firefighters' compliance with policies, regulations, instructions and standards. Snider coordinates with Installation Training Officers to ensure Fire Department employees meet installation training requirements. Also, he is responsible for tracking and reporting required training.

Three Training Battalion Chiefs report to Snider. The Training Battalion Chiefs support Snider and assist with implementing his training plan. The parties stipulated that the record establishes that Snider assigns work to the Training Battalion Chiefs.

Assistant Training Chief Snider evaluates the performance of the Training Battalion Chiefs as their Rating Official. He drafts the Training Battalion Chiefs' midterm and final performance evaluations and meets with them to discuss their evaluations. Snider recommends the Training Battalion Chiefs for annual performance awards based on their appraisals. Like the Captains, Snider's award recommendations are decided

³ The Agency contends that this is the intent of this language, but the record does not establish that Captains have been designated or even told that they are the 1st-step deciding official on grievances.

by the Agency's PARB which relies upon Snider's appraisals to decide Training Battalion Chiefs' awards.

The record demonstrates that Snider has the authority to grant leave. Unlike the Captains, however, Snider does not rely upon manning and minimum staffing SOGs in doing so.

The Assistant Training Chief has participated on Assessment Center panels for GS-9 promotions as well. As a panel member he rated candidates as part of a nine-member team assessing applicants' qualifications.

Snider has been more involved in the hiring process than Captains. When the Fire Department hired Training Battalion Chiefs, Snider selected applicants for interviews, drafted interview questions, conducted interviews and informed Chief Waeschle of the candidates he had selected. Chief Waeschle effectuated Snider's selections.

Regarding discipline, Snider has the authority to discipline the Training Battalion Chiefs, but has never had cause to discipline any of them. The collective bargaining agreement does not address the first-step deciding official for a grievance in training operations; none of the Battalion Training Chiefs has filed a grievance.

III. Analysis and Conclusions

A. Confidential Employee Exclusion

Section 7103(a)(13) of the Statute defines a "confidential employee" as an employee "who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations." Under Authority precedent, an employee is "confidential" when: (1) there is evidence of a confidential working relationship between an employee and an agency representative; and (2) the agency's representative is significantly involved in labor-management relations. *Nat'l. Aeronautics and Space Admin., Glenn Research Ctr., Cleveland, Ohio*, 57 FLRA 571, 573 (2001). In addition, the Authority will exclude as confidential any individual who actually formulates or effectuates management policies in the field of labor-management relations. *U.S. Dep't. of Labor, Office of the Solicitor, Arlington Field Office*, 37 FLRA 1371, 1377 (1990).

In determining whether an agency representative is significantly involved in labor-management relations, the Authority has identified responsibilities that are aspects of the formulation or effectuation of management policies in labor-management relations. These responsibilities include advising management on or

developing negotiating positions concerning proposals, representing management in negotiations with the union, preparing arbitration cases for hearing, and consulting with management regarding the handling of unfair labor practices. *Broadcasting Board of Governors*, 64 FLRA 235, 236 (2009); *U. S. Dep't. of Interior, Bureau of Reclamation, Yuma Projects Office, Yuma, Ariz.*, 37 FLRA 239, 240-41 (1990).

Among the factors considered by the Authority when assessing whether an individual serves in a confidential capacity to an individual significantly involved in labor-management relations are whether the individual: (1) obtains advance information of management's position regarding contract negotiations, the disposition of grievances, and other labor relations matters; (2) attends meetings where labor-management matters are discussed; (3) because of physical proximity to their supervisor, overhears discussions of labor management matters; and (4) has access to, prepares, or types materials related to labor-management relations, such as bargaining proposals and grievance responses. *U.S. Dep't of Labor, Wash., D.C.*, 59 FLRA 853, 855 (2004).

The parties stipulated that Chief Waeschle is significantly involved with labor relations within the meaning of section 7103(a)(13). The question of whether the Captains and the Assistant Training Chief have a confidential relationship with the Fire Chief is raised by their attendance of the Fire Chief's weekly Monday morning meetings. The record supports a finding that their attendance of these meetings demonstrates a confidential relationship with Fire Chief Waeschle, making them ineligible for inclusion in the Union's bargaining unit as confidential employees. In this regard, I note that while the discussion of labor relations matters is often limited to a summary of the status of ongoing issues, it may also include matters that the Authority has found are indicative of a confidential relationship. For example, impending changes in working conditions that have not been disclosed to the bargaining unit have been addressed at the meeting with instructions not to divulge the information to bargaining unit employees. The Agency's stance in an upcoming arbitration has been addressed at the meeting. Also, concerning a matter that was pending in the parties' unfair labor practice notification process, there was an acknowledgement at one of these meetings that the Agency had erred by not notifying the Union of a change in working conditions, essentially an admission of culpability. Because the Captains have access to information related to labor relations, and sometimes advance knowledge of it, they are appropriately excluded from the Union's bargaining unit as confidential employees. *Id*; see also *U.S. Dep't of the Air Force, Air Force Materiel Command*, 67 FLRA 117, 122-123 (2013) (station chiefs

who attended meetings where labor relations matters were discussed were confidential employees).

B. Supervisor Exclusion

Firefighters are statutory supervisors when: (1) they have the authority to engage in any of the supervisory functions listed in section 7103(a)(10); (2) their exercise of such authority “is not merely routine or clerical in nature but requires the consistent exercise of independent judgment”; and (3) they spend a preponderance of their employment time exercising that authority. *U.S. Dep’t of the Air Force, Offutt Air Force Base, Neb.*, 66 FLRA 616, 620 (2012) (*Offutt*).⁴ The Authority has held that “preponderance” means a “majority” of the employee’s employment time. *Id.* And the Authority decides unit status disputes based on the actual duties performed by the employee as testified to at the hearing. *Id.* at 623. Our conclusions in this decision and order are applicable to all Captains based upon consistent record evidence.

The parties did not enter into any stipulations about the Captains’ exercise of supervisory authority. But, I am able to make certain determinations applicable to all Captains based upon my review of the record as it applies to each employee individually and all Captains.⁵ In this regard, I conclude that the Captains consistently exercise independent judgment in assigning some work by determining the best-qualified employee to fill specified roles based upon their analysis of their

subordinates’ experience.⁶ I will address the extent of each Fire Captain’s exercise of independent judgment in assigning work below. I find that the Captains do not exercise supervisory authority in performing their Program Coordinator work because they do not supervise employees when they do this work. Also, I do not consider time spent by Captains entering training data into the computer and completing time cards or other employment forms as time spent exercising supervisory authorities because these tasks are administrative and routine in nature that do not involve direct supervision of employees.

Regarding discipline, the record establishes that each Captain who has disciplined employees has exercised independent judgment in doing so. Also, Captains exercise independent judgment when they evaluate employees, an exercise of supervisory authority under the Statute because the Agency relies upon the appraisals for awards. *U.S. Dep’t. of the Interior, Bureau of Indian Affairs, Navajo Area Office*, 45 FLRA 646, 650-51 (1992) (*Navajo Area Office*).

The record indicates that Captains have performed tasks related to hiring and promotions. But, I do not find that the Captains exercise supervisory authority under the Statute in promotions or hiring lower-graded firefighters. With respect to promotions, Captains who have served on Assessment Center panels offered input on promotions but did not recommend selected candidates. *Compare U.S. Dep’t. of Veterans Affairs, Veterans Admin. Med. Ctr., Allen Park, Mich.*, 35 FLRA 1206, 1212 (1990) (employee who jointly recommended an employee’s selection exercised supervisory authority). Regarding hiring, Captains’ involvement in the hiring process ends after filtering resumes and submitting qualified applicants’ resumes to their Battalion Chiefs. Assistant Chiefs and upper level managers assess the applicants independently and make selections. Therefore, the Captains do not effectively recommend hiring actions.⁷

⁴ Section 7103(a)(10) defines a supervisor as “an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term “supervisor” includes only those individuals who devote a preponderance of their employment time to exercising such authority.

⁵ I have not utilized an “all or nothing” approach, rejected by the Authority in *U.S. Department of Defense, Pentagon Force Protection Agency*, 62 FLRA 164, 172-173 (2007). Rather, I have reviewed the record and made conclusions applicable to all Fire Captains who, unlike the employees at issue in *Force Protection*, belong to the same job category.

⁶ I have determined that the Captains exercise this authority when they act as Incident Commanders on average about 273 hours per year based on record testimony. I will include this time in calculating the amount of time each Captain spends consistently exercising supervisory authority with independent judgement, unless a Captain’s testimony disputes this finding. The record indicates also that Captains may give assignments to their crews when they go out on calls and are not the Incident Commander. However, because these orders appear to be sporadic, taking little time, I will not include the time Captains spend giving orders of this type during calls.

⁷ I note that since the Agency only began assigning this duty a few months prior to the hearing, the amount of time Captains have spent performing this job duty would not alter the “preponderance of time” analysis even if the Captains exercised the requisite independent discretion in hiring employees.

Also, I have concluded that the time the Captains spend engaging in activities that the Authority considers “secondary” indicia of supervisory status such as attending management meetings and supervisory training sessions and processing leave and overtime matters, need not be considered separately. *Navajo Area Office*, 45 FLRA 646, 654 (1992). As discussed above, Captains are privy to confidential labor relations information at the Monday morning weekly meetings conducted by Chief Waeschle. But, there is no indication that in these meetings the Captains consistently exercise independent judgment, as it relates to the supervisory indicia. Also, though the Captains process leave requests and select employees for overtime assignments, they perform these tasks following established rules and guidelines. Therefore they do not consistently exercise independent judgment performing these job duties.

Finally, the record does not establish that Captains adjust grievances. They have not been named as the Battalion Chiefs’ designee in the grievance procedure. Moreover, though some Captains have discussed working conditions with Union representatives in their stations, these conversations did not amount to grievance adjustments. In particular, I note that the parties have not delegated bargaining to the station level.

In summary, I conclude that the Captains exercise supervisory authority with the requisite independent judgment when they assign some (but not all) work, appraise employees and recommend them for awards, and discipline employees. How much time each Captain spends performing these duties will determine whether the Captain is ineligible for inclusion in the Union’s bargaining unit under section 7103(a)(10). Facts specific to this determination for each employee and my application of those facts to the “preponderance of work time” standard follows.

1. Fire Captain Eric Frey

Captain Frey is currently assigned to the Battalion 1, Station 27, Naval Base Kitsap-Bremerton Fire Station. At the time of the hearing, seven firefighters worked under Frey. Frey’s daily routine is consistent with that of other Captains described above. He spends approximately 15 minutes daily for each 48-hour shift building a roster designating firefighters’ positions on the rig. In determining rig positions, Frey considers subordinate firefighters’ skill aptitude and his level of comfort with their abilities. Also, Frey assigns and oversees work that is included in firefighters’ daily activities, such as rig checks, training and exercise. In assigning “taskers”, Frey determines who performs the work without reference to existing procedures or guidelines. Frey did not quantify how much time he spends conveying taskers to his subordinates, but he

characterized the job duty as occasional in frequency. Based on Frey’s description of activities performed on a regular day, he does not spend a significant amount of time deciding who to assign “taskers” or conveying these assignments to employees.

With respect to performance appraisals, Frey spends approximately 55 hours formulating, preparing and conducting initial reviews, mid-term reviews and final performance appraisals yearly. He spends 16 hours working on awards recommendations which are submitted to the PARB for review.

Regarding disciplinary actions, Frey has verbally counseled two of his subordinates. He spent about an hour total preparing and delivering the verbal counselings.

Even if all the supervisory tasks where Frey consistently exercises independent judgement were performed by Frey in a single year, the record would not establish that Frey spends a preponderance of his time performing those job duties.

Frey exercises supervisory authority to evaluate employees and effectively recommends them for awards. *Navajo Area Office*, 45 FLRA 646, 650-51 (1992). While Frey oversees the work of station firefighters, his review of their work, such as vehicle maintenance, and training exercises is routine in nature. *Nat’l Mediation Board*, 56 FLRA 1, 8 (2000) (NMB); *U.S. Small Bus. Admin. Dist. Office, Casper, Wyo.*, 49 FLRA 1051, 1062 (1994) (*SBA Casper*). Therefore, I do not include the time Frey spends performing this work in determining how much time he spends performing supervisory duties. Frey exercises independent judgment when he determines rig assignments. But, he spends less than two hours per pay period performing this task. Also, Frey exercises independent judgment in disciplining employees. *Adjutant Gen., Del. Nat’l Guard*, 9 FLRA 3, 11 (1982). Based on past experience, the amount of time he has spent performing this task has been minimal, an hour at most if he performed both disciplinary actions in a single year.

The record does not establish that Frey devotes a preponderance of his employment time to exercising supervisory authority with the required exercise of independent judgment. The supervisory tasks where Frey consistently exercises independent judgement taken with time Frey spends as Incident Commander amount to approximately 32% of Frey’s active duty time. Under these circumstances, Frey is not a statutory supervisor. *Offutt*, 66 FLRA at 619-622; *U.S. Dep’t of the Army, Parks Reserve Training Ctr., Dublin, Cal.*, 61 FLRA 537, 543-544 (2006) (*Parks Reserve*).

Accordingly, I find that Frey is not a supervisor within the meaning of section 7103(a)(10) of the Statute.

2. Fire Captain Brian Dorr

Captain Dorr is currently assigned to the Battalion 2, Station 61, Naval Base Kitsap-Bangor Fire Station. At the time of the hearing, eight firefighters worked under Dorr. Dorr's daily routine is consistent with all Captains' routines described above. Dorr spends approximately 30 minutes daily for each 48-hour shift building a roster designating firefighters' positions and conveying the assignments to employees. Dorr assigns work using standardized guidelines, but may alter assignments if the situation warrants. He oversees the firefighters' daily activities such as training and exercise to ensure that they complete them. Also, Dorr assigns daily special projects (i.e., taskers) to his subordinates that may vary. Dorr conveys the initial work assignment; employees carry out the task based upon their knowledge and skills as firefighters. Dorr conveys these job duties during his 30-minute discussion of daily assignments at the beginning of the shift.

With respect to performance appraisals, Dorr spent approximately 5 hours on the performance appraisal process for each of his eight subordinates, including the awards nominations. Like Frey, Dorr recommends employees for awards that are ultimately determined by the Agency's PARB.

Regarding disciplinary actions, Dorr has verbally counseled two of his subordinates, both in 2014. He provided no quantification of the amount of time it took him to issue the verbal counselings, but his testimony and his written document memorializing the counselings establish that they were brief encounters, not requiring a significant amount of Dorr's time.

Like Frey, attributing all of Dorr's supervisory tasks where he consistently exercises independent judgement to a single year, would still fail to establish that Dobb spends a preponderance of his active duty time performing those tasks.

Dunn exercises supervisory authority to evaluate employees and effectively recommend employees for awards. *Navajo Area Office*, 45 FLRA 646, 650-51 (1992). His assignment and review of firefighters' daily work such as vehicle maintenance and training exercises is routine in nature. *NMB*, 56 FLRA 1, 8 (2000); *SBA Casper*, 49 FLRA 1051, 1062 (1994). Therefore, I do not include the time Dorr spends performing this work in determining how much time he spends performing supervisory duties. Dorr exercises independent judgment when he determines rig assignments and conveys assignments to the firefighters that are outside their

normal routine. Dorr spends approximately three hours per pay period assigning this work. Also, Dorr exercises independent judgment in disciplining employees. *Adjutant Gen., Del. Nat'l Guard*, 9 FLRA 3, 11 (1982). Though Dorr did not quantify the amount of time he spent issuing the oral counselings, the record demonstrates the time was minimal and not of an amount to be determinative of the preponderance test.

The record does not establish that Dorr devotes a preponderance of his employment time to exercising supervisory authority with the required exercise of independent judgment. The supervisory tasks where Dorr consistently exercises independent judgement taken with time Dorr spends as Incident Commander amount to approximately 31% of Dorr's active duty time. Under these circumstances, Dorr is not a statutory supervisor. *Offutt*, 66 FLRA at 619-622; *Parks Reserve*, 61 FLRA 537, 543-544 (2006).

Accordingly, I find that Dorr is not a supervisor within the meaning of section 7103(a)(10) of the Statute.

3. Fire Captain Jeran McCormick

Captain McCormick is currently assigned to the Battalion 2, Station 61, Naval Base Kitsap-Bremerton Fire Station. At the time of the hearing, eight firefighters worked under McCormick. McCormick's daily routine is consistent with all Captains' routines described above. He spends approximately 15 minutes daily for each 48-hour shift building a roster designating firefighters' positions. McCormick assigns work using standardized guidelines and strictly follows rosters and rotation lists to place employees in positions. He oversees the firefighters' daily activities such as training and exercise to ensure that they complete them while he performs the same activities. Also, McCormick assigns daily tasks such as clean-up duties to his subordinates. He spends about 1 hour initially conveying and then clarifying his instructions to employees.

With respect to performance appraisals, McCormick spends approximately 34 hours in total per year on initial, mid-term and final performance appraisals, including awards. Like other Captains, his award recommendations are submitted to the Agency's PARB which ultimately determines awards.

Regarding disciplinary actions, McCormick issued two Letters of Caution and verbally counseled one employee in 2012, a Letter of Caution and a Letter of Reprimand in 2013, and two Letters of Caution in 2014. McCormick testified that he terminated an employee. But, the record demonstrates that Chief Waeschle exercised independent discretion in the matter, ultimately determining the employee's fate. McCormick did not

quantify the amount of time he spent preparing the disciplinary actions he issued to employees.

Even if all the supervisory tasks where McCormick consistently exercises independent judgement were performed by Frey in a single year, the record would not establish that McCormick spends a preponderance of his time performing those job duties.

McCormick exercises supervisory authority to evaluate employees and effectively recommends them for awards. *Navajo Area Office*, 45 FLRA 646, 650-51 (1992). While McCormick oversees the work of station firefighters, his review of their work, such as vehicle maintenance, and training exercises is routine in nature. *NMB*, 56 FLRA 1, 8 (2000); *SBA Casper*, 49 FLRA 1051, 1062 (1994). Therefore, I do not include the time McCormick spends performing this work in determining how much time he spends performing supervisory duties. McCormick exercises independent judgment in disciplining employees. *Adjutant Gen., Del. Nat'l Guard*, 9 FLRA 3, 11 (1982). McCormick did not quantify the amount of time he spent preparing disciplinary actions.

The supervisory tasks where McCormick consistently exercises independent judgement taken with time McCormick spends as Incident Commander amount to approximately 25% of McCormick's active duty time.⁸ Under these circumstances, McCormick is not a statutory supervisor. *Offutt*, 66 FLRA at 619-622; *Parks Reserve*, 61 FLRA 537, 543-544 (2006).

Accordingly, I find that McCormick is not a supervisor within the meaning of section 7103(a)(10) of the Statute.

4. Fire Captain Dallas Smith

Captain Smith is currently assigned to the Battalion 2, Station 91, Naval Magazine Indian Island. At the time of the hearing, three firefighters worked under Smith. Smith's daily routine is consistent with all Captains' routines described above. He spends approximately 15 minutes daily for each 48-hour shift building a roster designating firefighters' rig positions. Smith determines rig positions using a rotation list, unless he decides that an employee needs additional training in a position. Also, Smith may assign an employee to work at another station based on his assessment of overall

staffing. He determines who will be temporarily transferred from a rotation list. Other tasks such as cleaning assignments are based on the firefighter's assigned position on the rig. Smith oversees the firefighters' daily activities such as training and exercise to ensure that they complete them while he performs the same activities. The training schedule is pre-established. Smith ensures that employees fulfill the required training within the specified time frame. Smith testified that he spends approximately four hours each day on administrative matters such as running and reviewing reports and performing timekeeping-related tasks.

With respect to performance appraisals, Smith spends approximately 5 hours in total per year on initial, mid-term and final performance appraisals. Due to high employee turn-over at his station, Smith has not recommended any employees for awards.

Regarding disciplinary actions, Smith has issued two verbal warning taking approximately an hour of his work time.

Even if all the supervisory tasks where Smith consistently exercises independent judgement were performed by Smith in a single year, the record would not establish that Smith spends a preponderance of his time performing those job duties.

Smith oversees the work of station firefighters, his review of their work, such as vehicle maintenance, and training exercises is routine in nature. *NMB*, 56 FLRA 1, 8 (2000); *SBA Casper*, 49 FLRA 1051, 1062 (1994). Therefore, I do not include the time Smith spends performing this work in determining how much time he spends performing supervisory duties. Likewise, Smith does not exercise independent judgment when he reassigns his staff to another station because the decision is based upon established manning requirements. Smith exercises independent judgment when he departs from the roster and assigns rig positions for training purposes. But, the record does not demonstrate that Smith does this with any degree of regularity. Also, Smith exercises independent judgment in disciplining employees. *Adjutant Gen., Del. Nat'l Guard*, 9 FLRA 3, 11 (1982). He spent approximately an hour issuing two verbal warnings to employees.

⁸ Though McCormick did not quantify the amount of time he spent disciplining employees, McCormick's account of the amount of time he spends performing other duties establishes that time McCormick spends disciplining employees has no bearing on the outcome of the preponderance test. In this regard, I note also that McCormick does not issue disciplinary actions on a regular basis; he last performed work of this type in 2014.

The supervisory tasks where Smith consistently exercises independent judgement taken with time Smith spends as Incident Commander amount to approximately 22% of Smith's active duty time. Under these circumstances, Smith is not a statutory supervisor. *Offutt*, 66 FLRA at 619-622; *Parks Reserve*, 61 FLRA 537, 543-544 (2006).⁹

Accordingly, I find that Smith is not a supervisor within the meaning of section 7103(a)(10) of the Statute.

5. Fire Captain Kenneth Finch

Captain Finch is currently assigned to the Battalion 3, Station 71, Naval Air Station Whidbey Island Fire Station. At the time of the hearing, seven firefighters worked under Finch. Finch's daily routine is consistent with all Captains' routines described above. He spends approximately 30 minutes daily during each 48-hour shift updating the schedule and the daily log, and building a roster designating firefighters' positions. Finch places employees in positions based upon the schedule and the position each employee has signed up to fill. Also, Finch may assign an employee to work at another station based on his assessment of overall staffing. He applies Fire Station policy to determine who to transfer temporarily. Finch oversees the firefighters' daily activities such as training and exercise to ensure that they complete them. For approximately one hour per day in each 48-hour shift (i.e., four hours-per-pay period), Finch assigns "crew training". He determines what apparatus employees will train on and takes an active role assigning tasks during the training. After the end of active duty hours, Finch spends approximately two hours on reports and administrative paperwork like leave approval and timecards.

With respect to performance appraisals, Finch spends approximately 25 hours formulating, preparing and conducting initial reviews, mid-term reviews and final performance appraisals. He spends an additional four hours preparing award justifications each year. Like all other Captains, Finch's award nominations are reviewed by the Agency's PARB. Finch testified that the PARB has accepted all of his award nominations except one, which the PARB accepted but increased the award amount.

Regarding disciplinary actions, Finch has issued a single verbal counseling taking approximately ½ hour of his work time.

Even if all the supervisory tasks where Finch consistently exercises independent judgement were performed by Finch in a single year, the record would not establish that Finch spends a preponderance of his time performing those job duties.

Finch exercises supervisory authority to evaluate employees and effectively recommends them for awards. *Navajo Area Office*, 45 FLRA 646, 650-51 (1992). Like other Captains, Finch oversees the work of station firefighters, but his review of their work, such as vehicle maintenance, and training exercises is mostly routine in nature. *NMB*, 56 FLRA 1, 8 (2000); *SBA Casper*, 49 FLRA 1051, 1062 (1994). Finch exercises independent judgement when he assigns "crew training" to the firefighters in his crew. During this period, Finch actively directs employees to perform job tasks, exercising independent judgement in determining assignments. I have included this time in calculating the amount of time Finch spends performing supervisory duties.

Finch exercises independent judgment in disciplining employees. *Adjutant Gen., Del. Nat'l Guard*, 9 FLRA 3, 11 (1982). But, the amount of time he has spent performing this task has been negligible, one-half hour in a single year.

The supervisory tasks where Finch consistently exercises independent judgement taken with time Finch spends as Incident Commander amount to approximately 33% of Finch's active duty time. Under these circumstances, Finch is not a statutory supervisor. *Offutt*, 66 FLRA at 619-622; *Parks Reserve*, 61 FLRA 537, 543-544 (2006).

Accordingly, I find that Finch is not a supervisor within the meaning of section 7103(a)(10) of the Statute.

6. Fire Captain Timothy Nold

Captain Timothy Nold is currently assigned to the Battalion 3, Station 29, Naval Air Station Everett Fire Station. At the time of the hearing, seven firefighters worked under Nold. Nold's daily routine is consistent with all Captains' routines described above. Nold spends approximately one hour daily for each 48-hour shift building a roster designating firefighters' positions on the rig and conveying the assignments to employees. Nold "assigns for the position" rather than based upon his assessment of individual employees' knowledge, skills or abilities. Employees have set work assignments based upon the position they fill on the rig. Nold performs the rig check along with his employees. He oversees the firefighters' daily activities such as training and exercise to ensure that they complete them. Also, Nold assigns daily assignments (i.e., taskers) to his subordinates that

⁹ Smith's appraisals are indicia of his exercise of supervisory authority because of the Agency's reliance upon them for award purposes irrespective of whether the Agency actually issues any awards based upon Smith's appraisals.

may vary. Nold conveys the work assignment then employees carry out the tasks based upon their knowledge and skills as firefighters. The time Nold spends conveying these assignments is included in the hour that Nold spends informing employees of their daily assignments. Also, on average for approximately 6 hours-per-pay-period, Nold assigns hands-on training. Nold determines what the employees will train on and assigns tasks during the training period.

On a yearly basis performance appraisals take up about 42 hours of Nold's work time, including the time Nold spends writing award justifications. Like all other Firefighter Captains, Nold's award recommendations are reviewed and determined by the Agency's PARB.

Regarding disciplinary actions, Nold has verbally counseled an employee and issued a letter of requirement, a letter of caution, and a written reprimand. Nold issued the disciplinary actions over a period of five years. He has spent approximately five hours per year on disciplinary actions.

Nold works about 8 hours per shift outside of regular active duty hours.

Consistent with the Firefighter Captains I addressed previously, attributing all of Nold's supervisory tasks where he consistently exercises independent judgement to a single year, would still fail to establish that Nold spends a preponderance of his active duty time performing those tasks.

Nold exercises supervisory authority to evaluate employees and effectively recommends them for awards. *Navajo Area Office*, 45 FLRA 646, 650-51 (1992). Also like other Captains, Nold oversees the work of station firefighters such as vehicle maintenance and training exercises which is routine in nature. *NMB*, 56 FLRA 1, 8 (2000); *SBA Casper*, 49 FLRA 1051, 1062 (1994). Therefore, I do not include the time Nold spends performing this work in determining how much time he spends performing supervisory duties. Nold exercises independent judgment when he assigns non-routine work and hands-on training that vary dependent upon Nold's exercise of his independent judgment in assigning work. Nold spends at approximately six-hours-per-pay-period performing these tasks. Also, Nord exercises independent judgment in disciplining employees. *Adjutant Gen., Del. Nat'l Guard*, 9 FLRA 3, 11 (1982). Therefore, the approximately five hours he spends per year on disciplinary actions is appropriately included in the time that Nold spends exercising supervisory authority.

The supervisory tasks where Nold consistently exercises independent judgement taken with time Nold spends as Incident Commander amount to approximately 22% of Nold's active duty time. Under these circumstances, Nold is not a statutory supervisor. *Offutt*, 66 FLRA at 619-622; *Parks Reserve*, 61 FLRA 537, 543-544 (2006).

Accordingly, I find that Nold is not a supervisor within the meaning of section 7103(a)(10) of the Statute.

7. Fire Captain Michael Farage

Captain Farage is currently assigned to the Battalion 3, Station 29, Naval Air Everett Fire Station. At the time of the hearing, seven firefighters worked under Farage. Farage's daily routine is consistent with all Captains' routines described above. Apart from the routine tasks such as exercise and rig checks that Farage oversees, Farage spends approximately 2 hours daily per shift directly assigning work to employees. This includes assigning work in "emergent situations" where Farage directs non-routine work, determining the best employee to perform a job task as well as training Farage assigns and directs. Farage indicated that the Everett Station receives mostly medical calls. During these calls, Farage actively directs the work of his crew. Based on Farage's testimony, he spends approximately 52 hours per year assigning work during incidents of this type. Apart from days where station Farage testified that he spends the majority of his day on his computer, reading and responding to e-mails. Also, Farage indicated that he spends approximately two hours after active duty hours performing administrative tasks on his computer.

Farage spends approximately 26 hours every year appraising employees' performances and nominating them for awards, where appropriate. Like all other Firefighter Captains, Farage's award recommendations are reviewed by the Agency PARB which makes a final determination.

Regarding disciplinary actions, Farage verbally counseled seven employees over a four-year period and issued two Letters of Requirement. Over this period of time, Farage spent approximately an hour-per-year on disciplinary actions.

Farage works about 4 hours per shift outside of regular active duty hours.

Consistent with the Firefighter Captains I addressed previously, Farage does not spend a preponderance of his active duty time exercising supervisory authority.

Farage exercises supervisory authority to evaluate employees and effectively recommends them for awards. *Navajo Area Office*, 45 FLRA 646, 650-51 (1992). Also like the Captains I addressed previously, Farage oversees the work of station firefighters, his review of their work, such as vehicle maintenance, and training exercises is routine in nature. *NMB*, 56 FLRA 1, 8 (2000); *SBA Casper*, 49 FLRA 1051, 1062 (1994). Therefore, I do not include the time Farage spends performing this work in determining how much time he spends performing supervisory duties. Farage exercises independent judgment when he assigns non-routine work assignments in situations where he determines what employees are best suited for non-routine job duties, spending approximately 312 hours yearly performing tasks of this type. Also, Farage exercises independent supervisory authority during the approximately 52 hours he spends assigning work during calls. The hour that Farage spends on average each year on disciplinary actions is also appropriately considered since the record establishes that Farage exercises independent judgment in disciplining employees. *Adjutant Gen., Del. Nat'l Guard*, 9 FLRA 3, 11 (1982).

Considering the amount of time that Farage spends exercising supervisory authority with the required independent judgment, I have concluded that Farage is not a supervisor under the Statute. Farage spends approximately 25% of his active duty time exercising supervisory authority. Under these circumstances, Farage is not a statutory supervisor. *Offutt*, 66 FLRA at 619-622; *Parks Reserve*, 61 FLRA 537, 543-544 (2006).

Accordingly, I find that Farage is not a supervisor within the meaning of section 7103(a)(10) of the Statute.

8. Fire Captain Michael Foreman

Firefighter Captain Michael Foreman is currently assigned to the Battalion 23, Station 91, Naval Magazine Indian Island Fire Station. At the time of the hearing, three firefighters worked under Foreman. Foreman's daily routine is consistent with all Captains' routines described above. Foreman spends minimal time ensuring that all scheduled personnel are present. He creates the daily log which takes less than a minute. He runs training reports. He then spends no more than an hour formulating his crew's daily plan: training that is normally based on required training set forth in the reports he has run. Daily, station firefighters spend the first 1.5 hours performing known chores such as rig checks and cleaning. Upon their completion of these duties, Foreman spends about 15 minutes determining whether firefighters have program work they need to perform and adjusting the work plan. He then writes the

daily plan on a board, based upon work that firefighters have planned and what other duties he believes will fit into time not already accounted for. Apart from the routine tasks such as exercise and rig checks that he oversees, Foreman spends an additional 30 hours at most per year on training based on his assessment of crew needs.¹⁰ Foreman indicated that he spends approximately eight hours per-pay-period after the end of the shift performing administrative tasks on his computer.

Foreman spends approximately 4 hours total every year on the performance appraisal process including award nominations. Like all other Firefighter Captains, Foreman's award recommendations are reviewed by the Agency PARB which makes a final determination.

Foreman testified that he has participated in two "fact-findings". As described by Foreman, the fact-findings concerned personality conflicts between employees where he and Assistant Chief Woodard mediated and resolved the dispute. Foreman has disciplined no employees.

Consistent with the Firefighter Captains I addressed previously, Foreman does not spend a preponderance of his active duty time exercising supervisory authority.

Foreman exercises supervisory authority to evaluate employees and effectively recommends them for awards. *U.S. Dep't. of the Interior, Bureau of Indian Affairs, Navajo Area Office*, 45 FLRA 646, 650-51 (1992). He spends approximately four hours per year performing this task. Also like the Captains I addressed previously, Foreman oversees the work of station firefighters, his review of their work, such as vehicle maintenance, and training exercises is routine in nature. *NMB*, 56 FLRA 1, 8; *SBA Casper*, 49 FLRA 1051, 1062 (1994). Therefore, I do not include the time Foreman spends performing this work in determining how much time he spends performing supervisory duties. Foreman exercises independent judgment when he assigns non-routine work assignments such as training based upon his assessment of employee needs. Likewise, Foreman exercises independent judgment in assigning work when he prioritizes and plans employees' work day in light of competing program assignments. Foreman spends approximately 73 hours yearly exercising independent judgment in assigning work. The record does not establish that Foreman has disciplined any

¹⁰ Foreman testified that he conducts training of this type about 10 times per year. He did not specify the amount of times he spends assigning this work. But, he testified that training fits into the schedule in a time slot that is three hours at most. So, Foreman spends no more than 30 hours per year assigning this work.

employees. The fact-finding sessions that Foreman described do not amount to disciplinary actions.

Foreman exercises supervisory authority for at most 21% of his active work time, well short of the preponderance standard. Under these circumstances, Foreman is not a statutory supervisor. *Offutt*, 66 FLRA at 619-622; *Parks Reserve*, 61 FLRA 537, 543-544 (2006).

Accordingly, I find that Foreman is not a supervisor within the meaning of section 7103(a)(10) of the Statute.

9. Assistant Training Chief Paul Snider

Assistant Training Chief Paul Snider is responsible for implementing the Agency's training program. He designs training assignments and distributes them to Fire Department Operations (i.e., the Fire Station chain-of-command). Notably, almost without exception, Captains testified that the training they did not control originated from Snider.

Three Training Battalion Chiefs report to Snider. Snider and his team conduct and oversee various drills and exercises throughout the region, including those directed by outside agencies. They average over 65 drills and exercises per year. When Snider goes out on drills with the Training Battalion Chiefs he assigns their drill positions. Drills can last over 4 hours. Snider goes out on about 75 percent of them. When Snider does not go out on a drill, he discusses the Training Battalion Chiefs' drill positions prior to their departure. If it appears to Snider that an employee needs assistance on a work project, Snider may, and has, assigned another employee to the project. Also, Snider has moved work between employees to meet goals. Snider spends about 3 hours each day communicating assignments to the Battalion Chiefs.

Snider evaluates the performance of the three Training Battalion Chiefs under his supervision. He drafts the Training Battalion Chiefs' midterm and final performance evaluations and meets with the employees to discuss their evaluations. Snider recommends employees for annual performance awards based on their appraisals. Like the Captains, all awards that Snider recommends are decided by the Agency's PARB.

When the Agency hired Snider's three subordinate Battalion Training Chiefs, Snider drafted interview questions, determined the participants on the interview panel, reviewed applicants' resumes, and selected applicants for interviews. After the interviewing process, Snider selected an applicant from the "top two" and then informed the Chief who he had selected. The

applicants Snider selected were forwarded to the Agency's Human Resources Department for hiring.

Snider indicated that he spends approximately 60% of his work time assigning work, appraising and recommending employees for award.¹¹

The record establishes that Snider exercises supervisory authority that requires the consistent exercise of independent judgment and that he devotes a majority of his employment time to exercising such authority.

Snider consistently exercises independent judgment in directing employees, assigning work, evaluating and rewarding employees. Also, Snider assigns, prioritizes and reviews Training Battalion Chiefs' work. On a daily basis, Snider requires Battalion Chiefs to work on drill packages and reviews their work for accuracy. He assigns work when he accompanies the Training Battalion Chiefs on drills, determining employees' position based upon his evaluation of their knowledge and skills.

Though Snider has disciplined no employees, the record establishes that, like Captains, Snider has the authority to discipline his subordinates up to a proposed suspension (i.e., verbal and written counselings, written reprimands and letters of caution). Also, like Captains, Snider's performance evaluations are directly linked to performance-based awards and are therefore appropriately considered when determining the amount of time Snider exercises supervisory authority. *Navajo Area Office*, 45 FLRA 646, 650-51 (1992).

Finally, the record establishes that Snider spends 60% of his employment time exercising supervisory authority with the requisite independent judgment, satisfying the Statute's preponderance requirement. *U.S. Dep't of the Army, U.S. Army Garrison, Fort Lee, Va.*, 63 FLRA 145, 148 (2009).

Accordingly, I find that Assistant Training Chief Snider is a supervisor within the meaning of section 7103(a)(10) of the Statute.

IV. Order

IT IS ORDERED that the Union's bargaining unit is clarified to exclude GS-9 Captains and the Assistant Chief of Training.

¹¹ I find that the record bears out Snider's testimony in this regard.

V. Right to File an Application for 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 after the date of this Decision. The application for review must be filed by **May 8, 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.¹²

John R. Pannozzo, Regional Director
San Francisco Region
Federal Labor Relations Authority
901 Market Street, Suite 470
San Francisco, California 94103

Dated: March 2, 2017

¹² 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.