

73 FLRA No. 142

DEFENSE HEALTH AGENCY
(Petitioner/Agency)

and

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

and

AMERICAN NURSES
ASSOCIATION ILLINOIS
(Exclusive Representative)

and

ASSOCIATION OF
CIVILIAN TECHNICIANS
(Exclusive Representative)

and

INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO
(Exclusive Representative)

and

INTERNATIONAL BROTHERHOOD
OF PAINTERS AND ALLIED TRADES
(Exclusive Representative)

and

METAL TRADES COUNCIL
(Exclusive Representative)

and

NATIONAL ASSOCIATION
OF GOVERNMENT EMPLOYEES
(Exclusive Representative)

and

NATIONAL ASSOCIATION
OF INDEPENDENT LABOR
(Petitioner/Exclusive Representative)

and

NATIONAL FEDERATION
OF FEDERAL EMPLOYEES, IAMAW, AFL-CIO
(Petitioner/Exclusive Representative)

WA-RP-22-0056
AT-RP-22-0032
CH-RP-22-0025
WA-RP-22-0066
SF-RP-23-0010

ORDER DENYING
APPLICATION FOR REVIEW

November 15, 2023

Before the Authority: Susan Tsui Grundmann,
Chairman, and Colleen Duffy Kiko, Member

I. Statement of the Case

As part of a reorganization, the Department of Defense transferred medical employees from various military branches to the Defense Health Agency (DHA), Small Market and Stand-Alone Military Treatment Facility Organization (SSO Market). In the attached decision and order, Federal Labor Relations Authority (FLRA) Regional Director John R. Pannozzo (the RD) found that the SSO Market is the successor employer of the transferred employees. Among the incumbent unions' proposed bargaining-unit configurations, the RD found appropriate a three-unit configuration that the American Federation of Government Employees (AFGE) and National Federation of Federal Employees (NFFE) proposed. Further, the RD concluded that AFGE and NFFE represent a sufficient number of the transferred employees in the appropriate units to render representation elections unnecessary.

The Association of Civilian Technicians (ACT) filed an application for review of the RD's decision (application). For the following reasons, we deny ACT's application.

II. Background and RD's Decision

Before 2018, each branch of the armed forces provided medical services through their own network of military treatment facilities (treatment facilities). In 2018, the Department of Defense reorganized these networks by transferring control over most treatment facilities to DHA, and DHA divided the transferred employees into separate geographical markets—including the SSO Market at issue here. The SSO Market comprises 7,409 civilian medical employees that previously worked in Army, Air Force, Navy, and Marine Corps hospitals and treatment facilities within the United States.

Before the reorganization, these employees were divided into eighty-two separate bargaining units, represented by nine unions. Following the reorganization, five of these unions either formally disclaimed interest in the units they previously represented or failed to engage in pre-hearing conferences with the FLRA related to this matter. The remaining four—AFGE, NFFE, ACT, and the National Association of Independent Labor (NAIL)—sought to continue representing SSO Market employees.

DHA filed a petition arguing it was the successor employer of the transferred employees, and AFGE, NFFE,

and NAIL filed petitions to represent the employees.¹ The FLRA consolidated these petitions and held a hearing to consider successorship. At the hearing and in their briefs, DHA and the participating unions submitted four proposals for dividing the SSO Market employees into new bargaining units. DHA proposed dividing all SSO Market employees into two units, one for professional employees and one for nonprofessional employees. AFGE and NFFE proposed dividing SSO Market employees into three bargaining units: (1) NFFE would represent one consolidated unit of 724 nonprofessional employees at three treatment facilities; (2) AFGE would represent the remaining nonprofessional employees in one unit; and (3) AFGE would represent all professional employees in the SSO Market in the remaining unit. DHA supported AFGE and NFFE's proposal.

ACT and NAIL proposed dividing the SSO Market into six units. Under this approach, AFGE and NFFE would represent the same units they proposed with the exception of three additional units: ACT would represent one bargaining unit of thirty-three employees, and NAIL would represent two bargaining units of seventy-seven and 291 employees, respectively. DHA and AFGE opposed this proposal. At the hearing, NAIL also proposed dividing the SSO Market employees among fifty-eight bargaining units. DHA opposed this proposal, and no other union supported it.

In evaluating the proposals, the RD applied the three-prong test the Authority prescribed in *Naval Facilities Engineering Service Center, Port Hueneme, California (Port Hueneme)*.² Under the *Port Hueneme* test, a gaining entity is a successor employer, and a union retains its representative status following a reorganization, when: (1) an entire recognized unit, or a portion thereof, is transferred and the transferred employees (a) are in an appropriate unit after the transfer

and (b) constitute a majority of the employees in that unit; (2) the gaining entity has substantially the same organizational mission as the losing entity, with transferred employees performing substantially the same duties and functions under substantially similar working conditions in the gaining entity; and (3) it has not been demonstrated that an election is necessary to determine representation.³

Regarding the first factor, the RD noted that, when there are competing petitions alleging different appropriate units, "the Authority has held that . . . unit proposals that approximate the status quo should be considered first."⁴ Because the ACT and NAIL proposal, and NAIL's separate proposal, would both result in units composed of only one treatment facility each, the RD determined that these proposals were closest to the status quo. Thus, he considered these unit configurations first.

Applying § 7112 of the Federal Service Labor-Management Relations Statute, the RD considered whether the individual-treatment-facility units that ACT and NAIL sought to represent retained clear and identifiable communities of interest that were distinct from the rest of the SSO Market.⁵ Finding that all treatment facilities are now subject to the same personnel policies,⁶ similar conditions of employment,⁷ and one chain of command,⁸ the RD determined that individual treatment facilities "no longer have separate and distinct communities of interest."⁹

Further, the RD considered whether individual-treatment-facility units "bear[] some rational relationship to the operational and organizational structure of the [A]gency" that would promote effective dealings with the Agency and the efficiency of the Agency's operations.¹⁰ The RD noted that treatment facilities were no longer "separated by chains of command that ran to the

¹ Although ACT did not file a successorship petition, it participated in the hearing and filed a post-hearing brief. Decision at 3.

² 50 FLRA 363, 368 (1995).

³ *Id.*

⁴ Decision at 15-16 (citing *U.S. Dep't of the Navy, Commander, Naval Base, Norfolk, Va.*, 56 FLRA 328, 332 (2000) (*Norfolk*) (Chairman Wasserman concurring in part and dissenting in part)).

⁵ 5 U.S.C. § 7112(a) (a unit is appropriate when employees in the transferred unit share "a clear and identifiable community of interest").

⁶ Decision at 21 (observing that all treatment facilities "must apply the same policies set forth by DHA, and [that] the SSO Market exercises considerable oversight to ensure that all [treatment facilities] adhere to these guidelines"); *id.* at 18 (noting that the "SSO Market Director has one awards budget for the entire market, and the authority to allocate it among all [the treatment facilities]").

⁷ *Id.* at 19 ("[D]espite being given the opportunity to do so, no party presented evidence at hearing of any significant unique conditions of employment found exclusively at any particular [treatment facility]."); *id.* ("I find that [all treatment facilities] are now all subject to the same general working conditions established by DHA.").

⁸ *Id.* at 18 ("[T]he chain of command runs from each [treatment facility] directly to [the SSO Market Director] and his supporting office rather than a variety of [m]ilitary [d]epartments and their organizational structures.").

⁹ *Id.* at 19 (citing *U.S. Dep't of the Navy, Commander, Navy Region Mid-Atlantic*, 64 FLRA 782, 783 (2010)).

¹⁰ *Id.* at 21 (citing *U.S. Dep't of the Navy, Fleet & Indus. Supply Ctr., Norfolk, Va.*, 52 FLRA 950, 961-62 (2008)); see 5 U.S.C. § 7112(a) (a unit is appropriate when the unit "will promote effective dealings with [the agency], and efficiency of the [agency's] operations").

various [m]ilitary [d]epartments,”¹¹ with each department exercising “independent bargaining authority.”¹² Instead, all treatment facilities now “report[] directly to the SSO Market Director,” with one human-resources team supporting the entire SSO Market.¹³ Based on this consolidation, the RD found that it was no longer practical for one director and “a single [human-resources] team to administer numerous bargaining units with their attendant collective[-]bargaining agreements.”¹⁴ Consequently, the RD rejected the ACT and NAIL proposal, and NAIL’s separate proposal, finding that they would not result in appropriate units.

The RD proceeded to address whether the AFGE and NFFE proposed units are appropriate. He found that the professional and nonprofessional employees throughout the SSO Market share a community of interest because they share similar or related job responsibilities; support the same medical mission; are subject to the same chain of command under the SSO Market Director; share an awards budget; and receive human-resources support from the same national office. Thus, he found “a sufficient community of interest present to establish all three units” AFGE and NFFE proposed.¹⁵ Additionally, the RD found that the larger units in the AFGE and NFFE proposal bore a rational relationship to the Agency’s centralized chain of command. Consequently, the RD found that “the three units that comprise the [AFGE and NFFE] proposal all satisfy the appropriate[-]unit criteria.”¹⁶

Regarding the second *Port Hueneme* factor, the RD considered whether the treatment facilities under SSO Market direction have substantially the same organizational mission as they did when they reported to the military branches, with the transferred employees performing substantially the same duties and functions under substantially similar working conditions. He found that “the medical mission remains the same” for the

treatment facilities and that the employees perform “substantially similar duties and functions and work in the same facilities.”¹⁷ He also noted “[a]ll parties recognize that DHA’s . . . SSO Market[] is a successor employer” of the separate military branches.¹⁸ Thus, he concluded the second factor favored successorship.

For the third *Port Hueneme* factor, the RD considered whether AFGE and NFFE would represent a “sufficiently predominant” number of employees in their proposed units to obviate the need for elections.¹⁹ Applying Authority precedent,²⁰ the RD found that both AFGE and NFFE met this threshold, and he certified their three proposed units.

ACT filed the application on October 11, 2023, and AFGE filed an opposition on October 26, 2023.

III. Analysis and Conclusion: The application does not demonstrate that review is warranted.

In its application, ACT alleges only that there is “no rational basis” for the RD’s decision.²¹ ACT supports this allegation by listing certain community-of-interest factors the RD considered related to the individual treatment facilities, such as “geographic proximity, unique conditions of employment, [and] . . . distinct local concerns.”²² The Authority may grant an application for review “only when the application demonstrates that review is warranted on one or more of” the grounds provided in § 2422.31(c) of the Authority’s Regulations.²³

¹¹ Decision at 20.

¹² *Id.* at 18.

¹³ *Id.* at 17-18.

¹⁴ *Id.* at 20 (noting the Authority has held substantial changes to the chain of command can cause existing units to no longer bear a rational relationship to an agency’s structure (citing *Norfolk*, 56 FLRA at 333)).

¹⁵ *Id.* at 23.

¹⁶ *Id.* at 22.

¹⁷ *Id.* at 24.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 25.

²⁰ *Id.* at 24-25 (citing *Dep’t of the Army, U.S. Army Aviation Missile Command (AMCOM), Redstone Arsenal, Ala.*, 56 FLRA 126, 131 (2000) (holding that, where multiple unions file successorship petitions following a reorganization, an election is not required if one union represents more than seventy percent of new unit); *Dep’t of the Interior, Bureau of Land Mgmt., Sacramento, Cal. & Dep’t of the Interior, Bureau of Land Mgmt., Ukiah Dist. Off., Ukiah, Cal.*, 53 FLRA 1417, 1422 (1998) (holding that, where one union is involved, an election is unnecessary if union represents more than fifty percent of new unit)).

²¹ Application at 2.

²² *Id.*

²³ 5 C.F.R. § 2422.31(c)(1)-(3) (“(1) The decision raises an issue for which there is an absence of precedent; (2) [e]stablished law or policy warrants reconsideration; or, (3) [t]here is a genuine issue over whether the Regional Director has: (i) [f]ailed to apply established law; (ii) [c]omitted a prejudicial procedural error; or (iii) [c]omitted a clear and prejudicial error concerning a substantial factual matter.”).

Under Authority precedent, an application must offer more than a bare assertion that the Regional Director erred.²⁴

At the outset, we note that ACT does not identify a particular ground for review set forth in § 2422.31(c) of the Authority's Regulations. ACT also cites no law, regulation, or precedent that the RD allegedly failed to apply. Although ACT lists certain community-of-interest factors, it does not explain how those factors militate against finding AFGE and NFFE's proposed units appropriate. Nor does ACT directly challenge, as unsupported by the record, any of the RD's factual findings related to those factors.²⁵ Thus, we find that ACT makes only a bare assertion that the RD erred in finding the AFGE and NFFE units appropriate.²⁶ In any event, the RD clearly articulated and applied the Authority's standard for determining whether a proposed unit is appropriate after the reorganization.²⁷ Accordingly, we deny the application.

IV. Order

We deny ACT's application for review.

²⁴ *DOD, U.S. Army Aeronautical Servs. Agency, Fort Belvoir, Va.*, 64 FLRA 217, 221-22 (2009) (*Aeronautical Servs.*) (denying application for review where appealing party made only "bare assertions" without explaining how the Regional Director erred); *U.S. Dep't of the Navy, Fleet Readiness Ctr. Sw., San Diego, Cal.*, 63 FLRA 245, 252 (2009) (same).

²⁵ See 5 C.F.R. § 2422.31(b) ("An application for review must be sufficient for the Authority to rule on the application without looking at the record . . . [and must] include a summary of [the] evidence relating to any issue raised in the application, and make specific references to page citations in the transcript . . .").

²⁶ See *Dep't of the Army, Fort Carson Fire & Emergency Servs., Fort Carson, Colo.*, 73 FLRA 1, 4 (2022) (denying argument that the RD failed to apply established law where the appealing party did "not cite any evidence in the record to support [its] assertion"); *U.S. Dep't of the Navy, Commander, Navy Region Nw. Fire & Emergency Servs., Silverdale, Wash.*, 70 FLRA 231, 232 (2017) (denying argument where the appealing party did "not cite any Authority precedent, or any other law, with which the RD's decision allegedly conflicts"); *Aeronautical Servs.*, 64 FLRA at 221-22 (denying "bare assertion" without sufficient support).

²⁷ Decision at 16 (reciting appropriate-unit criteria (citing *U.S. DOD, Def. Info. Sys. Agency*, 70 FLRA 482, 485-86 (2018) (Member DuBester dissenting on other grounds))), 22-23 (applying the Authority's appropriate-unit factors to NFFE's proposed unit); see also *Norfolk*, 56 FLRA at 331-36 (factors regional directors may consider when assessing the appropriateness of a unit include avoiding fragmentation, changes in the chain of command, promoting effective dealings and efficiency of agency operations).

UNITED STATES OF AMERICA
 FEDERAL LABOR RELATIONS AUTHORITY
 SAN FRANCISCO REGION

WA-RP-22-0056
 AT-RP-22-0032
 CH-RP-22-0025
 WA-RP-22-0066
 SF-RP-23-0010

Defense Health Agency
 (Petitioner/Agency)

and

American Federation of Government Employees, AFL-
 CIO

(Petitioner/Exclusive Representative)
 and

American Nurses Association Illinois
 (Exclusive Representative)
 and

Association of Civilian Technicians
 (Exclusive Representative)
 and

International Association of Machinists and Aerospace
 Workers, AFL-CIO

(Exclusive Representative)
 and

International Brotherhood of Painters and Allied Trades
 (Exclusive Representative)
 and

Metal Trades Council
 (Exclusive Representative)
 and

National Association of Government Employees
 (Exclusive Representative)
 and

National Association of Independent Labor
 (Petitioner/Exclusive Representative)
 and

National Federation of Federal Employees, IAMAW,
 AFL-CIO

(Petitioner/Exclusive Representative)

DECISION AND ORDER

I. Statement of the Case

These five petitions are related.¹ They all seek to address the same reorganization involving the Defense Health Agency or DHA. This was a major transformation within the Department of Defense. All parties recognize that DHA's Small Market and Stand-Alone Organization, or the SSO Market, is a successor employer. The SSO Market acquired approximately 7,409 civilian medical bargaining unit and unit eligible employees from the armed forces of the United States, or Military Departments, including those working at various Army, Navy, Air Force, and Marine Corps hospitals and medical treatment facilities.

Employees from 82 separate bargaining units were transferred to the SSO Market.² As a result, the SSO Market now has employees located at 63 Military Treatment Facilities (MTFs) and Dental Treatment Facilities (DTFs) in 32 states.

Some incumbent Unions that represent employees who were affected by issues raised in these petitions disclaimed interest in any SSO Market bargaining units that might result. A few incumbent Unions failed to appear at the hearing in this matter, or even participate in any pre-hearing conferences, despite adequate advance notice of these proceedings.³ And other incumbent Unions that are affiliates of national labor organizations did not appear because they designated their national to represent their interests.

Ultimately, four Unions made appearances at the hearing in this matter: the American Federation of Government Employees, AFL-CIO (AFGE); the Association of Civilian Technicians (ACT); the National

¹ DHA filed the petition in SF-RP-23-0010; AFGE filed WA-RP-22-0056; NAIL filed AT-RP-22-0032 and CH-RP-22-0025; and NFFE filed WA-RP-22-0066.

² None of the existing 82 bargaining unit certifications will be revoked at this time. While DHA is aware of how many employees it received from the various Military Departments to staff up the SSO Market, DHA cannot confirm that all civilian employees from those armed forces branches were transferred to it. Those bargaining units were certainly diminished due to the significant number of employees transferred to the SSO Market. But some unit employees may have remained behind, and therefore those existing units may still be viable.

³ ACT's representative left the hearing before the first witness was called and did not return for the remainder of the hearing. Neither the International Brotherhood of Painters and Allied Trades nor Metal Trades Council appeared at all, nor did they formally disclaim interest in their SSO employees.

Association of Independent Labor (NAIL); and the National Federation of Federal Employees, IAMAW, AFL-CIO (NFFE). A Hearing Officer of the Authority held a hearing on June 1, 2023. The Hearing Officer's rulings at the hearing are free from prejudicial error and are affirmed. All four Unions that made an appearance at the hearing filed post-hearing briefs which have been fully considered. DHA did not submit a post-hearing brief.

A variety of potential unit configurations were proposed by the parties during the hearing. And in its post-hearing brief, NAIL submitted an additional unit proposal. This new proposal was not previously mentioned nor was it sought by any other party that participated in this matter.

All the unit proposals to resolve the question concerning representation resulting from the SSO Market's formation are wide-ranging, from a single unit up to 58 separate units. The unit proposals can generally be divided into two distinct categories, a limited number of bargaining units that are larger and more comprehensive, versus proposals that would result in a multitude of comparably small separate units. DHA, AFGE, and NFFE are all in agreement about one of the more comprehensive bargaining unit proposals. Here is a summary of all the proposals currently before me:

- DHA proposed two "wall-to-wall" units within the SSO Market, one for all professionals, and one for all nonprofessionals.
- AFGE and NFFE presented a tandem proposal that would result in three separate units covering the entire SSO Market. AFGE would obtain the bulk of the SSO Market employees in two wall-to-wall units, save for about 724 nonprofessional employees that NFFE currently represents in three separate units at the Army Health Clinic (AHC) Moncrief, located at Fort Jackson; AHC Weed-Irwin, at Fort Irwin; and AHC Reynolds at Fort Sill. NFFE proposes that these three units be combined to form a single SSO Market bargaining unit. And NFFE disclaimed interest in all its remaining nonprofessional SSO Market employees, approximately 173 in total, including those at Barksdale Air Force Base, Holloman AFB, Sheppard AFB, and Vandenberg AFB. AFGE prefers two separate units versus one mixed unit, meaning one unit of all professional SSO Market employees, about 2,043 employees, and another unit for all nonprofessional SSO Market employees, other those NFFE would maintain, which amounts to about 4,640 employees. On the record, DHA stated that it has no objection to this tandem proposal should I find it appropriate. Both NAIL and ACT object

to the proposal. AFGE would acquire their SSO Market employees as a result.

- Both NAIL and ACT have requested carve-outs to preserve separate units for their employees who are now part of the SSO Market. For ACT, this includes a carve-out of approximately 33 nonprofessional employees at an MTF at Fairchild AFB. For NAIL, this includes two carve-outs, one unit of approximately 77 nonprofessional employees at an MTF at Scott AFB, Illinois and a second unit consisting of about 291 nonprofessional employees at an MTF at Fort Polk, Louisiana. For its part, NFFE doesn't oppose the carve-outs ACT and NAIL proposed at hearing. But both DHA and AFGE do oppose them.
- On brief, NAIL proposed for the first time that the entire SSO Market be divided into 58 separate units based on certain SSO organizational subdivisions. These would include one unit apiece for each of the SSO Market's 17 so-called "small markets" plus 41 separate "stand-alone" MTF units. No other Unions, including any of those which might be deemed the exclusive representative for any of these 58 potential units, requested this outcome.

For the reasons that follow, I reject all carve-out proposals made by ACT and NAIL to preserve individual MTF units. DHA indicated that it would accept the tandem unit proposal offered by AFGE and NFFE. I find that the tandem proposal, which is mutually acceptable to AFGE, DHA, and NFFE, results in appropriate units.

Accordingly, based on an application of successorship principles, I will order the certification of a unit of all professional employees, and two separate nonprofessional units. No election is necessary to determine the exclusive representative for any of these units. AFGE is sufficiently predominant in both the professional unit and nonprofessional units sought. NFFE is predominant in the nonprofessional unit.

II. Findings

A. Existing units and unions, designations, and disclaimers

A list that identifies the bargaining unit status of all SSO Market employees is part of the record in this matter, and will be only briefly summarized here. There are approximately 7,409 unit-eligible employees within the SSO Market, and about 980 of those are unrepresented by any union. About 6,429 employees are currently represented by some Union. Overall, there are about

5,364 nonprofessional SSO Market employees, and approximately 2,043 professional employees within the meaning of Section 7103(a)(15) of the Statute.

Throughout the SSO Market's professional employee compliment, physicians, nurses, and pharmacists are the most common positions found at the MTFs. There are also a substantial number of clinical laboratory scientists and psychologists. Turning to the nonprofessional SSO Market employees, the largest category is practical nurses, followed by medical support assistants, health system specialists, pharmacy technicians, and dental assistants at the MTFs and DTFs.

Five of the Unions affected by the issues raised here represent relatively small numbers of employees. The American Nurses Association Illinois (ANA) represents around 15 nurses at Scott AFB. ACT represents about 33 employees at Fairchild AFB. The International Association of Machinists and Aerospace Workers, AFL-CIO (IAM) represents about 74 employees at a Naval Health Clinic in Corpus Christi, Texas and about 13 employees at Wright-Patterson AFB. The International Brotherhood of Painters and Allied Trades represents approximately 29 employees at the Naval Medical Center Portsmouth. SSO Market records show that the Metal Trades Council currently represents a single employee at Fort Rucker, Alabama.

The National Association of Government Employees (NAGE) and its constituent locals represent approximately 177 total SSO Market bargaining unit employees at seven locations. The largest number of employees, about 78, are at the Charleston, South Carolina Naval Hospital, followed by around 61 employees in Groton, Connecticut, and at every other remaining location, less than 20 employees apiece.

As part of these proceedings, certain incumbent exclusive representatives submitted written disclaimers of interest for its employees who are now part of the SSO Market. These are part of the record. All of the NAGE Locals affected by the issues raised here, including NAGE Locals R1-8, R1-100, R1-00RN, R4-109, R12-29, and R14-32, designated NAGE National to represent their interests in this proceeding. Thereafter, NAGE disclaimed any representational interest in any SSO Market employees on behalf of all its constituent locals. IAM also disclaimed any representational interest, as did the ANA.

Besides ACT, the other three Unions that participated in the hearing in this matter represent the remaining SSO Market employees. Going from the smallest to largest of these, NAIL represents approximately 368 total employees in two separate units. Their largest group is at Fort Polk in Louisiana, about 291 employees, and the rest are at Scott AFB.

NFFE currently represents 897 SSO Market employees in total, and they are in 11 bargaining units. But as noted above, through the tandem proposal, NFFE only intends to preserve representation of its three largest bargaining units, about 724 employees in total, at three Army bases, those at AHC Moncrief, located at Fort Jackson; AHC Weed-Irwin, at Fort Irwin; and AHC Reynolds at Fort Sill in one new unit. NFFE is willing to forgo representation of the remaining approximately 173 employees in its eight other bargaining units if the tandem unit proposal is adopted. The greatest concentrations of NFFE's remaining employees are found at four locations: Barksdale Air Force Base, Holloman AFB, Sheppard AFB, and Vandenberg AFB, roughly 156 employees in total.

AFGE and its constituent locals represent the remaining SSO Market employees in 56 bargaining units, a total of about 4,822 employees. All 42 of the AFGE Locals that hold certifications directly that are affected by the issues raised here designated AFGE National to represent their interests. Four of the AFGE-represented groups are comparably large. For example, the Fort Leonard Wood MTF group alone has about 594 bargaining unit employees, and Guthrie Army Health Clinic at Fort Drum has 404 bargaining unit employees. AFGE has three additional groups with nearly 400 employees apiece. One of these is at Fort Riley, about 390 employees. AFGE also has 11 additional groups, each of which are roughly in the 100-to-200-person range. But there are also 23 smaller groups that each have 30 or less employees.

B. SSO Market formation and organizational structure

DHA Senior Leader, Ronald Hamilton, the Director of Administration and Management, J-1, testified in this matter. He reports directly to the DHA Director of Staff, Brigadier General Norman West, who reports to the DHA Director, a three-star General over the whole Agency. The SSO Market Director reports directly to the DHA Director. Mr. Hamilton described the recent evolution of DHA as an Agency now responsible for all Department of Defense (DoD) medical facilities:

DHA is known as a fourth estate agency, a separate component from the Army, Navy, and the Air Force, and we take our guidance from the Director of Administration & Management within the Pentagon.

....

In the last few years DHA has moved from being a management headquarters oversight responsible for ten shared functions that supports all of the Service components within the DoD to actually becoming a defense health headquarters responsible for the administration and management and control over the healthcare delivery mission within the DoD. And not just the ten shared services, but all Military Treatment Facilities within the DoD are now under the authority, direction, and control of the Defense Health Agency director. And so, the operational mission for the DHA has expanded exponentially from just a management headquarters of ten shared functions within military health care to managing the hospitals throughout the DoD.

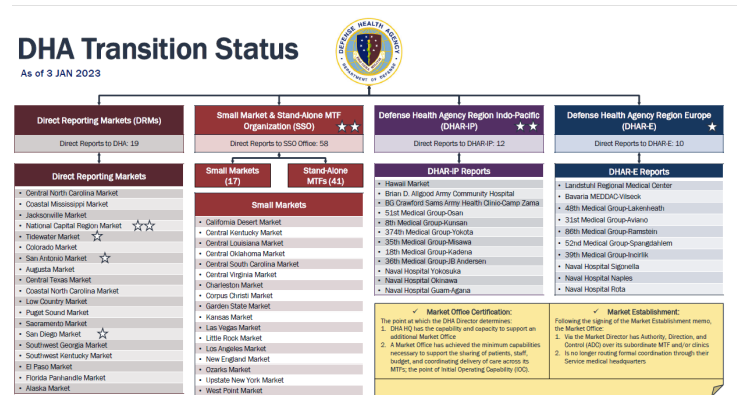
Mr. Hamilton explained that the National Defense Authorization Act of 2017 (NDAA FY17) and the DoD Directive Number 5136.13 essentially serve as the “charter” for DHA as it currently operates, giving the DHA Director control over all DoD MTFs around the world in furtherance of DHA’s mission of healthcare delivery within the Military Health System. DHA’s scope includes all MTFs, with the only exception being operational hospitals, essentially in tents, located in a hostile environment. But DHA also has a combat support function, to support the combatant commanders by providing medical logistics, blood, and other related functions. In essence, DHA took full control of the healthcare delivery mission, while the various Military Departments retained control of their operational readiness missions, which includes deployment to hostile environments and humanitarian missions around the world.

The DoD Directive defines an MTF as any fixed facility, outside of a deployed environment, used primarily for health care (including dental care), and any other location used for the purposes of providing health care services as designated by the Under Secretary of Defense for Personnel and Readiness. Organizationally, DHA groups the MTFs into what it refers to as health care markets. This is the management structure through which the DHA exercises authority, direction and control of the MTFs.

Organizational charts that are part of the record show that DHA divides itself into 19 Direct Reporting Markets; two overseas markets, an Indo-Pacific Region Market and a Europe Market; and the SSO Market. All of these markets have their own Directors, and they all report to the DHA Director, General Crosland. And this includes the SSO Market Director, Brigadier General Cox. Mr. Hamilton explained that the SSO Market Director

received the same delegated authority from General Crosland as the other Market Directors.

Organizationally, unlike any of the Direct Reporting Markets, all the MTFs that comprise the SSO Market are further divided into two categories, 17 Small Markets and 41 Stand-Alone MTFs. These distinctions are not present elsewhere within DHA as a whole.



The SSO Market, which is headquartered in San Antonio, Texas just outside of Kelly AFB, is somewhat different than the other DHA markets in one other respect. The SSO Market is composed solely of what DHA refers to as all its “Tier 3” MTFs.

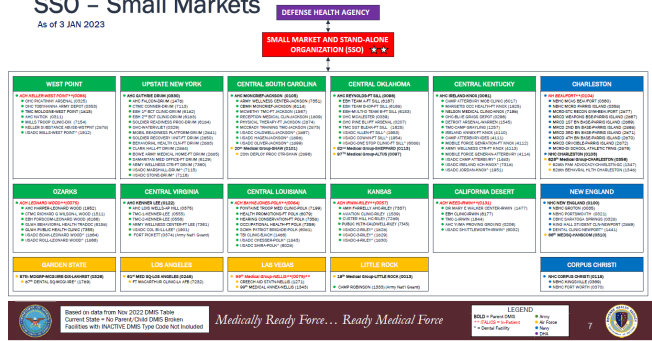
Lieutenant Colonel James Stewart, who works for DHA’s Assistant Director for Healthcare Administration, testified in this matter. Colonel Stewart was involved in the transition and alignment of the MTFs when they were transferred from the Military Departments to the DHA. This includes bringing the SSO Market into what he referred to as “full operating capability” through the REPPS process (Realignment of Personnel, Property, and Systems).

Colonel Stewart explained what makes the SSO Market different than the other markets:

So, in determining the markets as they stand today, the DHA made a list of all of our major MTFs and their associated clinics and assigned complexity scores. We used a number of factors to include the number of beneficiaries enrolled to each of these locations; the number of specialties offered, i.e., was it an outpatient clinic versus an inpatient facility that had hospital, surgery, you know, ICU, et cetera; how many people we had assigned to these MTFs; was there graduate medical education and things of that nature. And as we went through the list, we assigned complexity scores into three tiers. And the Tier 1 and 2 locations ended up becoming what we call those Direct Reporting Markets and the Tier 3 Small Markets and MTFs became part of the SSO.

SSO - Small Markets

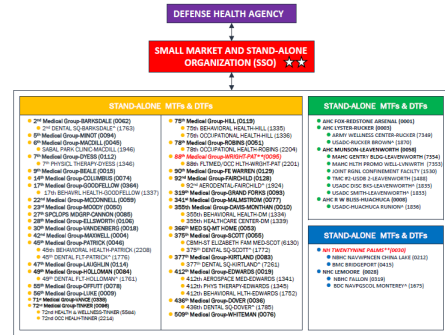
As of 3 JAN 2023



Similarly, in the other part of the SSO Market, the Stand-Alone group, each MTF reports directly to the SSO Market Director. But here, it is not the case that any ostensible parent shown below serves as the lead over any other MTF for any purpose whatsoever.

SSO - Stand Alone MTFs & DTFs

As of 3 JAN 2023



These are all MTFs that have a similar scope and mission in that they provide services. But as the name denotes, they are in a Small Market, typically not located near another Services MTF. They might be very geographically separated and so Stand-Alone. That moniker as well. But, again, these are all in a general [having the] same sort of mission, even though they're geographically separated.

Colonel Stewart explained that within the SSO Market overall, 17 small markets were identified, but this generally is just to depict what he described as the "parent" MTF along with its subordinate "child clinics." Most of the small markets are comprised of a single such parent and its subordinate clinics.

Only four small markets have more than one parent MTF. In such cases, one parent within the market, the one at the top of the chart shown below, is the lead when it comes to matters of patient care, but has no role in personnel decisions. Each parent MTF still reports directly to, and is held accountable by, the SSO Market Director.

The SSO Market has occasionally produced a newsletter for all its MTF employees, both those in small markets or stand-alone MTFs, known as the Pulse. Volume 1, Issue 3 is part of the record, and it contains a variety of articles discussing matters of concern, including addressing the needs of Military Department employees who were transferred to the SSO Market.

The Pulse also featured a write-up about a recent visit by the then SSO Market Director to the California Desert Small Market, including the Fort Irwin National Training Center and the Yuma, Arizona Proving Ground. The article described how being integrated as part of the SSO Market would benefit not only Fort Irwin, but its patients:

Seeing a market's challenges first hand is important because the SSO is responsible for all healthcare delivery within the market. "The SSO distributes the budget to the market director and will monitor metrics on the healthcare delivery at all markets," COL Parson said. "The SSO is also able to provide manning assistance with a market that has a shortfall in staffing."

Fort Irwin beneficiaries have previously voiced concerns about the distance they sometimes have to travel for certain specialties because they are not always available on post. However, joining the SSO will ultimately improve access to care. "[Fort Irwin is] geographically separated by a long distance, so if we can leverage other MTFs to see any sub specialty care that needs to be delivered here or bring any circuit riders in here as well ... that will help," Maj. Gen. Woyak said.

Results may not be immediate, but joining the SSO will be beneficial for the Fort Irwin community. "At the end of the day, when we are fully integrated with all the MTFs, not only in the SSO, but in the [Military Health System], any patient would have the ability to make an appointment at any MTF and receive care no matter where they were located," Maj. Gen. Woyak said.

The statements in this article confirm the fact that DHA exercising control over MTFs instead of Military Departments was a substantial change in operations.

C. The transfer of employees from Military Departments to the SSO Market; employees generally perform the same work in the same locations.

Turning to the actual transfer of Military Department employees to the SSO Market, Mr. Hamilton confirmed that generally speaking, the transferred employees work in the same organizational components that they did before their transfer to DHA and perform the same mission. This was done under what is known as a transfer of function authority. Mr. Hamilton explained it this way:

[When you] execute a transfer of function, it means that that function is being removed from one component or organization to another. In this case the DHA would be the gaining activity and those employees are entitled, if they accept, to move with the function. And they would move doing the same job under the same organizational structure that they were under the MILDEP [Military Department] component, if you will, because the function is now under the DHA as opposed to the MILDEPs.

Testimony and a party stipulation during the hearing established that employee transfers from the Military Departments to the SSO Market occurred in

waves on a rolling basis, roughly between August and September 2022. The record includes what the parties stipulated was a representative sample SF-50 documenting the "Mass Transfer" of employees to the SSO Market effective August 14, 2022. The remarks section of the SF-50 states the justification for the action, "This is in support of the Military Health Transformation NDAA FY17," the same enactment Mr. Hamilton referred to as DHA's charter.

The record also contains an example of the memoranda DHA issued in May 2022 to certain employees who were transferred from their Military Department to the SSO Market effective September 11, 2022. The subject is, Notice of Transfer of Function to the Defense Health Agency. It explained that the employee would not physically relocate but would have a different employer:

Section 702 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328) reformed the administration of the Defense Health Agency (DHA). Specifically, the Act directed the DHA to take responsibility for the administration (i.e., authority, direction, and control) of all military medical treatment facilities (MTFs) beginning 1 Oct 18. The Act further required the Department of Defense to identify and eliminate duplicative Military Service headquarters activities and transfer personnel to the DHA headquarters to support all healthcare delivery functions and responsibilities associated with the administration of MTFs.

...

a. You are entitled to transfer with the function of your position to the DHA in accordance with the provisions of reference 1b. Upon transfer, you will become a DoD employee.

b. You will transfer to the DHA in your current position at your current salary within the local commuting area (i.e., no change in geographical duty location).

Payroll servicing for the SSO Market employees has remained the same as well. The Defense Finance and Accounting Service (DFAS) handles payroll for all SSO Market employees, and actually all of DHA. DFAS provided payroll servicing for these employees when they were part of the various Military Departments.

Accordingly, the record reflects that from the perspective of the SSO Market employees, they are

generally performing the same work in the same MTFs, though their employer and their management structure are now entirely different. They no longer work for individual Military Departments, but are all part of the SSO Market.

D. Similarities and differences among all the MTFs that make up the SSO Market

Carmen Rinehart, the Chief of Staff for the SSO Market, also testified in this matter. She works directly for the SSO Market Deputy Director, Rear Admiral Farrell and the SSO Market Director, Brigadier General Cox. Ms. Rinehart manages all supervisors within the SSO Market.

Ms. Rinehart testified that if there was a “critical shortage” they have the authority to temporarily detail any SSO Market employees from one MTF to another, but they have not actually done so because it is more expeditious to provide coverage with military personnel. She testified that detailing a civilian employee would be considered a last resort.

Mr. Hamilton confirmed that the employees at each individual MTF are not routinely moved between SSO Market facilities. And there is not much interchange or interaction between employees at the various MTFs that constitute the SSO Market. Nonetheless, all of the MTFs within the SSO Market now report directly to the SSO Market Director who reports to the DHA Director.

Ms. Rinehart described the oversight that the SSO Market Director exercises over all MTFs, to include all those in the Small Market group and the Stand-Alone MTFs. In this regard, Ms. Rinehart explained that there is no difference between how her office interacts with any of the MTFs, meaning all those in the Small Markets and the Stand-Alone MTFs, “we don’t have special rules for each group.”

As part of the SSO Market Director’s oversight, Ms. Rinehart testified that her office tracks the budgets that all the MTFs within SSO Market receive from DHA at their headquarters level. This includes tracking all MTF expenditures, whether they are over budget, and whether they are meeting their performance objectives.

Ms. Rinehart described additional MTF oversight by her office. She has several Assistant Directors as part of her staff, including a Senior Physician who works directly with physicians at each MTF regarding quality assurance and patient safety. Her office monitors “all the critical incidents that occur at the MTF[s],” and they also conduct site visits and inspections. But hiring, firing, and disciplinary action decisions are made at the MTF level, and those actions do not require approval beyond the SSO Market level.

E. Common administration of personnel and labor relations for all SSO Market employees

Andrea Dowdy, DHA’s Chief of Labor Management and Employee Relations, testified in this matter. Ms. Dowdy previously worked for the Army’s Civilian Human Resources Agency or CHRA. DHA and CHRA entered into a Memorandum of Agreement whereby CHRA provides DHA with human resources support in a variety of areas, including staffing/hiring, discipline, and benefits throughout DHA, including the SSO Market. Ms. Dowdy stated that in fiscal year 2023, this Memorandum cost DHA approximately \$93 million overall.

CHRA provides specific specialists for different DHA markets. For example, there is a dedicated CHRA support team servicing the entire SSO Market as a whole. This is a virtual team with specialists throughout the country. Ms. Dowdy explained that there should not be differences in how personnel matters are handled at any MTFs within the SSO Market because they all have to adhere to DHA human resources guidance promulgated at the headquarters level by the J-1 policy branch, the branch headed by Mr. Hamilton.

Moreover, Ms. Dowdy explained that CHRA servicing is not divided by any of the individual MTFs that make up the SSO Market. And there is no division based on any of the Small Market groupings in the overall SSO Market, or the Stand-Alone MTF section. The CHRA team provides its services on an SSO Market-wide basis. Ms. Dowdy testified about monthly meetings that include CHRA and the Defense Legal Services Agency, headed by the DoD General Counsel. They are included to promote consistency of service throughout the various SSO Market MTFs.

Mr. Hamilton testified that the policies concerning labor relations, discipline and adverse actions are promulgated at the DHA level and are applicable to all MTFs. And Ms. Dowdy confirmed that there are no substantial differences in personnel policies or benefits between employees throughout the SSO Market. She further testified that DHA Market Directors, which would include the SSO Market Director, are responsible for the administration of awards with their markets. This includes allocating the award amounts available to each MTF within their markets.

All Small Market EEO complaints go to one Equal Opportunity and Diversity Management Office. For all such complaints within the entirety of the SSO Market, there is one primary point of contact, Associate Director Luisa Gonzales. SSO Market supervisors can also submit their EEO questions to a group mailbox set up specifically for the SSO Market.

When asked about the appropriate unit claims made at the hearing, Ms. Dowdy provided her opinion about why DHA's proposed wall-to-wall units would be appropriate. At the present time, the SSO Market is adhering to the collective bargaining agreements applicable to all of its employees and dealing with their existing exclusive representatives. She expressed an interest in reducing the number of collective bargaining agreements, both for efficiency, and because the SSO Market Director is the decision-maker for all matters not addressed by DHA-wide policies.

Ms. Dowdy also provided her opinion about the ACT and NAIL carve-out proposals and the AFGE-NFFE tandem proposal. All of these proposals would result in a reduction in collective bargaining agreements to administer. Insofar as the tandem AFGE-NFFE proposal, she testified, "I believe it would be a workable arrangement if deemed so." But when asked about the feasibility of the additional carve-outs ACT and NAIL proposed, she stated that she did not believe those would be appropriate because decision-makers would have to consider too many contracts with different response times for notification of changes in working conditions in particular.

III. Analysis and Conclusions

The formation of the SSO Market was a transformational event. It necessitated the organizational transfer of employees from 82 different bargaining units. Since then, the SSO Market and its CHRA team have had to grapple with the aftermath, all the separate units at 62 MTFs scattered across the country. Clearly the present situation cannot be maintained indefinitely.

Section 7112 of the Statute provides that employees must be in "an" appropriate unit rather than the most appropriate one.⁴ The SSO Market is an organization with over 7,000 bargaining unit eligible employees, and all are now controlled by the SSO Market Director, General Cox.

The range of units that the parties propose for the SSO Market starts with as few as two units, then three units, six units, up to as many as 58 separate units. The NAIL proposal in particular, the one that would result in 58 units, only incrementally improves the existing situation. A reduction from 82 to 58 units for 62 MTFs, would amount to a slight improvement, but remains an unwieldy number for the sole CHRA team responsible for servicing the entire SSO Market and all these MTFs.

For the reasons that follow, the weight of the evidence is clear. It is not appropriate for the General or his staff to continue to deal with 82 separate units, or any unit configurations based on individual MTFs. This is the nature of all the ACT and NAIL proposals. Preserving their three specific units would result in comparably small units for the CHRA team to administer, given that this is an organization with well in excess of 7,000 employees. And yet their three proposed separate MTF units would consist of approximately 33, 75, and 291 employees respectively. These are small portions considering the overall number of SSO employees and the number of MTFs that would be remaining, an additional 59 of them.

And there is the suggestion that I find that the General and CHRA team be required to deal with 58 separate units. Casting that aside, there could potentially be six units when including any for AFGE and NFFE besides those for ACT and NAIL.

All of the NAIL and ACT claims must be rejected. But the tandem proposal made by AFGE and NFFE, which is acceptable to DHA, results in three appropriate units, a manageable number for the SSO Market. Having three units will also drastically reduce fragmentation throughout the SSO Market. Authority precedent dictates that unwarranted fragmentation is something to be avoided. In another reorganization case, the Authority upheld the determination that, "separating the employees into very small units that would coexist with a larger unit consisting of many geographical sites would result in 'unwarranted fragmentation.'"⁵ The same is true here.

A. The NAIL and ACT unit proposals are not appropriate

The parties all acknowledge that the Authority's well-established successorship doctrine applies to the reorganization that created the SSO Market. The successor unit claims made by ACT and NAIL seek to preserve vestiges of their previous units, and in the case of the 58-unit proposal, previous units that other Unions had as well. But all of these are based on units at the various Military Departments before their employees were transferred to the SSO Market.

The Authority has held that as part of any successorship analysis, unit proposals that approximate the *status quo* should be considered first:

⁴ *Dep't of Commerce, Nt'l. Oceanic and Atmos. Admin. Nt'l Marine Fish. Serv., S.E. Fish. Science Ctr.*, 73 FLRA 238, 241 (2022) (*Fisheries Service*).

⁵ *U.S. Dep't of the Navy, Fleet and Indus. Sup. Ctr., Norfolk, Norfolk, Va.*, 62 FLRA 497, 502 (2008) (*FISC Norfolk*).

[W]hen we are presented with competing successorship claims alleging different appropriate units, we will first consider the appropriate unit claim that will most fully preserve the status quo in terms of unit structure and the relationship of employees to their chosen exclusive representative. If we find that a petitioned-for, existing unit continues to be appropriate, then we will not address any petitions that attempt to establish different unit structures, because the Statute requires only that a proposed unit be an appropriate unit, not the most, or the only, appropriate unit.⁶

Accordingly, the ACT and NAIL unit proposals will be evaluated first. In this regard, the Authority has also stated that when determining whether existing units remain appropriate after a reorganization, the focus should be “on the changes caused by the reorganization” and an assessment of whether those changes render existing units inappropriate.⁷ For the reasons that follow, I find that this was a very significant reorganization, and that reorganization has indeed rendered all existing individual MTF units no longer appropriate.

i. Appropriate Unit Criteria

Under Section 7112 of the Statute, an appropriate unit is one that will ensure a clear and identifiable community of interest among the employees in the unit; promote effective dealings with the agency involved; and promote efficiency of agency operations. The Authority has set forth a variety of factors to assess whether a clear and identifiable community of interest exists. But the Authority has not specified the weight of individual factors or a particular number of factors necessary to establish an appropriate unit. The factors include:

- geographic proximity,
- unique conditions of employment or distinct local concerns,
- degree of interchange between organizational components,
- functional or operational separation,
- whether the employees in the proposed unit are a part of the same organizational component of the agency and support the same mission,
- are subject to the same chain of command,
- have similar or related duties, job titles, and work assignments,

- are subject to the same general working conditions,
- have common supervision,
- the distribution and proportion of employees to be represented,
- the locus and scope of personnel and labor relations authority and functions,
- areas of consideration for merit promotion or reduction-in-force actions,
- delegation to local management, and
- integration of mission and function.⁸

In addition, when considering reorganizations, the Authority has held that changes to budgets, including the way they are managed, are significant factors.⁹

The SSO Market reorganization concerns 62 separate MTFs in 32 states. These MTFs are relatively isolated. But isolation is not a particularly unique feature for any single MTF. The nature of all of the Tier 3 facilities is that they are somewhat isolated. That is part of the reason that all of them are now part of one organization, the SSO Market.

Throughout the SSO Market, the MTFs and their employees have similar medically-related duties. The fact that DHA refers by name to certain MTFs under the overall SSO Market umbrella as “stand-alone” facilities is not a sufficient basis to conclude that separate MTF units remain appropriate based on all the record evidence before me. DHA uses some confounding terminology by referring to parts of the SSO Market as “stand-alone” facilities and the other part consisting of “small markets.”

These descriptors are misleading in terms of operational significance. The record reveals that the SSO Market in its entirety is no more than a collection of all the Tier 3 MTFs found throughout the United States. Some of these MTFs appear on a DHA organizational chart as either stand-alone MTFs or small market ones. Among the stand-alones, they are clustered together on the organizational chart solely because they are at Air Force Bases instead of Navy or Army installations. Such distinctions make little difference in terms of how the SSO Market operates. As Ms. Rinehart testified when describing the oversight her office exercises over all SSO Market MTFs, “we don’t have special rules for each group.”

At this point, every Tier 3 MTF reports directly to the SSO Market Director. They no longer fall under layers of separate and independent chains of command at

⁶ *U.S. Dep’t of the Navy, Cmdr., Naval Base Norfolk, Va.*, 56 FLRA 328, 332 (2000) (*Navy Norfolk*).

⁷ *U.S. Dep’t of the Army, Army Materiel Cmd. HQ., Jt. Munitions Cmd., Rock Island, Il.*, 63 FLRA 394, 405 (2009) (*Rock Island*).

⁸ *U.S. Dep’t of Def., Def. Info. Sys. Agency*, 70 FLRA 482, 485-6 (2018).

⁹ *Rock Island*, 63 FLRA at 402.

the various Military Departments they came from. Once DHA assumed the medical mission, the SSO Market Director started exercising full oversight and operational control over all of them as part of a single DHA market, the SSO Market.

The Authority has stated that, “changes in the chain of command may affect unit employees’ ability to deal collectively with management as a single group.”¹⁰ That is an overriding consideration for the SSO Market reorganization. Moreover, as relevant here, the Authority has explained that:

[C]hanges in chains of command may affect unit employees' ability to deal collectively with management as a single group. This is true particularly in situations where unit employees have been organizationally separated into different chains of command, with different management officials holding independent bargaining authority.¹¹

Likewise, the various Military Departments that had separate chains of command and independent bargaining authority for any MTFs under their purview are no longer involved. DHA has assumed the entire medical mission. In this new environment, NAIL’s 58-unit proposal does not comport with the unified chain of command that now exists, nor do ACT and NAIL’s other unit proposals that would preserve relatively small separate units for their separate MTFs, the largest one being a unit of about 291 employees out of 7,409 SSO Market employees. And ACT’s unit of 33 employees was with the Air Force, as was one of NAIL’s units. But the other NAIL unit was with the Army. Those distinctions no longer apply in terms of the new chain of command.

Now, the chain of command runs from each MTF directly to General Cox and his supporting office rather than a variety of Military Departments and their organizational structures. There are not intermediate levels of supervision with significant independent authorities that would support administering 58 separate units. And this amounts to nearly the same number of MTFs themselves, as there are 62 MTFs within the SSO Market. That is nearly one unit for each MTF under this NAIL unit proposal.

But all the SSO Market MTFs are now subject to the same standards based on generally applicable DHA policies generated by Mr. Hamilton’s office. And Ms. Rinehart’s office provides close supervision to all the

SSO Market MTFs on behalf of General Cox. This was part of the reason that DHA was established in the first place, to bring the medical mission under one organizational roof.

Ms. Rinehart’s office tracks the budgets and expenditures for all the MTFs within the SSO Market and assesses whether they are all meeting their performance objectives. And she has a Senior Physician working directly with physicians at each MTF for quality assurance and patient safety, conducting site visits and inspections. In addition, her office monitors “all the critical incidents that occur at the MTF[s].” The SSO Market Director has one awards budget for the entire market, and the authority to allocate it among all his Tier 3 MTFs.

Each MTF retains the ability to make decisions related to hiring, firing, and discipline, but as Ms. Dowdy testified, all MTFs within the SSO Market receive support in such matters from one dedicated CHRA support team. This team provides all personnel and labor relations support for the entire SSO Market. There are no separate CHRA teams for separate MTFs.

It is also true that employees from one SSO Market MTF are not routinely transferred to another SSO Market MTF, even on a temporary basis. While the SSO Market does have this authority, as a practical matter, it is not regularly exercised because it is simply more expeditious to order a military member with medical skills to provide coverage instead. Moreover, despite being given the opportunity to do so, no party presented evidence at hearing of any significant unique conditions of employment found exclusively at any particular MTF.¹²

Considering the weight of all record evidence, I do not find that preserving units based on separate MTFs continues to be appropriate. The separate MTF units proposed by ACT and NAIL no longer have a separate or distinct communities of interest.¹³ Although individual MTFs have some authority over matters of discipline, hiring and firing, and there is not much interchange between employees at the different MTFs, the SSO Market Director now exercises significant operational control over all Tier 3 MTFs.

I find that they are now all subject to the same general working conditions established by DHA rather than any from their former various Military Departments. And they are all subject to the same personnel and labor relations policies and serviced by the same CHRA team which provides its support throughout the SSO Market. Therefore, maintaining any number of relatively small

¹⁰ *Norfolk*, 56 FLRA at 333.

¹¹ *Id.*

¹² *FISC Norfolk*, 62 FLRA at 501 (Affording the parties with “opportunities to present evidence” is sufficient.).

¹³ *U.S. Dep’t of the Navy, Commander, Navy Region Mid-Atlantic*, 64 FLRA 782, (2010) (*Navy Mid-Atlantic*).

MTF-specific units is no longer appropriate as they no longer have separate and distinct communities of interest.¹⁴

i. Effective dealings would be impaired by preserving the ACT and NAIL MTF unit carve-outs

Effective dealings refers to the relationship between management and the exclusive representative in an appropriate bargaining unit. Factors to consider here include the past collective bargaining experience; the locus and scope of authority of the responsible personnel office administering personnel policies covering employees in the proposed unit; the limitations, if any, on the negotiation of matters of critical concern to employees in the proposed unit; and the level at which labor relations policy is set in the agency.¹⁵

As noted above, the MTFs that were formerly separated by chains of command that ran to the various Military Departments no longer apply. They are all integrated into one agency, the DHA, and are under the control of the SSO Market Director.

This sea change in the chain of command is appropriately considered when evaluating effective dealings as well. As the Authority has explained:

[C]hanges in chain of command may also be relevant in assessing the second and third appropriate unit criteria. In assessing the second criterion -- whether recognition of a proposed unit would promote effective dealings -- the Authority considers, among other things, the limitations, if any, on the negotiation of matters of critical importance to employees in the proposed unit, and the level at which labor relations policy is set in the agency.¹⁶

No individual MTF that is part of the SSO Market has the authority to set labor relations policy. The authority that exists resides with Brigadier General Cox as the SSO Market Director, and is effectuated through his sole CHRA team throughout the entire SSO Market.

In this regard, I have considered the testimony of Ms. Dowdy, DHA's Chief of Labor Management and Employee Relations, that was un rebutted by any other witness. From her vantage point, the ACT and NAIL proposals would simply result in too many contracts with varying response times, rendering dealings ineffective. In

her view, administering no more than three contracts is manageable for the CHRA team, but dealing with six or as many as 58 separate units is not.

On cross-examination, NAIL's representative challenged Ms. Dowdy, suggesting that despite her contrary testimony about the manageable number of units for the SSO Market, it really should not be that difficult for the CHRA team to maintain spreadsheets to track the various Union officials that might represent numerous bargaining units, or presumably the variations in their agreements as applicable, when they provide services and guidance to individual MTFs. But I find this grossly underestimates the enormity of such an undertaking, particularly if 58 units are involved as NAIL proposed. Requiring a single CHRA team to administer numerous bargaining units with their attendant collective bargaining agreements amounts to a considerable expenditure of resources. This is simply not tenable under the now-existing circumstances where all Tier 3 MTFs are part of a single organization.

The fact that the MTFs are somewhat isolated is not a determining factor. In another reorganization case where it was found that "transferred employees do not have frequent interaction with other . . . employees, as they are located in different geographic locations," the Authority sustained a determination that all employees had become "organizationally and operationally integrated," rendering existing small units no longer appropriate.¹⁷ The same is true for all the Tier 3 MTFs that comprise the SSO Market.

Considering all the record evidence, nothing particularly unique about any of the Tier 3 MTFs that make up the SSO Market was articulated. They all must apply the same policies set forth by DHA, and the SSO Market exercises considerable oversight to ensure that all MTFs adhere to these guidelines. Maintaining a multitude of separate MTF units indefinitely would not be rational or effective given this new integrated organizational structure that applies uniformly to all 62 MTFs in the SSO Market. Accordingly, individual MTF units no longer maintain separate and distinct communities of interest.

ii. The ACT and NAIL carve-out proposals impede efficient operations

Efficiency of agency operations concerns the "benefits to be derived from a unit structure which bears some rational relationship to the operational and organizational structure of the agency." When a unit bears a rational relationship to an agency's operational and

¹⁴ *FISC Norfolk*, 62 FLRA at 501-502.

¹⁵ *Navy Fleet and Indus. Supply Ctr., Norfolk, Va.* 52 FLRA 950, 961 (1997) (*FISC*).

¹⁶ *Norfolk*, 56 FLRA at 333.

¹⁷ *FISC Norfolk*, 62 FLRA at 499-500.

organizational structure, it could result in economic savings and increased productivity for the agency. Factors to be examined pertain to the effect of the proposed unit on agency operations in terms of cost, productivity and use of resources.¹⁸

And when a change in the chain of command brings about changes to an agency's operational and organizational structure, the change in chain of command could create a situation where existing units no longer bear a rational relationship to that structure.¹⁹ In this regard, the chain of command for the SSO Market is now wildly different than what it had been, given that the involvement of the various Military Departments has been eliminated in favor of DHA.

The determination of Congress that DHA assumed the healthcare delivery mission throughout the DoD rather than leaving it to the various Military Departments must be acknowledged. Clearly, this was done to facilitate more effective and consistent medical services at all treatment facilities regardless. This is a strong indication of what a rational relationship to the overall DHA mission, and that of the SSO Market in particular, was intended to achieve. This includes centralizing control of all Tier 3 MTFs under one market. The record reflects that the SSO Market is one of 21 DHA markets. It is unique in that it consists of all DHA Tier 3 MTFs. But otherwise, it is no different than the other DHA markets, and at a certain point, these markets cannot be carved up into too many pieces for collective bargaining purposes. ACT and NAIL have demonstrated what a bridge too far looks like here.

These Unions are attempting to maintain some version of existing bargaining relationships that were founded on drastically different organizational structures, when MTFs were controlled by different Military Departments rather than unified under one roof within the SSO Market.

Maintaining divisions based on individual MTFs does not bear a rational relationship to the SSO Market's current operational and organizational structure. For example, is not rational to expect General Cox or his CHRA team to keep track of varying and numerous obligations for the between six and 58 separate small units that these carve-out proposals could spawn. As the Authority previously affirmed in a similar situation, "separating the employees into very small units" when they are all part of the same organization and subject to the same personnel and labor relations policies, does not promote effective dealings and efficient operations.²⁰

Likewise here, none of these individual MTF small unit proposals satisfy the appropriate unit criteria.

B. The tandem unit proposal results in three units that are all appropriate

Resolution of this matter does not depend on finding the ideal bargaining unit. The tandem proposal presented by AFGE and NFFE is acceptable to DHA. They are appropriate, and that is sufficient. As the Authority recently affirmed:

[P]recedent is clear that a unit only needs to be *an* appropriate unit, not the *most* appropriate unit.²¹

For the reasons that follow, the three units that comprise the tandem proposal all satisfy the appropriate unit criteria.

In terms of community of interest, starting with the proposed wall-to-wall unit of all professional SSO Market employees, it is plainly appropriate. Wall-to-wall, or agency-wide units, are specifically authorized in the Statute itself.²² Consistent with long-standing Authority policy, such units avoid fragmentation as much as possible, and reducing fragmentation is an important consideration, one not present in the ACT and NAIL proposals that could result in as many as 58 separate units.²³

Similarly, the two nonprofessional SSO Market units that are part of the tandem proposal also result in appropriate units that reduce fragmentation to a considerable extent. The larger nonprofessional unit that AFGE seeks is essentially nearly a wall-to-wall one, minus the approximately 724 nonprofessional employees NFFE would retain in its larger and more comprehensive new unit. A reduction from 82 bargaining units to three large ones represents a meaningful effort to reduce fragmentation within the SSO Market and is commendable. No doubt that is why this three-unit tandem proposal is acceptable to the DHA.

These units include employees in all the Tier 3 MTFs, which are similar in nature as previously discussed. All the professional medical employees would be in a single bargaining unit, and all nonprofessional employees would be in one of two units. NFFE points out that for the nonprofessional unit it seeks, all three MTF sites where its employees are found are on Army bases, so its unit would have that common element as well.

¹⁸ *FISC*, 52 FLRA at 961-2.

¹⁹ *Norfolk*, 56 FLRA at 333.

²⁰ *FISC Norfolk*, 62 FLRA at 502.

²¹ *Fisheries Service*, 73 FLRA at 241 [emphasis in original].

²² *Norfolk*, 56 FLRA at 332.

²³ *Norfolk*, 56 FLRA at 333.

All the professional and nonprofessional SSO Market employees have similar and related job responsibilities. They support the same overall medical mission and are subject to the same chain of command under Brigadier General Cox. And all receive the same mission oversight from Ms. Rinehart's office, as well as personnel and labor relations support from the same CHRA team. General Cox allocates the budget and awards available to each MTF in the SSO Market. They all receive the same payroll servicing by DFAS. Considering all record factors, I find a sufficient community of interest present to establish all three units sought.

These unit proposals promote effective dealings as well. There is one clear locus and scope of authority for personnel policies, along with those that address labor relations, discipline and adverse actions. All such policies are promulgated at the DHA headquarters level and administered by the SSO Market Director through his subordinate office and the CHRA team for application throughout the SSO Market regardless of location.

The tandem unit proposals bear a more rational relationship to the structure of the SSO Market as well, and thus promote efficiency of operations. Certainly, the wall-to-wall professional unit bears the most rational relationship among the three. But DHA would not have agreed on the record to the three-unit tandem proposal unless it had already made a favorable assessment of the effect of the units in terms of cost, productivity and use of resources. Unquestionably, the Agency would have opposed this unit configuration otherwise.

C. Based on successorship principles, under the tandem proposal, no elections are required for the two AFGE units or the NFFE unit

The successorship test set forth by the Authority requires that when a reorganization occurs, the transferred employees must be in an appropriate unit after the transfer and constitute a majority of the employees in such unit.²⁴ As explained above, the three units resulting from the tandem proposal are all appropriate. For AFGE, this includes the wall-to-wall unit of all professional SSO Market employees and a unit of all nonprofessional employees that excludes those in the new NFFE nonprofessional unit.

In addition, the gaining entity must have substantially the same organizational mission as the losing

entity, with the transferred employees performing substantially the same duties and functions under substantially similar working conditions.²⁵ This is satisfied for all SSO Market employees in both the professional and nonprofessional categories.

All medical employees transferred from the various Military Departments to the SSO Market have substantially similar duties and functions and work in the same facilities, i.e., the Tier 3 MTFs that continue to be located at various Army, Navy, and Air Force installations. But the employees no longer report through those chains of command. Nonetheless, the medical mission remains the same. DHA assumed that responsibility overall, and the SSO Market assumed it in particular for all Tier 3 MTFs. That was not really a contested matter. The only remaining consideration is whether any elections are necessary to determine the exclusive representative of the two AFGE units or the NFFE unit.²⁶

When there are multiple unions involved, no election is necessary to determine the exclusive representative if one of them is sufficiently predominant, meaning that it represents more than 70% of the employees in the new unit.²⁷ Here, the necessary threshold is satisfied in each unit. When local unions affiliated with the same national union hold their certifications independently, the Authority has acknowledged aggregation of the total number of employees represented by all affiliated locals in order to satisfy the requisite predominance threshold.²⁸

i. The numbers that establish no elections are necessary

Starting with the NFFE unit I have found appropriate, which includes nonprofessional employees at Fort Irwin, Fort Jackson, and Fort Sill, the certified exclusive representatives are identified, along with the approximate total number of employees transferred to the SSO Market from each existing unit:

NFFE Local 2035, Fort Irwin	108 employees
NFFE National, Fort Jackson	237 employees
NFFE Local 273, Fort Sill	379 employees
Total	724 employees

This shows that NFFE National is the exclusive representative for Fort Jackson, but two of its locals hold their own certifications independently, the ones at Fort Irwin and Fort Sill. NFFE National is willing to hold

²⁴ *Naval Facilities Eng'g Serv. Ctr., Port Hueneme, Cal.*, 50 FLRA 368 (1995).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Dep't of the Army, U.S. Army Aviation Missile Command (AMCOM), Redstone Arsenal, Ala.*, 56 FLRA 126, 131 (2000) (*Redstone Arsenal*).

²⁸ *NDW*, 60 FLRA at 475 (aggregation of bargaining units affiliated with the same parent union); *U.S. Dep't of the Navy, Mid-Atl. Reg'l. Maint. Ctr., Norfolk, Va.*, 61 FLRA 530 (2006) (aggregation applied when some employees were represented by IFPTE Local 10 and some by IFPTE national to achieve the required threshold).

the new SSO Market unit certification. And aggregating all these employees results in NFFE National being sufficiently predominant in the aforementioned appropriate unit. Accordingly, an election is unnecessary.²⁹

Turning now to the professional wall-to-wall unit, except for AFGE, all other Unions that have professional employees in their existing units have disclaimed any representational interest in them. These are all noted with an asterisk *. There are also a fairly large number of unrepresented employees, though not enough to affect the outcome.

AFGE and its affiliated locals	1,141
ANA*	15
IAM*	12
NAGE and its affiliated locals*	18
NFFE and its affiliated locals*	40
Unrepresented	819
Total	2,045

Considering all applicable disclaimers and aggregating all affiliated locals, in essence, there is only one Union remaining for all professional employees, AFGE. And in successorship cases where only one Union is involved, no election is necessary if that union represents more than 50% of the total number of unit employees.³⁰ Here, AFGE represents 56% of all professionals in the proposed wall-to-wall unit, thereby exceeding the required threshold. Accordingly, an election is unnecessary in a unit of all professional SSO Market employees.

Finally, here are the totals for the unit consisting of all nonprofessional employees except for those who will be in the NFFE unit. I note that NFFE disclaimed interest in all remaining employees it currently represents. This includes all those at certain Air Force Bases, including Barksdale AFB, Holloman AFB, Sheppard AFB, and Vandenberg AFB. They are all reflected in the totals below, along with those currently represented by all the other Unions. Again, all disclaimers are noted with an asterisk:

ACT	33
AFGE and its affiliated locals	3,681
IAM*	75
Int'l Brotherhood of Painters	29
Metal Trades	1
NAGE*	159
NAIL	366
NFFE and its affiliated locals*	133
Unrepresented	163
Total	4,640

Here, there are 4,640 nonprofessional employees, and in order to satisfy the sufficiently predominant standard, one Union has to represent more than 3,249 employees. AFGE represents over 79% of the total, well in excess of the required threshold to avoid an election in this nonprofessional unit.

IV. Order

As no elections are necessary in the three units I have found appropriate based on successorship, I will certify AFGE as the exclusive representative of the following two units:

Included: All professional employees of the Small Market and Stand-Alone Organization (SSO), Defense Health Agency.

Excluded: All nonprofessional employees; management officials; supervisors; and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7).

Included: All nonprofessional employees of the Small Market and Stand-Alone Organization (SSO), Defense Health Agency.

Excluded: All nonprofessional employees at the Army Health Clinic (AHC) Moncrief, at Fort Jackson; AHC Weed-Irwin, at Fort Irwin; and AHC Reynolds at Fort Sill; all professional employees; management officials; supervisors; and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7).

And I will certify NFFE as the exclusive representative of the following unit:

²⁹ *Redstone Arsenal*, 56 FLRA at 131 (“a union that represents more than 70 percent of the employees in a newly combined unit formerly represented by two or more unions is sufficiently predominant to render an election unnecessary because such an election would be a useless exercise.”).

³⁰ *BLM, Sacramento, Cal. & BLM, Ukiah Dist. Office*, 53 FLRA 1417, 1422 (1998) (*BLM*).

- Included: All nonprofessional employees of the Small Market and Stand-Alone Organization (SSO), Defense Health Agency located at the Army Health Clinic (AHC) Moncrief, at Fort Jackson; AHC Weed-Irwin, at Fort Irwin; and AHC Reynolds at Fort Sill.
- Excluded: All other nonprofessional employees; professional employees; management officials; supervisors; and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7).

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 **November 28, 2023**, 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.³¹

John R. Pannozzo
San Francisco Regional Director

Date: September 29, 2023

³¹ To file an application for review electronically, go to the Authority's website at [ww.flra.gov](http://www.flra.gov), select eFile under the Filing a Case tab and follow the instructions.