

FEDERAL LABOR RELATIONS AUTHORITY

OFFICE OF THE GENERAL COUNSEL

REPRESENTATION

CASE LAW OUTLINE

INTRODUCTION

WHAT IS THE OUTLINE OF REPRESENTATION CASE LAW?

The Office of the General Counsel issued this outline of representation case law to provide our parties with more effective and meaningful tools to understand the application of Authority case precedent in that process.

A comprehensive overview of representation-case issues offers our parties a resource that is not otherwise available to them. By openly discussing case law and sharing with parties the same topical material relied upon by FLRA field investigators and decision-makers, we hope to promote a better understanding by employees, labor organizations and agency management of representation issues.

A complete description of all aspects of representation case processing and decision-making process can be found in the FLRA Office of General Counsel Representation Case Handling Manual ([REP Manual](#)), which is also posted on this website. The REP Manual is a tool used by all OGC staff for questions about pre-petition meetings, filing and docketing of REP petitions, their processing, conducting elections and hearings, RD decisions and disposition of cases. This website also contains Frequently Asked Questions (FAQs) about:

- [REP Petitions](#)
- [REP Proceedings: Investigations and Hearings](#)
- [REP Proceedings: REP Elections](#)
- [REP Proceedings: Interventions](#)

With any general overview of legal precedent, this *Outline* cannot address all issues which may arise in the workplace and is not intended to be a substitute for independent legal research. Unique factual circumstances may always impact legal findings and that is certainly true in federal sector labor relations. This *Outline* offers a comprehensive summary to assist our parties in their legal analysis of REP issues. It is, however, only meant to be a starting point for research and shouldn't be used as a substitute for comprehensive research of any REP issue.

ORGANIZATION OF THE FLRA

The Federal Labor Relations Authority (FLRA) is an independent administrative federal agency created by Title VII of the *Civil Service Reform Act of 1978*, which is commonly known as the [Federal Service Labor-Management Relations Statute](#) (Statute). The Statute recognizes the right of most non-postal federal employees to bargain collectively and to participate, through labor organizations of their choice, in decisions affecting their conditions of employment. Employees of the U.S. Postal Service are covered under a different law – *The Postal Reorganization Act of 1970*.

The FLRA consists of several components. They are:

- the Authority
- the Federal Service Impasses Panel
- the Foreign Service Labor Relations Board
- the Foreign Service Impasse Disputes Panel
- the Office of the General Counsel

[For a full discussion of the duties and functions of each FLRA component, please visit the FLRA website at www.flra.gov. Following is a general overview of those functions.]

The Authority is a quasi-judicial body with three full time members appointed by the President, with the advice and consent of the Senate. The Authority adjudicates unfair labor practice disputes and issues raised by representation petitions and exceptions to grievance arbitration awards, and resolves negotiability disputes raised by the parties during collective bargaining.

The Federal Service Impasses Panel (FSIP) resolves impasses between federal agencies and unions representing federal employees. The FSIP consists of seven Presidential appointees who serve on a part-time basis and a staff which also supports the Foreign Service Impasse Disputes Panel. The FSIP may utilize a variety of dispute resolution procedures in assisting the parties, including informal conferences, mediation, fact-finding, written submissions, mediation-arbitration, or the imposition of contract terms through a final action.

The Foreign Service Labor Relations Board, which is composed of three members appointed by the Chairman of the FLRA (who also serves as Chairman of the Board), was created by the *Foreign Service Act of 1980* to administer the labor-management relations program for Foreign Service employees in the U. S. Information Agency, the Agency for International Development and the Departments of State, Agriculture and Commerce. The FLRA General Counsel also serves as General Counsel for the Board. Similarly, the Foreign Service Impasse Disputes Panel,

also created by the *Foreign Service Act of 1980*, consists of three part-time members appointed by the Chairman, and resolves impasses for the Foreign Service employees of the agencies noted above.

The Office of the General Counsel (OGC) operates under the direction of the General Counsel, who is appointed by the President, with the advice and consent of the Senate. The General Counsel has direct authority over and responsibility for both headquarters staff of the OGC and field staff of all regional offices around the country. OGC employees investigate unfair labor practice charges filed in the regional offices, file and prosecute complaints, resolve questions concerning representation and similar issues raised in representation petitions, and provide training and alternative dispute resolution services to both labor and management. Staff of each Regional Office, the FLRA Members, and the OGC collaborated to produce the *Representation Case Law Outline* to assist our parties in understanding representation issues.

1. DEFINITION OF EMPLOYEE

The Statute provides that employees of federal agencies may be included in bargaining units.

Does the Statute define “employee?”

Yes. An employee is an individual employed in an agency or an individual who lost employment because of a violation of section 7116 of the Statute, and has not been able to secure substantially equivalent employment. 5 U.S.C. § 7103(a)(2). Specifically **excluded** are the following:

- An alien or noncitizen of the U.S. who occupies a position outside the U.S.
- A member of the uniformed services
- A supervisor or management official
- An officer or employee in the Foreign Service of the U.S. employed by the Department of State, the International Communication Agency, the Agency for International Development, the Department of Agriculture, or the Department of Commerce
- Any person who participates in a strike in violation of 5 U.S.C. § 7311

The following meet the statutory definition of “employee:”

- **Off-duty military personnel**, who are employed by an agency, are employees and may not be excluded from bargaining units based solely on their military status. *See Navy Exch., Mayport, Fla.*, 1 A/SLMR 142 (1970)
- **Teachers employed by the Department of Defense Dependents Schools system** are employees, not independent contractors. *See Fort Knox Dependents Schs.*, [5 FLRA 33](#) (1981)
- Registered aliens working within the United States are employees under section [7103\(a\)\(2\)](#). *See U.S. Dep’t of the Treasury, IRS, Detroit Dist., Detroit, Mich.*, [38 FLRA 52](#) (1990)
- **Employees under special purpose Intergovernmental Personnel Act assignments** “remain employed in an agency” within the meaning of section [7103\(a\)\(2\)\(A\)](#) of the Statute. Individuals detailed to work at an Indian health care facility remain section [7103\(a\)\(2\)](#) employees, because [5 U.S.C. § 3373](#) dictates that they remain employees of the agency. *Phoenix Area Indian Health Serv., Sacaton Serv. Unit, Hu Hu Kam Mem. Hosp., Sacaton, Ariz.*, [53 FLRA 1200](#) (1998), *motion for reconsideration denied*, [54 FLRA 243](#) (1998) and *Phoenix Area Indian Health Serv., Owyhee Serv. Unit (Owyhee PHS Indian Hosp., and Elko Clinic) Owyhee, Nev.*, [53 FLRA 1221](#)(1998)

The following don't meet the statutory definition of "employee:"

- **VISTA (Volunteers in Service to America) volunteers** because they are denied status as federal employees under the Economic Opportunity Act of 1964. *VISTA*, 1 A/SLMR 445 (1974).
- **Recruits who have been offered positions pending successful completion of final certification procedures or pre-employment examinations.** See *Dep't of Defense Office of Dependent Schs.*, [36 FLRA 871](#) (1990).
- **Employees participating in a Compensated Work Therapy (CWT) program at the Department of Veterans Affairs.** Participants in rehabilitative work programs are not "considered employees of the United States for any purpose." [38 U.S.C. § 1718\(a\)](#). Section 1718 operates as a statutory exclusion from the Statute. *U.S. Dep't of Veterans Affairs, Hunter Holmes McGuire Med. Ctr.*, [54 FLRA 471](#) (1998).
- **Purchase Order Vendors (POVs)** are independent private contractors. They are not paid under the federal civil service pay systems. They are required to submit a detailed invoice for their work. They are not under the control of the Agency because their contracts provide that they are "free from direction or control by any Government employee with respect to the manner or method of its performance of the services specified." *Int'l Broad. Bureau, Broad. Bd. of Governors, Wash. D.C.*, [63 FLRA 42](#) (2008).
- **Employees of a private-sector employer which had a contract with DOL** to operate a Job Corps Center were not employees of an Executive Agency. *U.S. Dep't of Labor and Operations Maint. Serv., Inc. (Keystone Job Corps Ctr.)*, [32 FLRA 622](#) (1988).

2. DEFINITION OF AGENCY

Does the Statute define "agency"?

Yes. An agency is an Executive agency, including a nonappropriated fund instrumentality, the Veterans' Canteen Service, the Library of Congress, the Government Printing Office, and the Smithsonian Institution. [5 U.S.C. § 7103\(a\)\(3\)](#)

Are any Federal agencies and their employees specifically excluded from the Statute's coverage?

Yes. These agencies are specifically excluded under [5 U.S.C. § 7103\(a\)\(3\)](#):

- Government Accountability Office
- FBI

- CIA
- National Security Agency
- Tennessee Valley Authority
- Federal Labor Relations Authority, including the Federal Service Impasses Panel
- U.S. Secret Service and the U.S. Secret Service Uniformed Division.

Also excluded is the U.S. Postal Service because it is a government-owned corporation and is not an agency within the meaning of section [7103\(a\)\(3\)](#). The Postal Service and its employees are subject to the National Labor Relations Act. *U.S. Postal Serv., Dallas, Tex.*, [8 FLRA 386](#) (1982).

Can other entities be excluded from the Statute’s coverage?

Yes. The President can exclude entities through Executive Orders. 5 U.S.C. § [7103\(b\)\(1\)](#).

What governmental entities are covered by the Statute?

Except for those specifically excluded by law, or by Presidential Executive Order, all other Federal agencies or entities are covered by the Statute.

- *Kennedy Ctr. for the Performing Arts, Wash., D.C.*, [45 FLRA 835](#) (1992) (Kennedy Center is a bureau of the Smithsonian Institution, which is an agency within the meaning of the Statute).

3. DEFINITION OF LABOR ORGANIZATION AND CHALLENGES TO THE STATUS OF A LABOR ORGANIZATION

Does the Statute define a “labor organization”?

Yes. Section [7103\(a\)\(4\)](#) of the Statute provides:

[A]n organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include-

(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by an agency; or

(D) *an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike.*

What does the Authority consider in deciding if an organization meets the statutory definition of labor organization?

In interpreting section [7103\(a\)\(4\)](#) the Authority has found:

- A formal dues structure is not necessary to establish that a union is a labor organization. When applying the definition of the term “dues” in section [7103\(a\)\(5\)](#) of the Statute, the Authority examines whether there is evidence that employees paid dues, fees or assessments. *U.S. Dep’t of Veterans Affairs*, [35 FLRA 172](#), 177 (1990) (VA).
- A newly-formed labor organization is not required to have collected dues money by or on the date of certification. *Id.*, *Pension Benefit Guaranty Corp.*, [65 FLRA 635](#), 637 (2011).
- A union in the formative stages of developing its structure and operations will not necessarily operate with the degree of formality or precision expected of a labor organization. Such lack of formality does not alone establish that a union is not a labor organization. VA.
- Being in trusteeship will not alone suffice to disqualify a union as a labor organization. *Terminal Sys. Inc.*, [127 NLRB 979](#) (1960).
- A union that engaged in an unlawful strike against a federal agency was no longer a labor organization under section [7103\(a\)\(4\)\(D\)](#), and its certification was revoked. *PATCO, affiliated with MEBA, AFL-CIO*, [7 FLRA 34](#) (1981).

Can you challenge the status of a labor organization in a representation case?

Yes.

On what basis can you challenge the status of a labor organization?

Under section [2422.11](#) of the Authority’s Regulations you can challenge the status of a labor organization only on the basis that it does not meet the definition in 5 U.S.C. [7103\(a\)\(4\)](#).

Challenges may also be filed under 5 U.S.C. [7111\(f\)\(1\)](#) of the Statute, which prohibits granting exclusive recognition to a union which is subject to corrupt or undemocratic influences. *USIA, Wash., D.C.*, [53 FLRA 999](#), 1004 (1997) (a petition filed by an employee seeking revocation of a union’s certification under 5 U.S.C. [7111\(f\)\(1\)](#) does not need to be supported by a 30% showing

of interest).

What standard does the Authority apply in determining if a union is subject to corrupt or undemocratic influences?

The Authority's standard is found in *New York Nat'l Guard*, [53 FLRA 111](#) (1997) (*NYNG*).

- A labor organization is presumed free from corrupt and anti-democratic influences if it is subject to and subscribes to governing requirements that meet certain, specified standards found in 5 U.S.C. [7120\(a\)\(1\) through \(4\)](#). *Id.* at 119.
- **But that presumption may be rebutted**, and a union must furnish evidence of freedom from corrupt or anti-democratic influences if there is reasonable cause to believe that (1) the union has been suspended or expelled from, or was otherwise sanctioned by, a parent organization because of a demonstrated unwillingness to comply with proper governing requirements or (2) the union is, in fact, subject to influences that would preclude recognition. *Id.* at 121.
- If reasonable cause is established, the burden of proof shifts to the accused labor organization to show that it is free from influences that would preclude recognition. The Authority will determine whether the evidence shows that a labor organization has met this burden by demonstrating, for example, that the violation found by a third party has been cured, or the violation found by a third party is in effect *de minimis* and insufficient to warrant denial or revocation of a certification. *Id.* at 125.

Do guidelines exist to determine whether a party has established reasonable cause to rebut the presumption that the union is free from corrupt or undemocratic influences?

Yes. See [NYNG at 121-24](#). They are:

- A finding by a third party (with jurisdiction over the allegations asserted to establish that a labor organization is subject to corrupt or anti-democratic influences) may establish reasonable cause to proceed with a claim under 5 U.S.C. 7111(f)(1).
- Dismissal of such allegations by a third party, such as DOL, sufficient to establish the absence of reasonable cause to believe that denial of certification is required under 5 U.S.C. [7111\(f\)\(1\)](#).
- If a complaint is pending before a third party at the time that a section [7111\(f\)\(1\)](#) challenge is filed, the Authority will stay its proceedings pending disposition of the third-party proceeding.

- If there are allegations of corrupt or anti-democratic influences before the Authority, and the RD believes that they must be resolved by the DOL, the RD will instruct the party who filed the claim to first obtain the DOL's decision on those matters.
 - If such action is initiated within a reasonable time, the Authority may stay any underlying representation petition until a decision is rendered.
 - If such action is not initiated within a reasonable time, the Authority, where appropriate, will apply the presumption contained in section [7120](#) and proceed accordingly.

4. APPROPRIATE-UNIT DETERMINATIONS

Section [7112 \(a\)](#) of the Statute (§ [7112\(a\)](#)) requires the Authority to determine whether a petitioned-for or existing unit is appropriate for exclusive recognition. See 5 U.S.C. § [7112\(a\)](#).

What standard does the Authority use to determine whether a unit is appropriate?

The standard: The Authority examines whether the unit would:

1. Ensure a clear and identifiable community of interest among employees in the unit;
2. Promote effective dealings with the agency; *and*
3. Promote efficiency of the operations of the agency.

See *Id.* See also *U.S. Dep't of the Navy, Fleet & Indus. Supply Ctr., Norfolk, Va.*, [52 FLRA 950](#), 959-62 (1997) (*FISC*).

- The Authority applies these three criteria on a case-by-case basis. See *U.S. Dep't of the Army, Military Traffic Mgmt. Command, Alexandria, Va.*, [60 FLRA 390](#), 394 (2004) (*MTMC*) (Chairman Cabaniss concurring in relevant part, dissenting as to other matters).
- The Authority has not specified the weight of individual factors or a particular number of factors necessary to establish an appropriate unit. See *Id.* See also *U.S. Dep't of the Air Force, Travis Air Force Base, Cal.*, [64 FLRA 1](#), 7 (2009) (Member Beck dissenting) (*Travis AFB*); *U.S. Dep't of the Air Force, Lackland Air Force Base, San Antonio, Tex.*, [59 FLRA 739](#), 741-42 (2004) (*Lackland AFB*). Cf. *U.S. Dep't of the Army, U.S. Army Reserve Command, Fort McPherson, Ga.*, [57 FLRA 95](#), 96-97 (2001) (*Fort McPherson*). Some factors may weigh against finding a unit appropriate, but that doesn't mean that the unit is not appropriate, if other factors support finding the unit appropriate. See, e.g., *U.S. Dep't of Commerce, U.S. Census Bureau*, [64 FLRA 399](#), 402-03 (2010) (*USCB*); *Travis AFB*, [64 FLRA at 7-8](#).

How does the Authority assess whether the unit would ensure a clear and identifiable community of interest among employees in the unit?

A community of interest involves a commonality or sharing of interests between employees in a unit. This ensures that employees can deal collectively with management as a single group.

See *Travis AFB*, [64 FLRA at 6](#) (citing *FISC*, [52 FLRA at 960](#)).

- The Authority considers factors such as whether the employees in the proposed unit:
 - Are part of the same organizational component of the agency;
 - Support the same mission;
 - Are subject to the same chain of command;
 - Have similar or related duties, job titles, and work assignments;
 - Are subject to the same general working conditions; and
 - Are governed by the same personnel and labor relations policies that are administered by the same personnel office.

See [id.](#) at 960-61.

- Other factors may also bear on this inquiry. For example:
 - Geographic proximity;
 - Unique conditions of employment;
 - Distinct local concerns;
 - Degree of interchange between other organizational components; and
 - Functional or operational separation.

See [id.](#) at 961.

How does the Authority assess whether the unit would promote effective dealings with the agency?

The requirement that the unit promote effective dealings concerns the relationship between management and the exclusive representative selected by unit employees. See *U.S. Dep't of the Air Force, 82nd Training Wing, 361st Training Squadron, Aberdeen Proving Ground, Md.*, [57 FLRA 154](#), 156 (2001) (*82nd Training Wing*).

In assessing this requirement, the Authority examines factors such as:

- The efficient use of resources that might be derived from inclusion of other units;
- The parties' 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. *Id.*

How does the Authority assess whether the unit would promote the efficiency of agency operations?

The Authority examines the degree to which the unit structure bears a rational relationship to the operational and organizational structure of the agency. See *82nd Training Wing*, [57 FLRA at 156-57](#).

This inquiry considers the effect of the proposed unit on the agency's operations in terms of cost, productivity, and use of resources. *Id.*

Must the unit be the most or the only appropriate unit?

No. The Statute does not require that the unit be the most or the only appropriate unit. The proposed unit meets the requirements if it is **an** appropriate unit. See *Lackland AFB*, [59 FLRA at 741](#); *Miss. Army*, [57 FLRA at 341](#); *Def. Logistics Agency, Def. Supply Ctr. Columbus, Columbus, Ohio*, [53 FLRA 1114](#), 1127 n.7 (1998) (*DLA*); *AFGE*, [47 FLRA at 973](#); *Naval Station*, [14 FLRA at 704-05](#) (more than one unit structure is appropriate); *193rd Infantry*, [7 FLRA at 480-81](#) (same).

Does the Authority consider future changes in determining whether a unit is appropriate?

Generally, no. The Authority does not consider future changes unless there are definite and imminent changes planned by the agency. See *Mid-Atl.*, [63 FLRA at 13](#); *DPRO-Thiokol*, [41 FLRA](#)

[at 327](#); *NAGE, Local R12-35*, [8 FLRA 649](#), 650 n.3 (1982).

How does the Authority determine whether an existing unit remains appropriate after a reorganization?

The Authority focuses on the changes caused by the reorganization, and assesses whether those changes are sufficient to render a certified unit inappropriate. *See JMC II*, [63 FLRA at 403](#).

- If the scope and character of a unit is not significantly altered by a reorganization, then the unit remains appropriate. *Id.*
- Also, see the Representation Case Law Outline section, "[Successorship and Accretion](#)."

What if there are competing petitions alleging different appropriate units?

The Authority 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. *See Commander I*, [56 FLRA at 332](#).

- This rule stems from the Authority's reluctance to disturb long-standing bargaining units when bargaining in those units has been successful. *See DLA*, [53 FLRA at 1124](#).
- See also the Representation Case Law Outline section, "[Successorship and Accretion](#)."

How does the Authority determine whether employees should be included in a unit that is separate from other employees in an organization?

As with any appropriateness determination, the Authority applies the three criteria listed in [§ 7112\(a\)](#) to determine whether the proposed unit would be appropriate. However, when applying the "community of interest" criterion, the Authority assesses whether the employees in the proposed unit share a community of interest that is *separate and distinct* from other employees in the component. *See FDA*, [20 FLRA at 228-29](#). *See also JMC II*, [63 FLRA at 403-05](#).

- However, the fact that employees have unique concerns does not compel the Authority to find a separate and distinct interest where employees are integrated with other employees. *See CBP*, [61 FLRA at 496](#); *Dep't of the Interior, Nat'l Park Serv., Lake Mead Nat'l Recreation Area, Boulder City, Nev.*, [57 FLRA 582](#), 584-85 (2001) (*Lake Mead*).

Can a “functional” unit -- a unit of employees who are grouped by the functions that they perform -- be considered appropriate?

Yes. Units can be established on a functional basis. § [7112\(a\)](#). Functional units are appropriate, as long as the three appropriate-unit criteria are met (including a finding that the employees in the proposed unit share a community of interest that is separate and distinct from other employees). Here are some examples:

- *Naval Dist. Wash.*, [60 FLRA at 473-74](#) (functional unit of police officers, and functional unit of firefighters found appropriate);
- *U.S. Dep’t of the Air Force, Edwards AFB*, [35 FLRA 1311](#), 1314 (1990) (unit of air traffic controllers and electronics technicians found appropriate)(*Edwards AFB*);
- *Nat’l Park Serv.*, [55 FLRA at 314-15](#) (functional unit of unrepresented Law Enforcement Park Rangers, Criminal Investigators and Correctional Officers not found appropriate).
- *Lake Mead*, [57 FLRA at 584-85](#) (functional unit of Law Enforcement Park Rangers not found appropriate).

Can a small unit be considered appropriate?

Yes. See *82nd Training Wing*, [57 FLRA at 154](#), 156-57 (four person unit appropriate). But the Authority has a preference for preventing unit fragmentation. See *Fleet & Family*, [64 at 787](#) (small unit of 31 employees would result in artificial, unwarranted fragmentation). See also *Edwards AFB*, [35 FLRA at 1314](#).

What appropriate-unit test is applied when a union files an election petition to add employees to an existing unit?

The employees sought to be added do not need to constitute a separate, appropriate unit. But the inclusion of the unrepresented employees in the union’s existing unit must result in an overall unit that is appropriate under § [7112\(a\)](#). *DLA, Fort Belvoir, Va.*, [60 FLRA 701](#), 706-07 (2005).

See [Appendix A](#) for listings of Authority decisions on appropriateness of unit

5. UNITS INCLUDING SUPERVISORS OR MANAGEMENT OFFICIALS – 5 U.S.C. § [7135](#)

Do bargaining units which include supervisors or management officials exist in the federal sector?

Yes. Under [section 7112\(b\)\(1\)](#) of the Statute, supervisors and management officials may not be in bargaining units, **with one exception**, found in 5 U.S.C. § [7135\(a\)](#). Section [7135\(a\)](#) provides for the:

“continuation or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.”

- The Authority will permit exclusive recognition in a unit consisting solely of supervisors in very limited circumstances in which a labor organization has:
 - a) traditionally or historically represented units of supervisors in private industry **and**
 - b) held exclusive recognition for a unit of supervisors in a federal agency on the effective date of the Statute.

See Dep’t of Energy, W. Area Power Admin., Golden, Colo., [38 FLRA 935](#), 940 (1990) (citing Dep’t of the Navy, [10 FLRA 396](#), 397 (1982)).

- Courts have rejected the Authority’s view that § 7135(a)(2) permits mixed units of both supervisory and nonsupervisory personnel. *U.S. Dep’t of Energy v. FLRA*, [880 F.2d 1163](#) (10th Cir. 1989).

Under § [7112\(b\)\(1\)](#), supervisors must be excluded from bargaining units unless their inclusion is *expressly* authorized by § [7135\(a\)\(2\)](#). Because § [7135\(a\)\(2\)](#) refers to “units of” supervisors, “supervisors is the whole set,” and the term cannot refer to units that include anything other than supervisors. *Id.* at 1167. Therefore, the Authority may “recognize only exclusive units of supervisors, not mixed units.” *Id.*

- The continuation of mixed units of supervisory and nonsupervisory personnel is a permissive subject of bargaining. *See U.S. Dep’t of Interior, Bureau of Reclamation v. FLRA*, [23 F.3d 518](#) (D.C. Cir. 1994). So, if a union has historically represented such a mixed unit, the agency may agree in bargaining to continue to recognize it, but is not required to do so. And although an agency may withdraw recognition of a mixed unit, it must first follow any agreed-upon contractual procedures. *See also U.S. Dep’t of Interior v. FLRA*, [26 F.3d 179](#) (D.C. Cir. 1994).

6. SUCCESSORSHIP AND ACCRETION

Is there Authority caselaw that governs what happens when an agency reorganizes its operations?

Yes. In 1995 the Authority issued the first successorship decision, *U.S. Navy, Naval Facilities Eng'g Serv., Port Hueneme*, [50 FLRA 363](#) (1995) (*Port Hueneme*).

What is successorship?

Under successorship, a gaining entity is a successor employer and a union remains the exclusive representative of employees when all three successorship criteria are met.

- Here are the three *Port Hueneme* criteria:
 - Part one of the standard involves the **movement of employees**: An entire bargaining unit (or portion) is transferred; the transferred employees are in an appropriate unit after the transfer; and the transferred employees constitute a majority of the employees in this unit.
 - Part two involves the **continuity of operations**: The gaining entity must have a similar mission as the former entity and employees must perform similar duties, under similar working conditions after the reorganization. The gaining and former entities don't need to have the exact same mission. Employees need not be performing the exact same duties, just similar ones.
 - Part three concerns the **necessity for an election**: When affirmative answers are given for the first and second parts, successorship will be found, unless other factors are present which require that an election be conducted among employees of the post-transfer unit.
 - **Simple majority requirement – 50% plus 1**: If one union is involved and remaining employees in the new unit had been unrepresented, an election is not necessary if employees who transferred from a bargaining unit constitute a majority of the employees in the new bargaining unit. *BLM, Sacramento, Cal. & BLM, Ukiah Dist. Office*, [53 FLRA 1417](#), 1422 (1998) (*BLM*).
 - **“Sufficiently predominant:”** If more than one union's employees are involved, an election is not necessary if one union has more than 70% of the employees in the post-transfer unit. *U.S. Army Aviation Missile Comm., Redstone Arsenal, Ala.*, [56 FLRA 126](#), 131 (2000) (*Redstone*).

When do you assess the numbers of bargaining unit employees to determine if the simple majority or sufficiently predominant requirement is met?

The Authority has not addressed this yet. *Port Hueneme* is based on NLRB case law. Under NLRB case law you assess the numbers of employees at the time that the agency transfers the employees, or when there is a substantial and representative complement of employees, if there is a start-up period for the new entity. *Fall River Dyeing & Finishing v. NLRB*, [482 U.S. 27](#) (1987).

Will the Authority conduct an election after a reorganization occurs when the number of employees in the post-transfer unit is less than 50% plus one of all employees in the new unit?

Maybe. If one union is involved and the 50% plus one standard isn't met, an election will be conducted by the Authority as long as there is evidence that a genuine question of representation exists. A question of representation exists when 30% of employees in a unit seek an election. So if 30% to 50% of the employees in the post-transfer unit had been represented by the union, the Authority will conduct an election. *U.S. Dep't of the Navy, Naval Facilities Eng'g Command, S.E., Jacksonville, Fla.*, [62 FLRA 480](#), 489 (2008)

What happens if multiple unions are involved, and no union is sufficiently predominant, and the employees could be part of two different appropriate units?

In that situation the Authority conducts a self-determination election. Employees vote on which union, if any, will represent them, and they also vote on the scope of the unit (i.e., which bargaining unit they want to be in). *Defense Logistics Agency, Defense Supply Ctr. Columbus, Columbus, Ohio*, [53 FLRA 1114](#), 1133-34 (1998) (employees voted on if they wanted to be in a stand-alone bargaining unit represented by one union, or in a consolidated bargaining unit represented by a different union, or no union); *Dep't of the Navy, Naval Dist. Wash.*, [60 FLRA 469](#) (2004) (firefighters voted to be in a firefighter bargaining unit or to be in a unit with other nonprofessional employees, as well as their exclusive representative).

What happens if one party argues successorship to one appropriate unit, while another party argues successorship to a different, appropriate unit?

If the Authority finds that a bargaining unit continues to be appropriate, that appropriate unit claim will be chosen, since it most fully preserves the *status quo* in terms of unit structure and the relationship of employees to their union. *U.S. Dep't of the Navy, Commander, Naval Base, Norfolk, Va.*, [56 FLRA 328](#) (2000).

What happens if a union claims that through successorship it remains the exclusive representative, but another party claims that the employees accreted to a different bargaining unit?

The Authority first determines if there is successorship. If successorship is not found, then the Authority determines if the employees accreted (see directly below) to the other bargaining unit. *Dep't of Navy, Fleet & Indus. Supply Ctr., Norfolk, Va.*, [52 FLRA 950](#) (1997) (FISC). The legal analysis is as follows:

- First determine if the transferred employees are included in, and if they constitute a majority of, a separate, appropriate unit in the gaining organization.
 - If they do, then you apply the remaining *Port Hueneme* criteria to determine if the gaining employer is the successor and if the union continues to represent employees.
- If the transferred employees aren't included in, and don't constitute a majority of a separate, appropriate unit in the gaining organization, then you apply the accretion criteria to determine if the employees accreted into an existing unit.

[Id.](#) at 958-59.

What is accretion?

Accretion is inclusion of a group of employees in an existing unit without an election. The employees must have been fully integrated into the organization, and the bargaining unit must be an appropriate unit with their inclusion. *Dep't of Navy, Naval Air Warfare Command, Aircraft Div., Patuxent River, Md.*, [56 FLRA 1005](#), 1006 (2000).

- Accretion is narrowly applied because it precludes employee self-determination (i.e., employees aren't given the opportunity to vote if they want to be a part of the bargaining unit). [Id.](#)

What happens when unrepresented employees accrete to an existing unit?

The existing-unit employees must constitute a simple majority of the expanded unit. If they don't the Authority conducts an election. [BLM.](#)

What happens when represented employees accrete to an existing unit?

The existing-unit employees must be sufficiently predominant in the expanded unit, to avoid a question of representation. If they don't the Authority conducts an election. [Redstone.](#)

While the Authority processes a petition, what happens to bargaining obligations?

Parties must maintain existing recognitions, adhere to terms of existing contracts, and fulfill all representational and bargaining responsibilities. 5 C.F.R. § [2422.34](#); *Dep't of the Navy, Naval Weapons Station, Yorktown, Va.*, [55 FLRA 1112](#) (1999).

See [Appendix B](#) for listings of Authority decisions on successorship and accretion

7. ELECTION PETITIONS

Who can file a petition seeking an election among employees?

A union, seeking to represent a group of employees, and also employees in an existing unit, who allege that the union is no longer the representative of the majority of employees. 5 U.S.C. § [7111\(b\)\(1\)](#); sections [2422.1\(a\)\(1\)\(i\)](#) and [2422.1\(a\)\(2\)](#).

Can an election petition be filed at any time?

In general, a party may file a petition for an election at any time. However, there are four general exceptions to this rule:

- Election Bar (5 U.S.C. § [7111\(b\)](#))
- Certification Bar (5 U.S.C. § [7111\(f\)\(4\)](#))
- Contract Bar (5 U.S.C. § [7111\(f\)\(2\)](#))
- Bars on Filing Subsequent Petitions Following Withdrawal, Dismissal, or Disclaimer (5 C.F.R. § [2422.14](#))

What is an election bar?

An election may not be conducted in “any appropriate unit or subdivision thereof within which, in the preceding 12 calendar months, a valid election . . . has been held.” Section [7111\(b\)](#). The election bar only applies if an election is conducted and the employees do not vote for an exclusive representative, i.e., if there is no incumbent exclusive representative, another election cannot be conducted for 12 months. If there is an incumbent exclusive representative, then the certification or contract bar (see below) may apply.

- The Authority has not defined when an election is “held” or “conducted.” However, in *Mallinckrodt Chemical Works*, the National Labor Relations Board determined that an election occurs on the date of the balloting, not the date the results are certified. [84 NLRB 291](#) (1949); see also *NLRB v. Tri-Ex Tower Corp.*, [595 F.2d 1](#) (9th Cir. 1979).
- Although the Statute prohibits an election within one year of an election in the same

unit or subdivision, it does not prohibit the election if the proposed unit is broader than the unit in the previous election. *FAA, 2 A/SMLR 340 (1972).*

What is the certification bar?

The Authority will not certify an exclusive representative:

if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

[7111\(f\)\(4\)](#).

- A union may not file a petition for a broader unit in order to avoid the certification bar. *See Bureau of Indian Affairs, Navajo Area, N.M., 1 A/SLMR 459 (1971).* However, the current exclusive representative may file a petition for a broader unit, waiving the certification bar. *See U.S. Army Corps of Eng'r, Mobile, Ala., 2 A/SLMR 486 (1972).*
- In other words, a party may not file a petition challenging an incumbent until 12 months after the Regional Director issues a certification. If the agency and the exclusive representative enter into a collective agreement or if the agreement is pending agency head review, then the contract bar applies.

What is a contract bar?

Under 5 U.S.C. [7111\(f\)\(3\)](#), the Authority will not certify an exclusive representative:

if there is then in effect a lawful written collective-bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless--

(A) the collective-bargaining agreement has been in effect for more than 3 years, or

(B) the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration date of the collective-bargaining agreement.

In other words, the Authority will not process an election petition if the unit is covered by a valid contract, unless the petition is filed within the 45-day window defined in section [7111\(f\)\(3\)\(B\)](#).

What is an “lawful collective-bargaining agreement” under 5 U.S.C. [7111\(f\)\(3\)](#)?

A contract is a “collective-bargaining agreement” if it “contain[s] substantial terms and conditions of employment sufficient to stabilize the bargaining relationship between the parties to the agreement.” SSA, [44 FLRA 230](#), 238 (1992) (SSA). The contract does not need to include every possible provision to be considered a contract and it may contain contract language that allows the parties to reopen or modify the agreement. [Id.](#) at 239.

- Allegations that the collective-bargaining agreement was a “sham agreement” or that the agreement was obtained unlawfully are not appropriate for resolution in a representation proceeding. These are processed under ULP procedures. But the lawfulness of provisions in the collective-bargaining agreement may be challenged through the representation proceeding. [Id.](#) at 240-41.

How do you determine the effective date of a collective-bargaining agreement?

The effective date is critical in determining whether the contract bar is applicable. A contract must have a clear and unambiguous effective date, renewal date, duration, and termination date in order to permit a potential challenger to determine when it can file a petition. 5 C.F.R. § [2422.12\(h\)](#).

- The contract bar does not apply if critical errors in documents related to the agreement prevent a challenger from determining the window period. *Dep’t of the Interior, Redwood Nat’l Park, Crescent City, Cal.*, [48 FLRA 666](#) (1993) (the contract bar did not apply because the agency head approved the contract on June 2, but, due to a printing error, the effective date on the published copy of the agreement was June 12, 1988); *Florida Air Nat’l Guard, St. Augustine, Fla. (Florida ANG)*, [43 FLRA 1475](#) (1992) (no contract bar because the agreement had two different dates of approval by the agency head, and the agreement stated that the effective date was the date approved by the agency head).
- Other documents, such as one showing the agency head’s approval, may provide sufficient information to determine these dates. *Dep’t of the Army, Concord Dist. Recruiting Command, Concord, N.H.*, [14 FLRA 73](#), 75 (1984). However, a petitioner does not need to investigate further if the effective date on different documents conflict. *Florida ANG*, 43 FLRA at 671.
- Parties may waive their right to assert a contract bar, but a contract bar may not be waived unilaterally by one of the parties to the collective-bargaining agreement. *Dep’t of Defense, Overseas Dependent Schs.*, 1 A/SLMR 516 (1971). Of course, the exclusive representative can disclaim the unit (see [Unusual Circumstances](#) section below).

How do you compute the 45-day window period?

The petition must be filed within the 45-day window described in 5 U.S.C. § [7111\(f\)](#) and 5 C.F.R. § [2422.12\(d\)](#) and [\(e\)](#).

- When a collective-bargaining agreement has a **three-year term or less**, a party must file a petition not more than 105 days and not less than 60 days before the contract terminates. 5 C.F.R. [2422.12\(d\)](#).
- If a contract has a term that is **longer than three years**, then the 45-day window applies to the date of expiration of first three years. And an election petition can be filed any time after the expiration of the initial three-year period. 5 C.F.R. [2422.12\(e\)](#).
- An agreement to extend a collective-bargaining agreement that the parties execute more than 60 days before the collective-bargaining agreement expires cannot be used as a contract bar. 5 C.F.R. [2422.12\(g\)](#). In other words, parties cannot avoid the 45-day window by signing a temporary agreement to extend the collective-bargaining agreement before the window closes. Likewise, temporary agreements to extend a collective-bargaining agreement during negotiations do not create a contract bar, assuming that the agreements do not contain a definite termination date. *Dep't of the Army Corpus Christi Army Depot, Corpus Christi, Tex.*, [16 FLRA 281](#), 282-83 (1984); *DHHS, Boston Regional Office, Region I*, [12 FLRA 475](#) (1983).

What situations may arise after parties execute an agreement and submit it for Agency head review?

- An RD will dismiss a petition seeking an election if a party files it during the period for agency head review in 5 C.F.R. § [2422.12\(c\)](#). An agency head has 30 days to reject an agreement, and if the agency head fails to act, the agreement automatically takes effect. 5 U.S.C. § [7114\(c\)](#).
- This bar applies once the parties execute an agreement. A contract is executed when no further action is necessary to finalize a complete agreement. *Fort Bragg Ass'n of Teachers and U.S. Dep't of the Army, Fort Bragg Schs., Fort Bragg, N.C.*, [44 FLRA 852](#), 857-58 (1992).
- If the agency head rejects the agreement, then the petitioner may file a petition after the rejection. *Dep't of the Army, III Corps, Fort Hood, Tex.*, [51 FLRA 934](#), 941 (1996) (*Fort Hood*). If the petitioner files a petition before the agency head rejects the agreement, the petition must be dismissed. *Id.* at 942. The parties may agree to implement the portions of the agreement approved by the agency. *Dep't of the Army, Watervliet Arsenal, Watervliet, N.Y.*, [34 FLRA 98](#), 105 (1989). However, the contract bar does not apply if the parties agree to revise the provisions rejected by the agency head without

agreeing to implement the provisions approved by the agency head. *Id.* Moreover, as discussed above, the agreement that the parties agree to implement, less the disapproved provisions, must be a valid agreement and have a clear effective date, renewal date, duration, and termination date. See SSA, [44 FLRA 230](#) (1992).

- The contract bar applies if the petitioner files the petition on the **same day** that the parties execute a collective-bargaining agreement even if the petition is filed several hours before the contract is executed. *Fort Hood*, [51 FLRA at 941](#). However, there is a very narrow exception if the petitioner satisfies three requirements. *Id.*
 - First, the petitioner must give written notice that the petitioning union has taken all steps necessary to file a petition with the Authority. *Id.*
 - Second, petitioner must serve notice on a person who has authority over agency negotiations, which may include the agency head. *Id.*
 - Third, the agency must receive the notice on the same day that the petitioner files the petition but before the parties execute the collective-bargaining agreement is. *Id.* The petitioner must be able to prove that the agency received the notice. *Id.* This rule only applies if the parties execute an agreement **on the same day** that a petitioner files a petition and gives notice to the agency.

What about collective-bargaining agreements that contain provisions for automatic renewal?

- An automatic renewal clause in a collective-bargaining agreement means that a contract will renew unless a party does some act, often within a certain period of time, to prevent the contract from renewing. When parties first negotiate a collective-bargaining agreement, they will often set the effective date as the date the agency head approves the agreement or the 31st day following execution if the agency head does not approve or disapprove. However, the effective date of an agreement with an automatic renewal clause is generally the same day that contract automatically renews (the expiration date of the previous contract) even if the contract provides for agency head review prior to renewal. *Kansas Army Nat'l Guard, Topeka, Kan.*, [47 FLRA 937](#) (1993) (the effective date of the new contract was April 11, 1992 even though the window for agency review expired on March 11, 1992).
- If an agreement does not automatically renew because a party requests to renegotiate or modify the agreement, then the contract bar does not apply, even if the parties do not negotiate a new agreement. *U.S. Dep't of Defense, Army Nat'l Guard, Camp Keyes, Augusta, Me.*, [34 FLRA 59](#) (1989).

Do the Regulations provide for filing petitions when unusual circumstances exist?

- **Yes.** “[A] petition seeking an election or a determination relating to representation matters may be filed at any time when unusual circumstances exist that substantially affect the unit or majority representation.” 5 C.F.R. § [2422.12\(f\)](#). The Authority has not identified any examples. See *Dep't of State, Bureau of Consular Affairs, Passport Servs.*,

[35 FLRA 1163](#) (1990) (good faith doubt as to whether union continued to represent majority of employees not sufficient to overcome section [2422.12\(d\)](#)). However, the NLRB found that a union's inability or unwillingness to represent employees was an unusual circumstance. *Pioneer Inn Assoc. v. NLRB*, [578 F.2d 835](#), 838 (9th Cir. 1978). Likewise, it is unlikely that the FLRA would dismiss a case if the exclusive representative was unwilling or unable to represent the bargaining unit. See *FAA*, 2 A/SMLR 340 (1972).

- The Authority has not addressed the **impact of amended petitions on certification and contract bars**. The issue is whether the Authority will use the filing date of the original petition or the amended petition to determine whether the petitioner filed the petition on time.
 - The NLRB uses the filing date of the original petition as the filing date if the amendment does not substantially enlarge the character or size of the unit or number of employees in the unit and where the employers, operations and employees were contemplated in the original petition. *Deluxe Metal Furniture Co.*, [121 NLRB 995](#) (1958); *Illinois Bell Tel. Co.*, [77 NLRB 1073](#) (1948).
 - Otherwise, the NLRB uses the amended petition's filing date to determine whether the petition was timely. *Hyster Co.*, [72 NLRB 937](#) (1947) (the amended petition included a broader unit of employees); *Allied Beverage Distrib. Co.*, [143 NLRB 149](#) (1963) (petition misnamed the employer).
 - In *U.S. Dep't of the Interior, Wash. D.C.*, [55 FLRA 311](#), 314 (1999), the Authority stated that NLRB decisions, such as *Deluxe Metal Furniture*, regarding the timeliness of amended petitions addressed "situations analogous to the Authority's own rules on such matters found at section [2422.12](#) of the Authority's Regulations." However, the case did not require the Authority to make a decision on the matter. Nonetheless, the Authority indicated that it might consider NLRB case law regarding amended petitions.

Are there any other time limits for filing election petitions?

Yes. They are described in section [2422.14](#) of the FLRA's Regulations.

- Under subsection (a), when a petitioner who timely filed a petition seeking an election withdraws it or the RD dismisses it less than 60 days before an agreement expires or at any time after an agreement expires, another petition seeking an election is not timely if filed within a 90-day period from:
 - 1) the date the withdrawal is approved; or
 - 2) the date the petition is dismissed by the RD when no application for review is filed with the Authority; or
 - 3) the date the Authority rules on an application for review. Other pending petitions that have been timely filed continue to be processed.

- Under subsection (b), if a petitioner withdraws a petition after the RD either issues a notice of hearing or approves an election agreement, whichever comes first, the petitioner may not file another petition seeking an election for the same unit or any subdivision of the unit for 6 months after the withdrawal is approved by the RD.
- Under subsection (c), if the RD cancels an election because the current exclusive representative disclaims interest in the unit, the current exclusive representative may not file a petition regarding the same unit or any subdivision of the unit for 6 months after the election is cancelled by the RD.

What is a “Showing of Interest” and how does it relate to Election Petitions?

A labor organization seeking an election must submit with its petition a **30% showing of interest**, and that bargaining unit employees, who file a petition seeking an election to determine if the union should remain the exclusive representative, must support the petition with a 30% showing of interest. 5 U.S.C. § [7111\(b\)\(1\)](#).

- The 30% requirement applies to the number of employees in the proposed bargaining unit or the bargaining unit when the petition is filed.
- This is also true for a bargaining unit that is expanding. The petition must be supported by a 30% showing of interest of the employees in the bargaining unit at the time the petition is filed. The election date is set when there is a substantial and representative complement of employees on board. *Dep’t of Transp., U.S. Coast Guard Fin. Ctr., Chesapeake, Va.* [34 FLRA 946](#), 951-52 (1990).
- The RD’s determination of the adequacy of a showing of interest is administrative. It is not subject to collateral attack at a representation hearing or on appeal to the Authority. *North Carolina Army Nat’l Guard, Raleigh, N.C.*, [34 FLRA 377](#), 383 (1990); section [2422.9](#) of the Regulations. If an RD determines that a showing of interest is inadequate the RD issues a decision and order dismissing the petition or request for intervention.

What documents can you use to establish a showing of interest?

These documents include evidence of membership in a union; employees’ signed and dated authorization cards or petitions authorizing a labor organization to represent them; dues allotment forms; petitions or cards indicating that unit employees don’t want to be represented by the current union any longer, etc. Section [2421.16](#).

8. SEVERANCE

Severance arises when a petitioner files an election petition, seeking to sever or carve out employees from an established bargaining unit.

- The election petition must be accompanied with a 30% showing of interest of employees in the petitioned-for unit, not 30% of the existing bargaining unit. *Office of Hearings & Appeals, SSA, [16 FLRA 1175](#), 1176 (1984).*

When is severance granted?

Only in rare circumstances. Where the existing unit continues to be appropriate under § [7112\(a\)](#) of the Statute, severance is granted when unusual circumstances are present which justify removing the particular group of employees from the existing unit. *See U.S. Dep't of the Army Def. Language Inst. Foreign Language Ctr. & Presidio of Monterey Presidio of Monterey, Cal., [64 FLRA 497](#), 498-99 (2010) (Presidio of Monterey); U.S. Dep't of the Navy, Naval Air Station Jacksonville, Jacksonville, Fla., [61 FLRA 139](#) (2005) (NAS, Jacksonville) (denying request to sever police officers from a nonprofessional bargaining unit); Library of Cong., [16 FLRA 429](#), 431(1984); U.S. Dep't of Veterans Affairs, Wash, D.C., [35 FLRA 172](#), 179-80 (1990) (Veterans Affairs) (severance denied).*

- Where an established unit continues to remain appropriate and no unusual circumstances are present, the RD dismisses the petition seeking an election. *Presidio of Monterey.* The petition is dismissed in the interest of reducing the potential for unit fragmentation and promoting effective dealings and efficiency of agency operations. *Fraternal Order of Police, [66 FLRA 285](#), 287 (2011) (FOP).*
- Where the Authority determines that an existing unit remains appropriate and no unusual circumstances exist which would warrant severance, there is no need to make any further findings with respect to whether the petitioned-for unit would also constitute a separate, appropriate unit. *See Presidio of Monterey, [64 FLRA at 499](#); U.S. Dep't of the Air Force, Carswell Air Force Base, Tex., [40 FLRA 221](#), 228 (1991) (Carswell).*

What are some examples of “unusual circumstances” that might warrant severance?

- One is the adequacy of the representation afforded by the incumbent. The Authority will consider the incumbent union’s failure to represent the petitioned-for employees fairly and effectively in evaluating whether severance is warranted. *See FOP, [66 FLRA at 287](#) (severance denied where union failed to provide evidence demonstrating conflict of interests between groups of employees); NAS, Jacksonville, [61 FLRA at 142](#) (record did not show employees were not adequately represented); Veterans Affairs, [35 FLRA at 180](#); Dep't of the Army, Headquarters, Fort Carson & Headquarters, 4th Infantry Div.,*

Fort Carson, Colo., [34 FLRA 30](#) (1989) (evidence failed to demonstrate disparate representation); *Dep't of the Navy, Naval Air Station, Point Mugu, Cal.*, [26 FLRA 620](#) (1987) (evidence did not show that failure to renegotiate agreement deprived unit employees of rights under the Statute).

- Severance was warranted when the incumbent union did not oppose severance, expressly disclaimed interest in representing the employees at issue, and took other actions showing that it did not want to represent the employees, and other unique circumstances were present. *U.S. Dep't of the Treasury, Bureau of Engraving & Printing*, [49 FLRA 100](#), 107 (1994).

9. CHANGES IN THE NAME OF THE EXCLUSIVE REPRESENTATIVE

What procedures, if any, must an exclusive representative follow before it files a petition with the FLRA, asking that its name be changed on its certification?

It depends on the reason why the Union's name has changed.

- Some changes are technical in nature.
- Other changes reflect a change in the union's affiliation.

What does the Authority consider a technical change?

When there has been clerical or administrative error. When this occurs, a union can petition to change its certification.

What if the change involves a change in affiliation?

Then, the union must follow certain procedures before it files a petition with the FLRA. These procedures are called "**Montrose procedures**" because the Assistant Secretary of Labor developed the process in *VA Hosp., Montrose (Montrose), N.Y.*, 4 A/SLMR 859, 860 (1974). The Authority adopted the Montrose procedures in *Florida Nat'l Guard, St. Augustine, Fla.*, [25 FLRA 728](#), 729 (1987) (*Florida National Guard*).

When must the Montrose procedures be followed?

- When locals, lodges or chapters of a union are merged, and the name of the exclusive representative is changed. *Naval Aviation Depot, Naval Air Station, Alameda, Cal. (NAS Alameda)*, [47 FLRA 242](#) (1993).

- When the change of affiliation is from one international to another international. *Montrose*.
- When the change of affiliation involves changing the exclusive representative from one local to another of the same international organization. *Florida National Guard*.

Can the *Montrose* procedures change the composition of a bargaining unit?

No. A *Montrose* election cannot be used to expand, narrow, sever, or consolidate different bargaining units. *Florida Nat'l Guard, St. Augustine, Fla. (FNG II)*, [34 FLRA 223](#) (1990); *NAGE/SEIU, Local 5000, AFL-CIO-CLC*, [52 FLRA 1068](#), 1077(1997).

If a national union is the exclusive representative, can a local of that union use a *Montrose* election to try to disaffiliate or leave the existing unit?

No, because the *Montrose* procedure is used only to change the name of the exclusive representative. In this example, the national union is certified as the exclusive representative. *U.S. Dep't of Def., Nat'l Guard Bureau, Div. of Military and Naval Affairs, Latham, N.Y.*, [46 FLRA 1468](#) (1993).

What are the *Montrose* procedures?

To change affiliation, the petitioner must satisfy two general requirements: due process and continuity of representation.

What are the due process requirements?

The union must give union members a fair opportunity to vote on the change in affiliation:

- the proposed change in affiliation must be the subject of a special meeting;
- the meeting must be called for the specific purpose of changing affiliation;
- the union members must be given adequate advance notice of the meeting;
- the meeting must be scheduled at a time and place that is convenient to all members;
- the members must be given adequate time to discuss the changes and all members must be given an opportunity to ask questions in a reasonable manner; and
- the members must be given an opportunity to vote, by secret ballot, with the ballot clearly stating the change proposed and the choices inherent. *Montrose; U.S. Dep't of*

the Army, Rock Island Arsenal, Rock Island, Ill. (Rock Island), [46 FLRA 76](#), 79 (1992).

- A mail ballot process is acceptable when it isn't feasible to conduct a meeting because employees work far from each other. *Bureau of Indian Affairs, Gallup, N.M.* [34 FLRA 428](#), 445 (1990) (*Indian Affairs*).
- The notice must give adequate notice of the purpose of changing affiliation. *Union of Fed. Employees (UFE)*, [41 FLRA 562](#) (1991) (notice not sufficient because it did not mention that the members would also vote on whether to affiliate with UFE even though it mentioned that there would be a vote to disaffiliate from NFFE).
- The ballot must clearly identify each choice. *U.S. Army Corps of Engineers, Los Angeles, Cal. (Corps of Eng'r)*, [56 FLRA 973](#) (2000) (ballot contained a choice for "other" but did not identify what the "other" choice represented).
- Unions are not required to allow bargaining unit employees to vote if they are not members of the union. *Indian Affairs*, [34 FLRA at 445-46](#).
- Although a union may have *Montrose* elections for two bargaining units simultaneously, the Authority must be able to determine whether a majority of union members of each unit elected to change affiliation. *Corps of Eng'r*, [56 FLRA at 975-76](#) (Authority dismissed petition because it could not determine whether a majority of nonprofessional employees chose to change affiliation); *U.S. Dep't of the Interior, Bureau of Land Mgmt. (BLM)*, [56 FLRA 202](#), 205 (2000) (the Authority will determine whether the petitioner satisfied the *Montrose* requirements on a unit-by-unit basis).
- If professional and nonprofessional employees are part of the same unit, the *Montrose* election is still valid even if only professional employees actually voted. *Dep't of the Interior, Bureau of Land Mgmt., Reno, Nev.*, [66 FLRA 435](#) (2012).
- The Authority does not require that a minimum number of members vote in the election. *Id. at 445*; *Rock Island*, [46 FLRA at 80](#). Moreover, although the petitioner must establish that it gave all union members advance notice of the meeting, the fact that only a few members voted does not mean the notice was inadequate. *Id.* A petitioner may not use a *Montrose* election to change affiliation if there are no members in the unit. *BLM*, [56 FLRA at 205](#) (2000).

What are the substantial continuity requirements?

There must be "**substantial continuity**" between the old affiliation and new affiliation. The Authority considers three factors:

- whether the new union has the same officers or representatives;

- whether the new union maintains local control of day-to-day operations;
- whether the new union agrees to retain the existing collective-bargaining agreement *Rock Island*, [46 FLRA at 84](#).
- The petitioner does not have to prove all three factors; rather, the Authority balances the factors and determines whether there is a substantial change in the union's operations. [Id. at 85](#) (*Montrose* election valid even though new officer elections may be required).

Must a local union notify its national or international of a *Montrose* election?

No. A local union does not have to notify the national labor organization of a vote to disaffiliate with the national organization. *New Mexico Army and Air Nat'l Guard (New Mexico AANG)*, [56 FLRA 145](#), 149 (2000).

Who can file a *Montrose* petition?

- Only the agent of an exclusive representative can request a change in affiliation. *U.S. EPA*, [52 FLRA 772](#) (1996) (former president of union, removed during trusteeship, did not have authority to file petition); *U.S. Army Reserve Command, 88th Regional Support Command Fort Snelling, Minn.*, [53 FLRA 1174](#) (1998) (officer of another union does not have authority to file petition). But the exclusive representative can designate another union to file a petition. *BLM*, [56 at 202 n.1](#) (2000).

If a union is in trusteeship, what happens to the petition seeking a change of affiliation?

- **It depends.** If the national affiliate places the local in trusteeship after the petition is filed, the trusteeship has no effect on the processing of the petition. *New Mexico AANG*, [56 FLRA at 149](#).
- If the national affiliate places the local in trusteeship before the petition is filed, then the RD must follow the guidance provided by the Authority in *EPA*, [52 FLRA at 772](#). The DOL determines if a trusteeship is valid. [Id.](#) at 799. But the RD may dismiss the petition if the RD determines that the national labor organization followed the procedures in its constitution and bylaws and conducted a fair hearing either before the executive board or before such other body as required by [29 C.F.R. § 458.28](#). [Id. at 781](#). If the Regional Director decides that the national labor organization did not comply, then the RD will hold the petition until DOL makes a decision. [Id. at 781-82](#). However, the law presumes that the trusteeship ends after 18 months. [29 C.F.R. § 458.28](#).
- The Authority in *EPA* noted that it did not address two issues. In *EPA*, a party filed a complaint with the Assistant Secretary of Labor challenging the trusteeship. The Authority stated that its decision did not address whether the failure to file a complaint

or the withdrawal of the complaint would have any effect on its decision. [Id. at 782 n. 13](#). Also, in *EPA*, the national union imposed the trusteeship before the employees voted. The Authority stated that it did not decide whether a trusteeship imposed after the employees vote in a *Montrose* election has any effect. [Id. at 782, n.14](#).

10. CONSOLIDATION OF BARGAINING UNITS

Section 7112(d) of the Statute provides for consolidation of bargaining units:

Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

Must a consolidated unit meet the appropriate unit criteria under 5 U.S.C. [§ 7112\(a\)](#)?

Yes. Four additional community-of-interest factors must be considered to determine if a consolidated unit is appropriate:

- The degree of commonality and integration of the mission and function of the components involved. “[S]eparate missions of each component need only bear a relationship to one another, and the functions need only be similar or supportive to warrant consolidation.”
- The distribution of the employees involved throughout the organizational and geographical components of the agency;
- The degree of similarity in the occupational undertakings of the employees in the proposed unit; and
- The locus and scope of personnel and labor relations authority and functions.

U.S. Dep’t of the Air Force, Air Force Materiel Command, Wright-Patterson AFB, Ohio, [55 FLRA 359](#), 362 (1999) (AFMC).

To determine if a proposed consolidated unit promotes effective dealings and efficiency of operations, consider:

- the degree that an agency centralizes personnel and labor relations authority and broad operating policies exist at the higher level;

- if consolidation will reduce bargaining unit fragmentation, thereby "promoting a more effective, comprehensive bargaining unit structure to effectuate the purposes of the Statute"
- if the unit adequately reflects the agency's organizational structure or would require creating a new structure; and
- the past collective bargaining experience of the parties.

[*Id.* at 364.](#)

Must a union consolidate all its bargaining units in an agency when it seeks consolidation?

No. A union doesn't have to add all possible units to completely eliminate unit fragmentation. Consolidation of any units reduces fragmentation, which is sufficient. *AFMC*, [55 FLRA at 364](#).

Who can file a petition, seeking consolidation of units?

- An agency can petition to consolidate bargaining units—even over the union's objection—as long as the resulting unit is appropriate. *U.S. Dep't of Transp., FAA*, [63 FLRA 356](#), 359 (2009).
- The national level of a union can file a petition seeking consolidation of bargaining units exclusively represented by its affiliates. [AFMC](#).
- A local affiliate does not need to agree that its unit be consolidated before the Authority grants consolidation. A consolidated unit must be appropriate, and an appropriate unit must promote effective dealings. Where the national level of the union agrees to be the exclusive representative of the consolidated unit, effective dealings are found. *U.S. Dep't of the Navy, Commander, Navy Region S.E., Jacksonville, Fla.*, [62 FLRA 11](#), 13-14 (2007), compare *Sheppard AFB, Wichita Falls, Tex.*, [57 FLRA 149](#), 150 (2001).

Can units be consolidated without an election?

Yes. Bargaining units may be consolidated with or without an election. Section [7112\(d\)](#). Thirty percent or more of the employees in the proposed consolidated unit may request an election on the consolidation prior to the RD taking action on the case. Section [2422.30](#).

- This requirement is longstanding, based on the Assistant Secretary's Regulations under Executive Order 11491, as amended, which preceded the Statute. *IRS, Wash. D.C.*, 7 A/SLMR 357 (1977). In *IRS*, the Assistant Secretary stated that because 30% or more of the affected employees could demand an election, they would be protected from

arbitrary action by a national labor organization, and presumably, by the employer as well. This policy has never been changed, and is preserved by the savings provision in section [7135\(b\)](#) of the Statute. See, e.g. *U.S. Dep't of Homeland Sec., Bureau of Customs and Border Prot.*, [61 FLRA 485](#), 494 (2006).

- The election bars, certification bars, and agreement bars found in section [2422.12](#) do not apply to consolidation elections. This follows long-standing policy first established by the Federal Labor Relations Council.

11. GOOD-FAITH DOUBT OF UNION'S MAJORITY STATUS

An agency can file a petition raising a good-faith doubt as to a union's continued majority status.

- It does not have to prove that an actual numerical majority opposes the union. Rather, the agency must only demonstrate objective considerations sufficient to support a conclusion that a reasonable doubt exists that the union continues to represent a majority of employees in an existing unit. Objective considerations are based on the totality of the circumstances in a particular case. *Overseas Private Inv. Corp.*, [36 FLRA 480](#), 484 (1990) (*OPIC*).
- Objective considerations can include:
 - Failure of the union to request negotiations with respect to proposed changes in conditions of employment;
 - Long periods of dormancy by the union;
 - Lack of union officers or stewards;
 - Lack of members or very low membership;
 - Lack of a collective-bargaining agreement.

See *Dep't of the Interior, Nat'l Park Serv., W. Reg'l. Office, S.F., CA*, [15 FLRA 338](#), 341 (1984); *OPIC*, [36 at 486-87](#).

- A union's attempt to revive itself once the petition has been filed does not overcome the good-faith doubt as to continued majority status. [Id. at 485-86](#).
- If the evidence supports a finding of a good-faith doubt, a secret-ballot election is conducted to determine the exclusive representative of the unit, if any. [Id. at 487](#).

12. SCHISM

Schism is defined as “[a] basic intraunion conflict over policy at the highest level of an international union or within a federation which results in a disruption of existing intraunion relationships; and the employees seek to change their representative for reasons related to such conflict resulting in such confusion in the bargaining relationship that stability can only be restored by an election.” *Syscon Int’l, Inc.*, [322 NLRB 539](#), 543 (1996) (citing *Yates Indus.*, [264 NLRB 1237](#), 1249 (1982), citing *Hershey Chocolate Corp.*, [121 NLRB 901](#) (1958) (*Hershey Chocolate*), enforcement denied on other grounds, *NLRB v. Hershey Chocolate Corp.*, [297 F.2d 286](#) (3rd Cir. 1981) (schism doctrine not impaired).

- In a schism case, the petitioner generally asserts that the intra-union conflict constitutes the type of unusual circumstance which justifies the filing of an election petition during a contract-bar period or which justifies severance of a group of employees from a larger appropriate unit.

Has the Authority considered schism?

Yes. A schism occurs when:

- There is basic intra-union conflict over fundamental policy questions within the highest level of an international union or federation; and
- The conflict causes employees in the local unit to take action, based on the conflict itself, which creates such confusion in the bargaining relationship that stability can only be restored through an election.

Department of the Navy, Pearl Harbor Naval Shipyard Restaurant Sys., Pearl Harbor, Hawaii, [28 FLRA 172](#) (1987) (*Pearl Harbor*); *Hershey Chocolate*, [121 NLRB at 908](#).

In *Pearl Harbor* the Authority upheld the RD’s decision. The RD concluded that alleged intra-union conflicts, which merely involved a dispute over the local union’s internal procedures, did not support an assertion of schism. To find a schism, the alleged intra-union conflicts must involve a dispute over fundamental policy issue(s). In addition, the conflict must exist at the highest level of an international union or federation of unions. Given the absence of evidence that realignment, disaffiliation or expulsion of members had occurred as a result of the internal disputes, no schism was present.

13. DUES ALLOTMENT PETITIONS

A union can file a petition for a certification so that the union can negotiate an agreement only for dues allotment under 5 U.S.C. § [7115\(c\)](#).

Does section [7115\(c\)](#) establish any criteria for a dues allotment petition?

Yes. A union can petition for dues allotment where:

- The claimed unit is not already represented by a union;
- The claimed unit is appropriate for exclusive recognition; and
- The petitioning union provides a showing of *membership* of not less than 10% in the unit claimed to be appropriate.

What appropriate unit criterion is applied to dues-withholding cases?

The standard established under section [7112\(a\)](#) of the Statute. *Defense Indust. Plant Equip. Ctr., Memphis Tenn.*, [31 FLRA 1105](#) (1988).

Can an activity ever challenge the validity of a dues allotment certification?

Yes, if it can provide independent evidence that 10% of the employees in the unit are no longer union members. *Area Maint. Support Activities, 86th Army Reserve Comm., Forest Park, Ill.*, [32 FLRA 822](#) (1988).

What happens to a dues withholding agreement if a union is certified as the exclusive representative of the unit covered by a dues withholding agreement?

Any dues withholding agreement negotiated between a labor organization and an agency pursuant to a dues allotment certification becomes null and void upon the certification of an exclusive representative of the unit. 5 U.S.C. § [7115\(c\)\(2\)\(B\)](#).

14. GENERAL CONSIDERATIONS FOR UNIT DETERMINATIONS

Who can determine appropriate units and make determinations about bargaining unit eligibility?

The Authority determines appropriate units, and which positions are included in or excluded from bargaining units. See *SSA, Office of Disability Adjudication and Review, Nat'l Hearing Ctr.*,

(SSA, ODAR), [66 FLRA 193](#), 195 (2011); *U.S. Small Bus. Admin. (SBA)*, [32 FLRA 847](#) (1988), *reconsideration granted*, [36 FLRA 155](#) (1990) (Authority reinstated the grievance due to the time delay and a final determination on the unit status in a clarification of unit proceeding).

- Arbitrators cannot decide such issues. See *SSA, ODAR* (even if the unit question is raised as a collateral issue to an otherwise proper grievance), *SBA*, [36 FLRA at 853](#) citing *Nat'l Archives and Records Serv., GSA and Local 2578, AFGE, AFL-CIO*, [9 FLRA 381](#) (1982).

What evidence does the Authority use to decide whether to include or exclude a position from the bargaining unit?

The Authority uses testimony as to an employee's actual duties at the time of the hearing, not on duties that may exist in the future. See *Dep't of Veterans Affairs, Wash., D.C.*, [60 FLRA 749](#), 751 n.3 (2005); and *Dep't of HUD, Wash., D.C.*, [35 FLRA 1249](#), 1256-57 (1990). Evidence such as a position description for a position may be useful in making unit determinations, but is not controlling.

- Future duties may be considered, only where it is established that there are definite and imminent changes planned by the agency. *United States Dep't of Agric., Food Safety and Inspection Serv.*, [61 FLRA 397](#), 400-01 (2005).

But, what happens if an employee is recently placed in a position?

Where an employee has recently been placed in a position, duties are considered to have been actually assigned where:

- it has been demonstrated that, apart from a position description, an employee has been informed that he or she will be performing the duties;
- the nature of the job clearly requires those duties; and
- the employee is not performing those duties at the time of the hearing solely because of lack of experience on the job. *Dep't of the Interior, Bureau of Reclamation, Yuma, Ariz.*, [37 FLRA 239](#), 245 (1990).

The Authority does not consider duties to have been actually assigned where:

- the assignment of duties is speculative, because the nature of the job may change or the nature of the job does not require such duties; or
- although duties may be included in a written position description, it is not clear that the duties actually will be assigned to the employee or that the employee has been informed that he or she will perform those duties. *Id.*

Will the Authority clarify the bargaining unit status of vacant positions?

Generally, no. *Dep't of the Treasury, Bureau of the Mint, U.S. Mint, Denver, Colo.*, [6 FLRA 52](#) (1981).

But there are two exceptions:

- Where the clarification of a position will decide if an individual has access to the negotiated grievance procedure. *Headquarters, XVIII Airborne Corps and Fort Bragg, Fort Bragg, N.C. (Fort Bragg)*, [34 FLRA 21](#) (1990).
- Where the clarification of a position is a collateral issue necessary to the resolution of a grievance at arbitration. *U.S. Dep't of Veterans Affairs*, [55 FLRA 781](#), 784 (1999) (VA). Consistent with its holding in *Fort Bragg*, the Authority held that the RD "shall determine the unit status of a vacant position when both parties agree or an arbitrator decides that the unit determination is necessary to the resolution of the grievance at arbitration. In such event, the grievance must be placed in abeyance pending a decision on a petition for clarification of unit."

Must a petitioner file a representation petition whenever management creates new positions that haven't existed in the bargaining unit?

No. New positions are automatically included in an existing bargaining unit when the positions fall within the express terms of a bargaining certification and when their inclusion does not render the bargaining unit inappropriate. *Dep't of the Army, Headquarters, Fort Dix, Fort Dix, N.J. (Fort Dix)*, [53 FLRA 287](#) (1997). This is called the *Fort Dix* automatic inclusion principle.

- The *Fort Dix* principle isn't used to exclude employees from a bargaining unit, if the employees no longer fall within the description of the bargaining unit. *U.S. Dep't of the Air Force, Air Force Material Command, Elgin AFB, Hurlburt Field, Fla.*, [66 FLRA 375](#), 377 (2011).
- Examples of the automatic inclusion principle:
 - When police officers were hired in *Fort Dix*, the union, representing nonprofessional employees, automatically represented these employees and was not required to file a clarification of unit petition.
 - In *U.S. Dep't of the Air Force, Carswell Air Force Base, Tex.*, [40 FLRA 221](#) (1991), when a new category of employees (firefighters) was hired, the union representing nonprofessional employees automatically represented these employees and was not required to file a clarification of unit petition.

- In *Div. of Military and Naval Affairs, N.Y. Nat'l Guard, Latham, N.Y., and Selfridge ANG, Mich. and Ala. Nat'l Guard (N.Y. NG and Ala. NG)*, [56 FLRA 139](#) (2000), the Authority considered whether three employees who were separated from their National Guard technician positions and offered Title 5 competitive service provisions pursuant to [5 U.S.C. § 3329](#) were included in their respective bargaining units. The Authority found that the applicable unit descriptions were “sufficiently broad to include section 3329 employees.” *N.Y. NG and Ala. NG*, [56 FLRA at 142](#).
- Where new categories of employees who are covered by the existing unit are hired, no petition to clarify the unit is necessary to include them in the unit. [Fort Dix](#).

If the union and management agree on inclusions and exclusions of positions during the election process, are those agreements binding?

If parties (and the RD) agree on inclusions and exclusions in an election agreement, those inclusions and exclusions are binding. This means that positions that the parties agreed were excluded cannot be added to the unit unless a party can show that the position has undergone meaningful changes in duties and functions. See *FTC (FTC I)*, [15 FLRA 247](#) (1984).

- But a position can be subsequently excluded (without evidence of meaningful changes in the position’s duties and functions) if the position must be excluded from the unit under the [7112\(b\)\(1\)](#) thru (7) statutory exclusions. See *U.S. Dep’t of the Army, U.S. Army Law Enforcement Command Pacific, Fort Shafter, Haw.*, [53 FLRA 1602](#) (1998).

15. PROFESSIONAL EMPLOYEES

Section [7103\(a\)\(15\)](#) of the Statute defines a professional employee as:

- (A) an employee engaged in the performance of work--*
- (i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);*
 - (ii) requiring the consistent exercise of discretion and judgment in its performance;*
 - (iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work);*
 - (iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or*
- (B) an employee who has completed the courses of specialized intellectual instruction*

and study described in subparagraph (A) (i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee.

- To determine if an employee is a professional employee, you focus on the required education and the type of work performed. “[D]eterminations that require judgment and extensive educational background [are] the hallmark of professional employees.” *U.S. Dep’t of Homeland Sec., Bureau of Customs and Border Prot.*, [61 FLRA 485](#), 493 (2006) (*CBP*).

Must a professional employee have a college degree, or an advanced degree?

Not necessarily. Usually the knowledge of an advanced type is obtained from an institution of higher education. *VA Reg’l Office, Portland, Ore.*, [9 FLRA 804](#), 805-06 (1982) (vocational rehabilitation specialist position required college degree plus a master’s degree or experience and additional specialized education); *U.S. Attorneys Office for the Dist. of Columbia*, [37 FLRA 1077](#), 1082 (1990) (vacancy announcement didn’t have an advanced education requirement, and the position was not a professional). But a college degree is not necessarily required for an employee to be considered a professional. *Id.*; see also *CBP*, [61 FLRA at 492-93](#).

What about the type of work performed?

The Authority also considers the extent to which performance of the job requires the exercise of discretion and judgment. See, e.g., *934th Tactical Airlift Group (AFRES), Minneapolis-St. Paul Int’l Airport, Minneapolis, Minn.*, [13 FLRA 549](#), 553 (1983) (*AFRES*) (education specialist exercised broad discretion in carrying out duties, which were primarily intellectual and varied). Those whose work involves routine mental, manual, mechanical, or physical work are not considered professionals. See, e.g., *CBP*, [61 FLRA at 492-93](#) (agricultural specialists, whose work was routine in nature and standardized were not professionals).

What if the position is considered “professional” under other laws?

Other agencies may use the term “professional,” but this doesn’t mean they are using the Statutory definition. For example, the Office of Personnel Management (OPM) may designate a series as “professional,” or a position may be exempt as “professional” under the Fair Labor Standards Act (FLSA). These designations are for different purposes and have no legal effect on the Statutory determination of professional status within the meaning of section [7103\(a\)\(15\)](#). *U.S. Dep’t of Homeland Sec., Bureau of Customs and Border Prot.*, [61 FLRA 485](#), 493 (2006) (*CBP*).

What if the parties have considered a position to be professional?

Only the FLRA can determine someone is a professional under section [7103\(a\)\(15\)](#). Absent this

determination, past practices of treating employees as professionals or nonprofessionals are not binding; either they meet the Statutory requirements or they don't. *CBP*, [61 FLRA at 493](#) (despite an agency's 30-year history of treating certain employees as professionals, the Authority held this was a question of law that only it could determine, and concluded that the employees—who were now part of a different agency and had different job titles—were not professionals).

16. SUPERVISORS – SECTION 7112(b)(1) OF THE STATUTE

Can supervisors be in bargaining units?

No. because 5 U.S.C. § [7112\(b\)\(1\)](#) precludes it, with one exception. (See Units Including Supervisors).

Does the Statute define supervisor?

Yes. Section 7103(a)(10) of the Statute defines “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

The definition of supervisor in the Statute lists **indicia of supervisory authority** that an individual must possess over **employees** to be a supervisor, or actions that an individual must be able to **effectively recommend**, so long as the exercise of the authority requires the **consistent exercise of independent judgment**.

What are the indicia of supervisory authority?

The Statute lists 13 indicia of supervisory authority: the authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, or to adjust their grievances.

How many supervisory indicia must an employee possess to be a supervisor?

One. An employee is a supervisor if the employee consistently exercises independent judgment with regard to any **one** of the supervisory indicia. *SSA*, [60 FLRA 590](#), 592 (2005).

Are there any indicia that are not listed?

- Secondary indicia: Where the evidence does not conclusively establish that an individual possesses supervisory authority, “secondary indicia” of supervisory status may be considered. *U.S. Dep’t of the Interior, Bureau of Indian Affairs, Navajo Area Office, Gallup, N.M.*, [45 FLRA 646](#), 654-55 (1992) (*BIA*). These include whether an individual (1) attends management meetings, including supervisory training sessions and (2) has the authority to grant time off to employees. *Id.* Leave approval alone is not enough to demonstrate supervisory status. *VA. Med. Ctr., Allen Park, Mich.*, [34 FLRA 423](#), 426 (1990).
- Evaluating Performance: Although “evaluating performance” is not listed among the supervisory indicia, the Authority has found that it can – in some circumstances – serve as the basis for finding an employee is a supervisor. When an individual exercises independent judgment in evaluating employee performance and those evaluations are relied on by upper-level management in making decisions to hire, promote, reward or discipline employees, the evaluations constitute the effective recommendation of those actions within the meaning of the Statute. *BIA*, [45 FLRA at 650-51](#).

Who must a person supervise to be considered a supervisor under the Statute?

An individual must supervise “employees” to be a supervisor under the Statute. Temporary employees are employees under the Statute. *See Dep’t of the Interior, U.S. Fish and Wildlife Service, Patuxent Wildlife Research Ctr. Laurel, Md.*, [7 FLRA 643](#), 645 (1982).

- Military Personnel: The definition of “employee” does not include a member of the uniformed services. *Adjutant Gen., Del. Nat’l Guard*, [9 FLRA 3](#), 6 (1982). Individuals who supervise only military personnel will not be considered supervisors under the Statute. *Id. at 6-7*.
- Contractors: An employee must be employed in an agency under the Statute. Employees that were employed by the State of Georgia -- which paid their salaries and fringe benefits and under whose laws they were covered – were not “employees.” *Adjutant Gen., State of Ga., Dep’t of Def., Military Div. Atlanta, Ga.*, [14 FLRA 187](#), 188-89 (1984).

Does an employee have to supervise a certain number of employees to be a supervisor?

No. An individual who supervises one employee is a supervisor.

Are individuals who supervise employees only seasonally considered supervisors?

Yes. Seasonal supervisors are excluded from the bargaining unit during the period in which they supervise seasonal employees but are in the bargaining unit during the part of the year when they have no subordinates reporting or assigned to them. *U.S. Dep’t of Agric., Forest*

Serv., Intermountain Region Challis Nat'l Forest, [23 FLRA 349](#) (1986); *see also U.S. Nat'l Park Serv., Santa Monica, Mountains Recreation Area, Agoura Hills, Cal.*, [50 FLRA 164](#) (1995).

What does it mean to “effectively recommend” an action?

The inquiry focuses on the extent to which higher-level management accepts an individual's recommendation to determine whether or not it is effective. *See W. Point Elementary Sch., U.S. Military Acad., W. Point, N.Y.*, [6 FLRA 70](#), 72 (1981) (finding that it was not clear that individuals' recommendations were effective where two recommendations were accepted by higher-level management and one was rejected).

- Merely providing input and recommendations where the recommendations are only one factor in the decision and may not be followed does not suggest effective recommendation. *See SSA*, [60 FLRA 57](#), 62 (2004); *Dep't of Transp., FAA, Flight Standards Nat'l Field Office*, [4 FLRA 799](#), 802 (1980) (confirming previously identified candidates for hire, promotion, award or transfer, rather than selecting among qualified applicants is not an effective recommendation).
- Recommendations that higher-level management independently evaluates are **not** effective recommendations. *See Dep't of the Navy, Naval Undersea Warfare Eng'g Station, Keyport, Wash.*, [7 FLRA 526](#), 532 (1981) (*Undersea Warfare*).

What does it mean to consistently exercise independent judgment?

You must closely examine the facts. Consider the degree to which an individual's judgment is limited by higher-level management or constrained by established standards and policies. *See U.S. Dep't of Energy, W. Area Power Admin., Lakewood, Colo.*, [60 FLRA 6](#), 8-9 (2004) (*WAPA*).

Are “team leaders” supervisors?

It depends. When you examine whether a “team leader” or “lead” is a supervisor you look at whether the individual consistently exercises independent judgment and effectively recommends an action. You examine the facts and apply the law. *See U.S. Dep't of the Army, Army Aviation Sys. Command and Army Troop Support Command, St. Louis, Mo.*, [36 FLRA 587](#), 593 (1990). An individual's job duties -- not title -- determine status.

What are some specific examples sorted by indicia of supervisory authority?

Hire

Supervisory authority found:

Interviewing candidates for hire and recommending a candidate for hire where the recommendation is accepted. *Army and Air Force Exch., Serv. Base Exch., Fort Carson, Fort Carson, Col.*, [3 FLRA 595](#), 600 (1980); *Adjutant Gen. State of Vt., Vt. Air Nat'l Guard*,

[5 FLRA 779](#), 781 (1981) (finding individual who selected current subordinate after interviewing three candidates was a supervisor).

Joint participation in the hiring process may qualify an individual as a supervisor, if the individual exercises independent judgment in making a decision and the joint decision is effective. *VA Med. Ctr., Allen Park, Mich.*, [35 FLRA 1206](#), 1212 (1990); *see also SSA, Office of Disability Adjudication and Review, Baltimore, Md.*, [64 FLRA 896](#), 903 (denying review of RD's finding that ALJs use independent judgment in hiring where individuals' collective decisions constituted a directive that certain applicants be offered positions).

Supervisory authority may not be found:

If an individual interviews and makes a recommendation as to one candidate, that recommendation may not determine the supervisory status of the individual if the individual does not also interview and select from among all of the potential candidates. *U.S. Dep't of Justice, Bureau of Prisons, U.S. Penitentiary, Lewisburg, Penn.*, [7 FLRA 126](#), 130 (1981); *Mich. Air Nat'l Guard, Selfridge Air Nat'l Guard Base, Mich.*, [6 FLRA 485](#), 488 (1981).

Direct

Independently directs employees

Individuals who set work priorities, review employees' work for quality and completion, and are responsible for the quality of the work produced by the office exercise independent judgment in directing employees. *See Adjutant Gen. State of Vt., Vt. Air Nat'l Guard*, [5 FLRA 779](#), 785 (1981).

Does not independently direct employees

Individuals who merely review work to make sure that it is generally accurate when it goes out or in conformance with existing policy likely do not independently direct employees. *NMB*, [56 FLRA 1](#), 8 (2000) (*NMB*); *See SBA Dist. Office, Casper, Wyo.*, [49 FLRA 1051](#), 1062 (1994).

Assign

The Authority generally follows the NLRB's definition of "assign" and finds that assignment is the act of "designating an employee to a place (such as a location, department or wing), appointing an individual to a time (such as a shift or overtime period) or giving significant overall duties to an employee." *Oakwood Healthcare Inc.*, [348 NLRB 686](#), 689 (2006).

Independent Judgment Not Exercised:

- Designating an Employee to a Place: Individuals who assign employees to work posts on an equitable and rotating basis are not supervisors where any

adjustments they make in the rotational schedule -- such as when unexpected absences or details cause a shortage of employees-- do not require independent judgment. *Undersea Warfare*, [7 FLRA at 529-33](#).

- Discretion limited by type of work and equipment: Individuals who assign work solely based on the type of equipment, project, or system with which the work is associated and who normally do not reassign or shift initial work assignments, do not consistently exercise independent judgment. See *U.S. Dep't of Energy, W. Area Power Admin., Lakewood, Colo.*, [60 FLRA 6](#), 8-9 (2004); *U.S. Dep't of the Army, Army Aviation Sys. Command*, [36 FLRA 587](#) (1990) (reviewing seven positions and finding that employees who assigned work based on a single consideration and did not reassign tasks were not supervisory, whereas individuals who considered more than one factor in making assignments and frequently reassigned work are supervisors).
- Intermittent assignment of work: Individuals who assign work intermittently with little direction does not constitute consistent exercise of independent judgment. *W. Point Elementary School, U.S. Military Academy, W. Point, N.Y.*, [6 FLRA 70](#), 71 (1981).
- Get instructions from supervisors concerning work and manner to be done: Individuals who get instructions from their supervisors concerning the work to be done and the manner in which the work is to be performed and then pass the instructions along to other employees on the job, draw the necessary equipment for the job, distribute the equipment and tasks to the employees, work alongside the employees in finishing the job and observe and report the overall progress are not supervisors. *U.S. Dep't of the Navy, U.S. Naval Station, Panama*, [7 FLRA 489](#), 491 (1981)
- Higher-level supervisor assigns work to individual who then distributes work according to supervisor's directions to employees. *Dep't of Labor*, [59 FLRA 853](#), 856 (2004)
- No exercise of independent judgment in assigning work where the individual only assigned work to those employees who did that particular work on a routine basis, did not reassign work or change work priorities. *SSA*, [60 FLRA at 62](#).

Independent Judgment Exercised:

- Making initial post assignments: Individuals who exercise independent judgment in making initial post assignments and may realign employees based on problems or incidents that occur on the shift exercise independent judgment and are supervisors. *Id.*

- **Giving Significant Overall Duties:** Employees who assign work to team members based on an evaluation of the members' experience, expertise, competence, workload, or to increase the team members' capability and knowledge, consistently exercise independent judgment and are supervisory employees. SSA, [60 FLRA at 592](#).
- **Weighing priorities and input and expertise from others:** Employee who considers and weighs the expertise of team members, their availability, work priorities and employee development in assigning work is a supervisor, even though may ultimately assign 80 to 90 percent of work projects to members in their area of expertise. WAPA, [60 FLRA at 8-9](#).

Maybe yes, maybe no:

- **Appointing an Individual to a Time:** Individuals who assign overtime on a voluntary rotational basis that must be approved by another supervisor or based on a roster do not exercise independent judgment in assignment, whereas individuals who initially determine overtime assignments exercise independent judgment. SSA, [60 FLRA 590](#), 592 (2005); *Undersea Warfare* [7 FLRA at 530](#).

Reward and Promote

A central issue in rewards and promotions is whether and to what degree reward upper level management accepts and relies upon promotion recommendations. See *Dep't of Labor*, [59 FLRA 853](#), 856 (2004); *W. Point Elementary Sch., U.S. Military Academy, W. Point, N.Y.*, [6 FLRA 70](#), 72 (1981) (finding individuals were not supervisors where two recommendations for awards were accepted and one was rejected and a recommendation for step increase was denied); SSA, [60 FLRA 57](#), 62 (2004) (employee who was involved in recommending awards was not a supervisor where any employee can recommend another employee for an award).

- Where an individual evaluates an employee and management does not independently investigate the evaluations, such evaluation would suggest supervisory authority where there is a direct link between the evaluation and the award or promotion. BIA, [45 FLRA at 650-51](#).
- Another consideration is whether award and promotion recommendations are made in accordance with established policies. See *Nat'l Guard Mass., Air Nat'l Guard*, [3 FLRA 912](#), 915 (1980) (recommendations for promotion complied with established policy and therefore did not involve the exercise of independent judgment).

Suspension, Discipline, Removal

- **Supervisor**

An individual had the independent authority to issue a written reprimand and exercise that authority. See *Adjutant Gen., Del. Nat'l Guard*, [9 FLRA 3](#), 11 (1982).

- **Not a supervisor**

Individuals who proposed letters of reprimand did not effectively recommend discipline where they were required to discuss the recommendations with a higher-level supervisor who also had to approve the recommendation and where individuals may report more serious infractions but the higher-level supervisor conducts an independent evaluation before pursuing discipline. *Undersea Warfare*, [7 FLRA at 532-33](#).

- Individual was not a supervisor where the he brought to the attention of a higher-level manager behavior that was unprofessional and inappropriate and the he and manager met with the employee, and the individual, under instruction of the manager, issued a written warning. *SBA, Dist. Office, Casper, Wyo.*, [49 FLRA 1051](#), 1062 (1994)

17. SUPERVISORY FIREFIGHTERS AND NURSES

The definition of “supervisor” under section [7103\(a\)\(10\)](#) of the Statute has a clause that applies only to firefighters or nurses known as the “preponderance of time test:”

. . . 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

- The “preponderance of time” test **only** applies to firefighters and nurses and not to other types of employees who happen to be in units with firefighters or nurses. *Undersea Warfare*, 7 FLRA at 529.

Is there a statutory definition for firefighter or nurse?

- **Yes for a firefighter.** A firefighter is “any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment.” Section [7103\(a\)\(17\)](#). An individual who during the fire season, assigns work and trains his crew in the safe use of fire equipment and works side by side with his crew in performing duties that relate to fire suppression is a supervisor, even though his job title is “park ranger.” *U.S. Nat’l Park Serv., Santa Monica Mountains Recreation Area, Agoura Hills, Cal.*, [50 FLRA 164](#), 171 (1995) (*Santa Monica*).

- **No for a nurse.**

How is the test applied in an individual case?

- First, determine whether or not the firefighter or nurse engages in supervisory authority that requires the consistent exercise of independent judgment within the meaning of the Statute. *U.S. Dep't of the Army, Parks Reserve Training Ctr., Dublin, Cal.*, [61 FLRA 537](#), 542 (2006) (Parks Reserve).
 - Individuals who **do not** exercise supervisory authority that requires the consistent exercise of independent judgment are not supervisors regardless of whether they are nurses or firefighters. *See U.S. Dep't of the Army, Womack Army Med. Ctr., Fort Bragg, N.C.*, [63 FLRA 22](#) (2008).
- Then, determine if the firefighter or nurse spends a preponderance of employment time exercising supervisory authorities.

What does “preponderance” mean?

“Preponderance” means a majority. *Parks Reserve*, [61 FLRA at 541](#). An individual who spends more than half of his or her employment time exercising supervisory authority that requires the exercise of independent judgment is a supervisor.

What does “employment time” mean?

What constitutes “employment time” is determined by the record in a particular case. *Parks Reserve*, 61 FLRA at 542. The facts and circumstances presented in each case determine what activities and periods of time should be considered in determining work time for the individuals at issue. *Id.*

- For firefighters working 24-hour shift, employment time was “active duty time.” *U.S. Dep't of the Navy, Navy Marine Corps Base, Camp Pendleton, Cal.*, [8 FLRA 276](#), 278 (1982); *Parks Reserve*, [61 FLRA at 543](#).
- For a nurse, employment time was the 8-hour work day for which she was paid. *VA Med. Ctr., Fayetteville, N.C.*, [8 FLRA 651](#), 665 (1982); *VA, Wash. Hosp., Tucson, Ariz.*, [4 FLRA 112](#) (1980) (finding nurses primarily engaged in patient care were not supervisors while nurses primarily engaged in supervisory work were supervisors).
- For seasonal firefighters, employment time was duty time during the fire season while the individual is in charge of seasonal employees. *Santa Monica*, [50 FLRA at 171](#).

18. MANAGEMENT OFFICIAL - SECTION 7112(b)(1) OF THE STATUTE

Under section [7112\(b\)\(1\)](#), management officials must be excluded from bargaining units. Management official is defined in section [7103\(a\)\(11\)](#) of the Statute as:

... an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency.

“To influence” the policies of the agency is similar to the term “to effectively influence,” and means “to bring about or to obtain a result.” *Dep’t of the Navy, Automatic Data Processing Selection Office*, [7 FLRA 172](#), 174-75 (1981) (ADP).

What criteria are applied when determining if an employee is a management official?

Whether the person in the position:

- a) creates, establishes or prescribes general principles, plans or courses of action for an agency;
- b) decides upon or settles upon general principles, plans or courses of action for an agency; or
- c) brings about or obtains a result as to the adoption of general principles, plans or course of action for an agency.

[Id. at 177.](#)

- **Independent judgment** exercised by the individual who develops or enforces agency policies or has binding authority is critical in determining if a person is a management official. Individuals who serve on a board which sets agency policies may be management officials within the meaning of the Statute. *U.S. Dep’t of Justice, Bd. of Immigration Appeals*, [47 FLRA 505](#), 509 (1993); *U.S. Dep’t of Energy, Headquarters, Wash. D.C.*, [40 FLRA 264](#), 272 (1991) (*Energy*); *Headquarters, 1947th Admin. Support Group, U.S. Air Force, Wash., D.C.*, [14 FLRA 220](#), 228-29 (1984).
- In contrast, employees who are subject-matter experts and give advice but don’t develop policies are **not management officials**. *Energy*, [40 FLRA at 270](#).
- An employee who assists in the implementation of policy is **not a management official**. *U.S. Army Comm’n Sys. Agency, Fort Monmouth, N.J.*, [4 FLRA 627](#) (1980); *Dep’t of Def., Def. Logistics Agency, Def. Contract Mgmt. Command, Def. Contract Mgmt. Dist. N. Cent.*, [48 FLRA 285](#) (1993).

- Where an individual recommends policies or courses of action for an agency, the frequency with which the recommendations are adopted is important in determining if that person is a management official. *U.S. Coast Guard, Headquarters*, [7 FLRA 743](#), 744-43 (1982).

19. CONFIDENTIAL EMPLOYEES - SECTION [7112\(b\)\(2\)](#) OF THE STATUTE

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.” 5 U.S.C. § [7103\(a\)\(13\)](#).

What standard does the Authority apply to determine if an employee acts in a confidential capacity to an individual who develops or implements labor-management policies?

- The Authority established the **labor-nexus test** in *U.S. Dep’t of Interior, Bureau of Reclamation, Yuma Projects Office, Yuma, Ariz.*, [37 FLRA 239](#), 244 (1990) (*Yuma*). Under the labor-nexus test an employee is a confidential employee if:
 - (1) There is evidence of a confidential working relationship between an employee and the employee’s supervisor or a manager; and
 - (2) The supervisor or manager is significantly involved in labor-management relations.
- Both factors must be present for an employee to be considered confidential under the labor-nexus test. *U.S. Army Plant Representative Office, Mesa, Ariz.*, [35 FLRA 181](#) (1990).
- Examples of when a supervisor or manager is significantly involved in labor-management relations:
 - Advising management on or developing negotiating positions concerning proposals, preparing arbitration cases for hearing, and consulting with management regarding the handling of unfair labor practices. *U.S. Dep’t of the Army, U.S. Army Aviation Ctr., Fort Rucker, Ala.*, [60 FLRA 771](#), 772 (2005) (*Fort Rucker*).
 - Participating in contract negotiations and deciding grievances. *Id.*
 - But it does not include EEO, MSPB matters. *See, e.g., Broad. Bd. of Governors*, [64 FLRA 235](#), 236-37 (2009).

- Examples of employees who were confidential employees:
 - Secretaries who attended management meetings, and took notes at these meetings. Attendees at the meetings discussed labor-management issues, such as management's responses to grievances and negotiation proposals. The secretaries also participated in preparing management responses to grievances, proposed disciplinary actions and negotiation proposals. *NASA, Glenn Research Ctr., Cleveland, Ohio*, [57 FRLA 571](#), 573-74(2001).
 - Engineering technician who worked for a Director. The Director was the second-step grievance official, negotiated with the union, responded to proposed disciplinary actions. The technician edited the Director's response to grievances, had prior knowledge of grievance responses, proposed disciplinary actions, promotions and awards. *Fort Rucker*, [60 FLRA at 772](#).
 - An employee who consulted and discussed with a Human Resources Specialist about the agency's response to the union's requests for information under the Statute and under FOIA. The Human Resources Specialist was the contact point for the union. *Nat'l Credit Union Admin.*, [61 FLRA 349](#), 351 (2005).
- Examples of employees who weren't confidential employees:
 - A technician who worked for a Program Director but did not act in a confidential capacity to the Director when the Director performed labor-management relations activities. *Tick Eradication Program, Veterinary Servs., AHIS, U.S. Dep't of Agric.*, [15 FLRA 250](#), 252 (1984).
 - A documents examiner who worked for a Chief Legal Officer but did not act in a confidential capacity when the Chief Legal Officer engaged in labor-management relations. The documents examiner overheard (by chance) one discussion of a labor relations matter, and had access to labor-management materials, but never saw any labor-relations documents. *Red River Army Depot, Texarkana, Tex.*, [2 FLRA 659](#), 660-61 (1980).

What about employees who don't meet the labor-nexus test but (as part of their job) may obtain advance information on management's position in labor-management relations issues?

Employees are confidential when in the normal performance of their duties they may:

- Obtain advance information regarding management's position with regard to contract negotiations and the disposition of grievances and other labor-management relations matters;

- Overhear discussions of labor relations matters; and
- Have access to and prepare materials related to labor relations.

Office of the Solicitor, Arlington Field Office, [37 FLRA 1371](#), 1383 (1990) (DOL).

- The frequency and the amount of an employee’s working time devoted to labor relations matters may be relevant factors in determining confidential status, but are not controlling factors for section 7103(a)(13) purposes. *Id.* at [1382](#).

20. PERSONNEL WORK – SECTION 7112(b)(3) OF THE STATUTE

To be excluded under § [7112\(b\)\(3\)](#), the employee must be “engaged in personnel work in other than a purely clerical capacity.” 5 U.S.C. § [7112\(b\)\(3\)](#). The Authority has clarified that this means that:

- the character and extent of involvement of the employee in personnel work is more than clerical in nature;
- the duties are not performed in a routine manner; and
- the employee exercises independent judgment and discretion.

U.S. Dep’t of Veterans Affairs, N. Cal. Health Care Sys. Martinez, Cal. [66 FLRA 522](#), 524 (2012) (VA Martinez) (Member Beck dissenting).

Must an employee’s personnel work concern employees in the same bargaining unit for § [7112\(b\)\(3\)](#) to apply?

No. The Authority has clarified that employees may be excluded from a unit under § [7112\(b\)\(3\)](#) even if their personnel work affects only employees outside the unit. *U.S. Dep’t of the Army, N. Cent. Civilian Pers. Operation Ctr., Rock Island, Ill.*, [59 FLRA 296](#), 302 (2003) (Rock Island) (Chairman Cabaniss concurring). However, personnel work concerning persons excluded by [5 U.S.C. § 7103\(a\)\(2\)](#) from the definition of “employee” cannot serve as the basis for excluding an employee under § [7112\(b\)\(3\)](#). *934th Tactical Airlift Group (AFRES), Minneapolis-St. Paul Int’l Airport, Minneapolis, Minn.*, [13 FLRA 549](#), 552 (1983) (employees not excluded by § [7112\(b\)\(3\)](#) where their personnel work concerned military personnel excluded from the definition of employee under § [7103\(a\)\(2\)](#)); *U.S. Army Dist. Recruiting Command-Phila.*, [12 FLRA 409](#), 410 (1983) (same).

Does § [7112\(b\)\(3\)](#) exclude employees who perform personnel work for other agencies?

No. The exclusion does not encompass “those who serve as advisors on personnel matters” to employers other than their own. *OPM*, [5 FLRA 238](#), 246-47 (1981). This means that “the proper focus . . . is whether the personnel work performed by employees in other than a purely clerical capacity relates to their own employing agency.” *Rock Island*, [59 FLRA at 302](#); see also *OPM*, [5 FLRA at 246-47](#).

Must an employee’s work directly involve the agency’s internal personnel operations to constitute personnel work for purposes of § [7112\(b\)\(3\)](#)?

No. The Authority has found that § [7112\(b\)\(3\)](#) extends beyond “internal personnel operations” to exclude employees whose work “directly impact[s] staffing and the overall work environment.” *U.S. Dep’t of Transp., FAA*, [63 FLRA 356](#), 360 (2009).

Examples:

- Employees who advised the FAA on the impact of new technology on how many air traffic controllers the agency needed to employ were excluded under § [7112\(b\)\(3\)](#). *Id.* at 360-61. The employees also made recommendations about the agency’s organizational structure that resulted in the relocation or transfer of over one thousand employees. *Id.* at [361](#).
- Analysts who conducted “Most Efficient Organization” studies to consider whether work should be contracted out and made recommendations that resulted in the reduction of personnel positions excluded under section [7112\(b\)\(3\)](#). *U.S. Dep’t of the Army Headquarters, 101st Airborne Div., Fort Campbell, Ky.*, [36 FLRA 598](#), 603-04 (1990).

What personnel duties has the Authority found are “clerical,” “routine,” or do not involve the “exercise of independent judgment and discretion” for purposes of § [7112\(b\)\(3\)](#)?

Examples of employees who were **not** excluded under § [7112\(b\)\(3\)](#):

- Benefits Assistants who advised other employees about their benefits performed work that was “**mostly clerical**” and involved following regulations and guidelines rather than exercising independent judgment and discretion. *VA Martinez*, [66 FLRA at 523](#), 525.
- Recruitment Assistants who relied on guidelines, rules, and regulations to review vacancy announcements, verify applicants’ qualifications, and answer questions from applicants and management officials **did not exercise independent judgment**. *Id.*
- Pre-Employment Assistants who performed “**mostly clerical**” duties involving verifying the qualifications of applicants did not consistently exercise independent judgment. *Id.*

- Although Human Resource Assistants served as subject-matter experts on personnel matters, they performed their duties in a routine manner, and followed standardized guidelines rather than exercising independent judgment and discretion. *U.S. Dep't of Agric. Forest Serv., Albuquerque Serv. Ctr., Human Capital Mgmt., Albuquerque, N.M.*, [64 FLRA 239](#), 242-43 (2009) (Member Beck concurring).
- A Customer Service Representative who reviewed personnel matters to ensure that appropriate procedures had been followed did not exercise independent judgment and discretion and her duties were clerical. *AFGE, Local 3529*, [57 FLRA 633](#), 638-39 (2001).
- Legal Assistants who accessed confidential personnel files and assisted attorneys with personnel-related cases by citation-checking, formatting, copying, and mailing documents performed clerical work and did not exercise independent judgment or discretion. *SSA*, [56 FLRA 1015](#), 1015-18 (2000).
- Section 7112(b)(3) did not exclude an Equal Employment Specialist who maintained data concerning EEO complaints because her duties were routine in nature, involved following prescribed guidelines, and did not require the exercise of independent judgment or discretion. *U.S. Dep't of Housing & Urban Dev., Wash., D.C.*, [35 FLRA 1249](#), 1254 (1990).

Examples of employees who were **excluded** under § [7112\(b\)\(3\)](#):

- Two Management Analysts who analyzed personnel programs affecting the bargaining unit and made recommendations to management concerning the programs. Another Management Analyst set up management's initial qualifying test for job applicants; worked with management in the recruitment and selection process, screened applicants and made effective recommendations on applicant selections. The duties of the three employees were more than clerical in nature, and they exercised independent judgment. *DHHS, Region X, Seattle, Wash.*, [9 FLRA 518](#), 524 (1982).
- Personnel Assistant who counseled employees and answered their questions about the Workers' Compensation and Retirement and Death Benefit Programs, and had authority to authorize medical treatment and continuation of pay for employees under the Workers' Compensation Program. *VA, Wash, D.C.*, [11 FLRA 176](#), 177 (1983).

21. EMPLOYEES WHO ADMINISTER THE STATUTE – SECTION [7112\(b\)\(4\)](#) OF THE STATUTE

To be excluded under § [7112\(b\)\(4\)](#), the employee must administer any provisions of the Statute.

Who (besides FLRA employees) administers the Statute?

- Mediators of the Federal Mediation and Conciliation Service, who provide mediation services to federal agencies and unions, administer 5 U.S.C. § [7119\(a\)](#), and are excluded from coverage of the Statute. *FMCS, Region 7, S.F. Cal.*, [3 FLRA 138](#) (1980); *FMCS*, [52 FLRA 1509](#) (1997).
- Employees of the Department of Labor who enforce 5 U.S.C. [§ 7120\(a\) through \(e\)](#) administer the Statute, and are excluded from its coverage under 5 U.S.C. § [7112\(b\)\(4\)](#). *U.S. Dep't of Labor, Office of the Solicitor, Region III*, [8 FLRA 286](#) (1982). But a bargaining unit of DOL field employees who enforce 5 U.S.C. § [7120\(a\) through \(e\)](#) remained appropriate after enactment of the Statute under 5 U.S.C. § [7135\(a\)\(1\)](#), the Statute's savings provision. *U.S. Dep't of Labor*, [23 FLRA 464](#), 473 (1986).

Does this exemption apply to employees who administer other laws relating to labor-management relations?

No. These employees are covered by the Statute and may be in bargaining units. But, under 5 U.S.C. § [7112\(c\)](#) these employees cannot be represented by a union:

- which represents other individuals to whom such provisions applies; or
- which is affiliated directly or indirectly with an organization which represents other individuals to whom such provisions applies.
 - These restrictions were enacted "to prevent conflicts of interest and appearance of conflicts of interest which would result from represented employees administering labor laws that apply to other employees from their union." See *U.S. Dep't of Labor, Pension and Welfare Benefits Admin.*, [30 FLRA 1229](#), 1234 (1988), citing the *Legislative History of the Fed. Serv. Labor-Management Relations Statute, Title VII of the Civil Serv. Reform Act of 1978*, Comm. Print No. 96-7 at 925.

What does it mean to "administer" a law relating to labor-management relations?

Administer means to have charge of, manage or oversee the provision or execution of something. *NMB*, [56 FLRA 1](#), 5 (2000). It has the same meaning as in section [7112\(b\)\(4\)](#), because both provisions were "enacted for the same purpose -- to protect against a conflict of interest between administering employees and the employees covered by the labor relations

statute being administered.” *NMB*, [56 FLRA at 5](#). Any other employees in the agency “who are not responsible for managing, implementing, carrying-out, or otherwise executing a provision of law relating to labor-management relations [can] be included in an appropriate unit.” *Id.* (footnotes omitted).

- Employees of the National Mediation Board are covered by section [7112\(c\)](#), because they administer the Railway Labor Act. That Act addresses labor-management relations in the railway and airline industries. *NMB*, [54 FLRA 1474](#) (1998).
- But, other NMB employees, who provide clerical, administrative and technical support, do not administer the Railway Labor Act and can be represented by a union that represents other employees. *NMB*, [56 FLRA at 5](#).

What does it mean to be “affiliated directly or indirectly”?

Unions affiliated with the AFL-CIO are affiliated directly or indirectly with one another. *NMB*, [54 FLRA 1474](#) (1998).

22. SECURITY WORK -- SECTION [7112\(b\)\(6\)](#) OF THE STATUTE

To be excluded under section [7112\(b\)\(6\)](#), the employee must be:

- engaged in intelligence, counterintelligence, investigative, or security work that
- directly affects
- national security

See 5 U.S.C. § [7112\(b\)\(6\)](#); *U.S. Dep’t of the Air Force, Davis-Monthan Air Force Base, Ariz.*, [62 FLRA 332](#), 334 (2008) (*Davis-Monthan*) (Chairman Cabaniss concurring).

How does the Authority define “intelligence,” “counterintelligence,” “investigative,” or “security” work?

- Intelligence Work: Because the Statute does not define “intelligence” work, the Authority used a dictionary definition: work that involves “evaluated information concerning an enemy or possible enemy or a possible theater of operations and the conclusion drawn therefrom.” *U.S. Nuclear Regulatory Comm’n*, [66 FLRA 311](#), 317-18 (2011) (*NRC*) (Member Beck dissenting).

Examples:

- The Authority has not yet found that an employee did intelligence work.
- Criminal investigators for the U.S. Nuclear Regulatory Commission did *not* do intelligence work. *NRC*, [66 FLRA at 318](#).
- Counterintelligence Work: Because the Statute does not define “counterintelligence” work, the Authority used a dictionary definition: work that involves “organized activity of an intelligence service designed to block an enemy’s sources of information by concealment, camouflage, censorship, and other measures, to deceive the enemy by ruses and misinformation, to prevent sabotage, and to gather political and military information.” See *NRC*, [66 FLRA at 317-18](#).

Examples:

- The Authority has not yet found that an employee did counterintelligence work.
- Criminal investigators for the U.S. Nuclear Regulatory Commission did *not* do counterintelligence work. *NRC*, [66 FLRA at 318](#).
- Investigative Work: Neither the Statute nor Authority case law defines “investigative” work, but parties have agreed that employees performed investigative work in at least two cases.

Examples:

- Parties did not dispute that criminal investigators for the U.S. Nuclear Regulatory Commission did investigative work. *NRC*, [66 FLRA at 315](#).
- Parties did not dispute that OPM investigators and “investigations technicians” who investigate applicants’ qualifications and suitability for employment did investigative work. *Office of Pers. Mgmt.*, [5 FLRA 238](#), 247-48 (1981).
- Security Work: “a task, duty, function, or activity related to securing, guarding, protecting, or preserving something.” *Dep’t of Energy, Oak Ridge Operations, Oak Ridge, Tenn.*, [4 FLRA 644](#), 655 (1980) (*Oak Ridge*). Security work includes:
 - the design, analysis, or monitoring of security systems and procedures, *id.*; and
 - work that involves the regular use of, or access to, classified information. See *U.S. DOJ*, [52 FLRA 1093](#), 1102-03 (1997) (reversing *Oak Ridge* on this point).

- work that involves regular use of, or access to certain non-classified information, i.e., “safeguards information” involving the security plans of nuclear facilities. *NRC*, [66 FLRA at 318-21](#).

Examples:

- Employees who developed and maintained automated information systems that processed and secured classified information did security work. *U.S. DOJ*, [52 FLRA at 1104](#).
- Physical security specialists who made recommendations for security-system design improvements, wrote and implemented security action plans, and ensured that security measures were properly implemented did security work. *See SSA, Balt., Md.*, [59 FLRA 137](#), 146 (2003) (*SSA Balt.*) (Chairman Cabaniss concurring and then-Member Pope concurring in part and dissenting in part).
- Security clerk who handled, controlled access to, destroyed, transported, and protected highly classified information did security work. *Def. Mapping Agency, Aerospace Ctr., Kan. City Office, Kan. City, Mo.*, [13 FLRA 52](#), 53-54 (1983).
- Criminal investigators who did not use or access classified information did not do security work. *NRC*, [66 FLRA at 317](#).
- Information technology specialists did not do security work where they maintained a telecommunications network, but did not monitor the network for security issues, make determinations about who could access the network, or use or access classified information. *SSA*, [60 FLRA 57](#), 61 (2004).

How does the Authority determine whether an employee’s use of, or access to, classified or safeguards information is “regular”?

- *NRC* provides some examples of what is, and what is not, “regular” use or access of information. *See NRC*, [66 FLRA at 317](#), 321-22. Employees cannot be excluded on the basis of “potential, future use of or access to safeguards and classified information.” [Id. at 317](#). Employees who had access to safeguards information on only one or two occasions, or “limited” access, did not have “regular” access. [Id.](#) Employees who had access “several” times had “regular” access. [Id. at 322](#). That an employee was the “custodian of the safe in which safeguards information is kept,” or knew the combination to that safe, supported a conclusion that the employee had access on a “continuous, or regular, basis.” [Id.](#)

Must an employee have security clearance to be excluded under § [7112\(b\)\(6\)](#)?

No. An employee need not have a security clearance, or be in a position designated as “sensitive,” to be excluded. See *SSA, Balt.*, [59 FLRA at 145](#) & n.6.

If an employee has security clearance, then is the employee automatically excluded under § [7112\(b\)\(6\)](#)?

No. Possessing a security clearance, or occupying a position designated as “sensitive,” is a “significant,” but not dispositive factor in determining whether an employee performs security work. *SSA Balt.*, [59 FLRA at 145](#) & n.6. The Authority focuses on the type and nature of the work performed. *Id.* at 145.

How does the Authority determine whether the employee’s work involves national security?

The term “national security” includes “those sensitive activities of the government that are directly related to the protection and preservation of the military, economic, and productive strength of the United States, including the security of the [g]overnment in domestic and foreign affairs, against or from espionage, sabotage, subversion, foreign aggression, and any other illegal acts which adversely affect the national defense.” *Oak Ridge*, [4 FLRA at 655-56](#). This includes protecting the nation’s critical infrastructure, as well as defending the nation from terrorist attacks. See *SSA Balt.*, [59 FLRA at 144](#).

Examples:

- In *Davis-Monthan*, employees’ duties involved national security because they related to the protection and preservation of the nation’s military strength. [62 FLRA at 335](#). These employees regularly used and accessed classified information concerning, for example, troop movements and operational plans. *Id.*
- Employees in *SSA Balt.* did national-security work by protecting the government’s ability to deliver Social Security benefits, which “are of great significance to the [n]ation’s economic strength.” [59 FLRA at 145-46](#). For example, an electronics technician designed, installed, and implemented comprehensive security measures at the agency’s most sensitive facilities, and could access, adjust, and provide guidance concerning security systems. *Id.* at 146.

Must an employee work at a military agency for his or her work to involve national security?

- **No.** Work performed by employees in both civilian and military agencies may be security work which directly affects national security within the meaning of [§ 7112\(b\)\(6\)](#) of the Statute. *U.S. DOJ*, [52 FLRA at 1098-99](#); *SSA Balt.*, [59 FLRA at 143-46](#). See also *United States Dep’t of the Treasury, IRS*, [62 FLRA 298](#), 303 (2007) (*IRS*) (security system

that allows collection of taxes, which fund government operations, concerns national security).

Must *all* of an employee’s duties involve national security in order for the employee to be excluded?

- **No.** An employee need not perform national-security work “all the time” in order to be excluded. *See NRC, [66 FLRA at 317](#); SSA Balt.*, 59 FLRA at 146. Similarly, the Authority does not require any “minimum amount of time” for access to classified material in order to find that an employee performs security work. *NRC, [66 FLRA at 317](#); U.S. Dep’t of the Army, Corps of Eng’rs, U.S. Army Eng’r Research Dev. Ctr., Vicksburg, Miss.*, [57 FLRA 834](#), 837 (2002).

How does the Authority determine whether the employee’s work *directly affects* national security?

- “Directly affects” means that there is “a straight bearing or unbroken connection that produces a material influence or alter[.]ation.” *Oak Ridge, [4 FLRA at 655](#)*. This definition means that § [7112\(b\)\(6\)](#) doesn’t permit the exclusion of positions merely because they have *some* relationship to national security – even “important national [security] interests.” *U.S. Dep’t of the Treasury, IRS, [65 FLRA 687](#)*, 690 (2011) (*Treasury*) (Member Beck dissenting in part). This requirement is applied narrowly to implement Congress’s determination in § [7101\(a\)](#) to “safeguard[] the public interest” through the institution of collective bargaining for federal employees. *Id. at 691*. So this requirement is met only in limited circumstances.” *Id. at 690*.
- The determination is based upon the duties of the employee, and not the mission or functions performed by the activity. *U.S. Dep’t of the Air Force, Tyndall Air Force Base, Tyndall AFB, Fla.*, [65 FLRA 610](#), 613 (2011) (*Tyndall AFB*).

What factors does the Authority consider to determine whether employees’ work directly affects national security?

- Whether any intervening steps sever, or otherwise limit, an employee’s potential effect on national security.
 - *Compare IRS, [62 FLRA at 304](#)* (finding direct effect where security specialists were personally responsible for designing, analyzing, and monitoring the security of facilities essential to national security), *with NRC, [66 FLRA at 315-16](#)* (intervening steps limited the effect of criminal investigators’ investigative duties on national security).
 - Whether the employee’s discretion is limited, such as where the employee carries out duties under established procedures and the employee has little

opportunity for making choices.

- *See, e.g., Tyndall AFB, [65 at 614](#)* (police officer’s limited discretion in suspicious-package situations supported finding that position did not directly affect national security); *U.S. Dep’t of Agric., Food Safety & Inspection Serv., [61 FLRA 397](#), 402-03 (2005) (USDA)* (requirements that food inspectors adhere to database-generated assignments and follow step-by-step inspection process as defined in agency manual supported finding that position did not directly affect national security).
- Whether the employee must “go through another individual” before his or her actions may impact national security.
 - *See, e.g., NRC, [66 FLRA at 316](#)* (that another individual must take prosecutorial or enforcement action before a criminal investigator’s work can affect national security supported finding that position did not directly affect national security); *USDA, [61 FLRA at 402-03](#)* (inspectors who could determine that heightened inspection was necessary, but had to get permission before conducting a more extensive review, did not directly affect national security).
- Whether the employee is responsible for the physical security of facilities or designs the security systems for those facilities.
 - *See, e.g., IRS, [62 FLRA at 303-04](#)* (specialists directly affected national security where their duties included granting and restricting access to agency facilities by issuing and deactivating key cards, and determining the type and placement of security systems used in agency facilities); *U.S. DOJ, Wash., D.C., [62 FLRA 286](#), 293-94 (2007)* (Chairman Cabaniss concurring in part and dissenting in part) (specialist who implemented and enforced security requirements directly affected national security); *id. at 294-96* (specialist and project manager who oversaw contractor work on security system directly affected national security).
- Whether other individuals play an important role in the security of a facility.
 - *See Treasury, [65 FLRA at 691-92](#)* (role of guards in controlling access to the facility supported conclusion that officers did not directly affect national security).
- Whether, in addition to performing national-security-related duties, the employee performs numerous duties that do not involve national security.

- See *Treasury*, [65 FLRA at 692](#) (officers’ duties securing areas of agency facility unrelated to national security supported conclusion that officers did not directly affect national security).

How does the Authority determine whether an employee’s use of, or access to, information directly affects national security?

- In cases involving employees who regularly used or accessed classified information, the Authority has found a direct effect where, “given the nature of” the information at issue, it was “clear that there [were] no intervening steps between the employees’ failure to prevent unauthorized disclosure” of the information and “the potential effect on national security should they fail to do so.” *Davis-Monthan*, [62 FLRA at 335](#). The same standard applies to certain non-classified information as well. See *NRC*, [66 FLRA at 321](#) (direct effect where employees’ failure to prevent unauthorized disclosure of “safeguards” information involving the security plans of nuclear facilities could significantly adversely affect national security).

23. INVESTIGATION OR AUDIT FUNCTIONS – SECTION [7112\(b\)\(7\)](#) OF THE STATUTE

To be excluded under § [7112\(b\)\(7\)](#), the employee must be:

- (1) primarily engaged in investigation or audit functions
- (2) relating to the work of individuals employed by the agency whose duties directly affect the internal security of the agency
- (3) and these functions must be undertaken to ensure that the duties are discharged honestly and with integrity.

5 U.S.C. § [7112\(b\)\(7\)](#); *U.S. DOJ, Fed. Bureau of Prisons, U.S. Penitentiary McCreary, Pine Knot, Ky.*, [63 FLRA 153](#), 155 (2009) (*Pine Knot*).

How does the Authority determine whether an employee is “primarily engaged” in the investigation and audit functions described by § [7112\(b\)\(7\)](#)?

An employee is “primarily engaged” in these functions if the functions make up a majority of that employee’s duties. *U.S. DOJ, Fed. Bureau of Prisons, Fed. Corr. Inst., Seagoville, Tex.*, [65 FLRA 239](#), 241 (2010) (*Seagoville*).

Examples:

- Technician who spent no more than forty-five percent of his time investigating staff was not “primarily engaged” for purposes of § [7112\(b\)\(7\)](#). See *Seagoville*, [65 FLRA at 241](#).
- Technician who spent ten to twenty percent of his time investigating staff was not “primarily engaged.” *Pine Knot*, [63 FLRA at 156](#).
- Where “preponderance” of auditor’s duties did not implicate § [7112\(b\)\(7\)](#), auditor was not “primarily engaged.” *AFGE, Local 3529*, [57 FLRA 633](#), 637-38 (2001) (*Local 3529*).

Must an employee be directly investigating employees for his or her investigation or audit duties to “relat[e] to the work of individuals employed by an agency whose duties directly affect the internal security of the agency[?]”

No. An employee who conducts audits of *programs* or *contracts*, and whose audits may uncover the failure of employees to discharge their duties honestly and with integrity, is excluded under § [7112\(b\)\(7\)](#). See *Small Business Admin.*, [34 FLRA 392](#), 401-02 (1990).

Examples:

- Auditors evaluated programs and “only a small percentage” of these audits resulted in investigations of employees. *U.S. Dep’t of the Navy, Naval Audit Serv. S.E. Region*, [46 FLRA 512](#), 518 (1992) (*Naval Audit*). However, because the auditors frequently reviewed the work product of individuals whose duties directly affected internal security to determine whether those employees performed their work with honesty and integrity, auditors were primarily engaged in investigation or audit functions “relat[ed] to the work of” individuals whose duties directly affected internal security. *Id.* at 518-19.
- Technicians’ investigations of prison-inmate misconduct and complaints that could “potential[ly]” uncover staff misconduct did not “relate to” the work of individuals whose duties affected internal security under § [7112\(b\)\(7\)](#). *Pine Knot*, [63 FLRA at 155](#). See also *Seagoville*, [65 FLRA at 241](#).

How does the Authority determine whether an employee’s investigation and audit functions are “undertaken to ensure that the duties are discharged honestly and with integrity[?]”

In *Naval Audit*, the Authority found that employees who performed audits or investigations “designed to detect possible fraud, waste, and abuse” were undertaken to ensure that “employees . . . performed with honesty and integrity” for purposes of § [7112\(b\)\(7\)](#). *Naval Audit*, [46 FLRA at 519](#). However, the Authority later clarified that the § [7112\(b\)\(7\)](#) standard “is not . . . limited to that type of employee, and includes *any* audit or investigation that relates to the ‘honesty and integrity’ of particular types of employees.” *U.S. DOJ, Fed. Bureau of Prisons, U.S. Penitentiary, Marion, Ill.*, [55 FLRA 1243](#), 1248 (2000) (emphasis added).

Examples:

- Section [7112\(b\)\(7\)](#) excluded from the unit auditors who: (1) investigated programs, activities, and systems to evaluate compliance with policies, procedures, laws, and regulations; and (2) reviewed the adequacy of internal controls for safeguarding assets, protecting data integrity, and preventing fraud, waste, or abuse. *Naval Audit*, [46 FLRA at 518-19](#).
- Auditor that performed “procedural quality control checks to ensure [that employees’] compli[ed] with generally accepted government . . . standards,” but did not substantively review employees’ specific actions, did not work to ensure that employees discharged their duties with honesty and integrity under § [7112\(b\)\(7\)](#). *Local 3529*, [57 FLRA at 638](#).
- Specialist who supplied information to external auditors was **not excluded** under § [7112\(b\)\(7\)](#) because the financial audits at issue were not designed to determine whether or not the employees of the agency were discharging their duties honestly and with integrity. *U.S. Dep’t of Agric. Forest Serv., Albuquerque Serv. Ctr., Human Capital Mgmt., Albuquerque, N.M.*, [64 FLRA 239](#), 243 (2009) (Member Beck concurring).

Appendix A – Appropriate Unit

The Authority has addressed the **community-of-interest** criterion in numerous cases, including:

- U.S. Dep't of the Navy, Naval Facilities Eng'g Command, Mid-Atlantic, Norfolk, Va., [65 FLRA 272](#), 278-80 (2010) (Eng'g Command);
- U.S. Dep't of the Navy, Commander, Navy Region, Mid-Atl. Program Dir., Fleet & Family Readiness, Norfolk, Va., [64 FLRA 782](#), 786-87 (2010) (Fleet & Family);
- USCB, [64 FLRA 399](#), 402-03 (2010);
- Travis AFB, [64 FLRA 1](#), 6-7 (2009);
- U.S. Dep't of the Army, Army Materiel Command Headquarters, Joint Munitions Command, Rock Island, Ill., [63 FLRA 394](#), 403-05 (2009) (JMC II);
- U.S. Dep't of the Navy, Fleet Readiness Ctr. S.W., San Diego, Cal., [63 FLRA 245](#), 251 (2009) (Fleet Readiness Ctr.);
- U.S. Dep't of the Navy, Carrier Planning Activity, Chesapeake, Va., [63 FLRA 63](#), 64-65 (2009) (Carrier Planning Activity);
- U.S. Dep't of the Navy, Commander, Navy Region, Mid-Atlantic, [63 FLRA 8](#), 13 (2008) (Mid-Atl.);
- U.S. Dep't of the Navy, Naval Facilities Eng'g Command, S.E., Jacksonville, Fla., [62 FLRA 480](#), 487-88 (2008) (Eng'g Command S.E.);
- U.S. Dep't of Commerce, Nat'l Weather Serv., Silver Spring, Md., [62 FLRA 472](#), 476 (2008) (Nat'l Weather Serv.);
- JMC I, [62 FLRA 313](#), 317-18 (2007);
- U.S. Dep't of Health & Human Servs., NIH, Nat'l Inst. of Env'tl. Health Sciences Research, Triangle Park, N.C., [62 FLRA 84](#), 87 (2007)(NIH);
- U.S. Dep't of Agric., Office of the Chief Info. Officer, Info. Tech. Servs., [61 FLRA 879](#), 883-84 (2006) (Info. Tech. Servs.);
- U.S. Dep't of Veterans Affairs, VA Conn. Healthcare Sys., W. Haven, Conn., [61 FLRA 864](#), 868-69 (2006) (VA Conn.);
- U.S. Dep't of Homeland Sec., Bureau of Customs & Border Prot., [61 FLRA 485](#), 495-96 (2006) (CBP);
- Def. Logistics Agency, Fort Belvoir, Va. [60 FLRA 701](#), 705 (2005) (Chairman Cabaniss dissenting) (Fort Belvoir);
- U.S. Dep't of the Navy, Naval Dist. Wash., [60 FLRA 469](#), 474 (2004) (Naval Dist. Wash.);
- MTMC, [60 FLRA 390](#), 394-95 (2004);
- Lackland AFB, [59 FLRA 739](#), 741-42 (2004);
- Dep't of the Interior, Nat'l Park Serv., Lake Mead Nat'l Recreation Area, Boulder City, Nev., [57 FLRA 582](#), 585 (2001) (Lake Mead);
- Miss. Army Nat'l Guard, Jackson, Miss., [57 FLRA 337](#), 241-42 (2001) (Miss. Army);

- *Fort McPherson* , [57 FLRA 95](#), (2001);
- *U.S. Dep't of the Navy, Naval Air Warfare Command, Aircraft Div., Patuxent River, Md.*, [56 FLRA 1005](#), 1007-08 (2000) (Chairman Wasserman concurring);
- *U.S. Dep't of the Navy, Commander, Naval Base, Norfolk, Va.*, [56 FLRA 328](#), 334-35 (2000) (Chairman Wasserman concurring in part and dissenting in part) (*Commander I*);
- *U.S. Sec. & Exchange Comm'n, Wash., D.C.*, [56 FLRA 312](#), 315-16 (2000) (*SEC*);
- *Div. of Military & Naval Affairs, N.Y. Nat'l Guard, Latham, N.Y.*, [56 FLRA 139](#), 143-44 (2000) (*N.Y. Nat'l Guard*);
- *U.S. Dep't of Def., Nat'l Guard Bureau*, [55 FLRA 657](#), 662-63 (1999) (*DOD*);
- *U.S. Dep't of the Navy, Commander, Naval Base, Norfolk, Va.*, [55 FLRA 514](#), 518-19 (1999);
- *U.S. Dep't of the Air Force, Air Force Materiel Command, Wright-Patterson Air Force Base, Ohio*, [55 FLRA 359](#), 362-64 (1999) (*Wright-Patterson AFB I*);
- *U.S. Dep't of the Interior, Nat'l Park Serv., Wash. D.C.*, [55 FLRA 311](#), 315 (1999) (*Nat'l Park Serv.*);
- *Phx. Area Indian Health Serv., Owyhee Serv. Unit (Owyhee PHS Indian Hosp., & Elko Clinic), Owyhee, Nev.*, [53 FLRA 1221](#), 1227 (1998) (*Owyhee*);
- *Phoenix Area Indian Health Serv., Sacaton Serv. Unit, Hu Hu Kam Mem'l Hosp., Sacaton, Ariz.*, [53 FLRA 1200](#), 1216-18 (1998) (*Sacaton*);
- *Dep't of the Navy, Naval Supply Ctr., Puget Sound, Bremerton, Wash.*, [53 FLRA 173](#), 179-82 (1997) (*Puget Sound*);
- *FISC*, [52 FLRA 950](#), 964-66 (1997);
- *Walter Reed Army Med. Ctr.*, [52 FLRA 852](#), 856-57 (1997) (*Walter Reed*);
- *Dep't of Health & Human Servs., Navajo Area Indian Health Serv., Shiprock Serv. Unit, Shiprock, N.M.*, [49 FLRA 1375](#), 1383-84 (1994) (*Shiprock*);
- *U.S. Dep't of the Interior, Nat'l Park Serv., Rocky Mountain Nat'l Park, Estes Park, Colo.*, [48 FLRA 1404](#), 1409 (*Estes Park*);
- *U.S. Office of Pers. Mgmt., Atlanta Reg'l Office of Fed. Investigations, Atlanta, Ga.*, [48 FLRA 1228](#), 1234-36 (1993) (*OPM*);
- *U.S. Dep't of Justice, Exec. Office for Immigration Review, Office of the Chief Immigration Judge, Chi., Ill.*, [48 FLRA 620](#), 634-35 (1993) (*DOJ*);
- *Norfolk Naval Shipyard, Portsmouth, Va.*, [47 FLRA 1297](#), 1302 (1993) (*Norfolk Naval*);
- *AFGE*, [47 FLRA 969](#), 972-73 (1993) (*AFGE*);
- *U.S. Dep't of the Air Force, Air Force Materiel Command, Wright-Patterson Air Force Base*, [47 FLRA 602](#), 611 (1993) (*Wright-Patterson AFB II*);

- *Naval Submarine Base, New London, Naval Submarine Sch., Naval Submarine Support Facility New London, Pers. Support Activity, New London, and Naval Hosp. Groton*, [46 FLRA 1354](#), 1363 (1993) (*New London*);
- *U.S. Geological Survey, Water Res. Div., S.E. Region, Caribbean Dist.*, [46 FLRA 832](#), 843-44 (1992) (*Caribbean*);
- *Def. Mapping Agency, Aerospace Ctr., St. Louis, Mo.*, [46 FLRA 502](#), 509-10 (*Aerospace Ctr.*) (1992);
- *Dep't of Health & Human Servs., Region II, N.Y., N.Y.*, [43 FLRA 1245](#), 1255 (1992) (*HHS*);
- *Def. Logistics Agency, Def. Contract Mgm't Command, Def. Contract Mgm't Dist., N. Cent., Def. Plant Representative Office-Thiokol, Brigham City, Utah*, [41 FLRA 316](#), 328, 330-31 (1991) (*DPRO-Thiokol*);
- *U.S. Dep't of the Air Force, 842nd Combat Support Group, Grand Forks Air Force Base, N.D.*, [40 FLRA 1025](#), 1030 (1991) (*Grand Forks AFB*);
- *NTEU, Chapter 243*, [39 FLRA 96](#), 101-02 (1991);
- *AFGE, Local 2211*, [35 FLRA 576](#), 582-83 (1990) (*Local 2211*);
- *U.S. Dep't of Veterans Affairs, Wash., D.C.*, [35 FLRA 172](#), 179-80 (1990) (*VA*);
- *U.S. Small Bus. Admin.*, [34 FLRA 392](#), 399-400 (1990) (*SBA*);
- *Dep't of the Army, Headquarters, Fort Carson & Headquarters, 4th Infantry Div., Fort Carson, Colo.*, [34 FLRA 30](#), 34-35 (1989) (*Fort Carson*);
- *U.S. Army Air Def. Artillery Ctr. & Fort Bliss, Fort Bliss, Tex.*, [31 FLRA 938](#), 940-41 (1988) (*Fort Bliss*);
- *U.S. Dep't of Commerce, Nat'l Oceanic & Atmospheric Admin., Nat'l Marine Fisheries Serv., N.E. Region*, [24 FLRA 922](#), 926 (1986);
- *U.S. Dep't of Labor*, [23 FLRA 464](#), 471 (1986);
- *Dep't of Transp., Fed. Aviation Admin., New England Region*, [20 FLRA 224](#), 228-29 (1985) (*FDA*);
- *Dep't of Agric., Farmers Home Admin.*, [20 FLRA 216](#), 221-22 (1985) (*Farmers*);
- *Red River Army Depot, Texarkana, Tex.*, [17 FLRA 216](#), 217 (1985);
- *U.S. Dep't of Justice*, [17 FLRA 58](#), 62-63 (1985);
- *Library of Cong.*, [16 FLRA 429](#), 432 (1984) (*LOC*);
- *Dep't of the Interior, Nat'l Park Serv., W. Reg'l Office, S.F., Cal.*, [15 FLRA 338](#), 340-41 (1984) (*Nat'l Park Serv. S.F.*);
- *Dep't of the Navy, Naval Station, Norfolk, Va.*, [14 FLRA 702](#), 704 (1984) (*Naval Station*);
- *Dep't of the Air Force, Detachment 4, Air Force Contract Mgmt. Div., Air Force Plant Representative Office, Pratt and Whitney Aircraft Group, W. Palm Beach, Fla.*, [14 FLRA 166](#), 168 (1984) (*Detachment 4*);
- *U.S. Fish & Wildlife Serv., Fin. Ctr., Denver, Colo.*, [14 FLRA 153](#), 155 (1984) (*Fish & Wildlife Serv.*);

- *Immigration & Naturalization Serv.*, [12 FLRA 309](#), 311-12 (1983) (*INS*);
- *MSPB*, [12 FLRA 137](#), 140 (1983) (*MSPB*);
- *U.S. Army Materiel Dev. & Readiness Command*, [11 FLRA 156](#), 159-60 (1983) (*Materiel Dev.*);
- *U.S. Army Training & Doctrine Command*, [11 FLRA 105](#), 109 (1983);
- *Dep't of the Navy*, [10 FLRA 396](#), 399 (1982) (*Navy*);
- *Fort Buchanan Installation, Club Mgmt. Sys., Fort Buchanan, P.R.*, [9 FLRA 143](#), 144 (1982) (*Fort Buchanan*);
- *Dep't of the Navy, U.S. Marine Corps*, [8 FLRA 15](#), 22-23 (1982) (*Marine Corps*);
- *Army & Air Force Exch. Serv., Panama Area Exch.*, [7 FLRA 514](#), 516 (1981) (*Exch. Serv.*);
- *Dep't of Def., Dep't of the Army, 193rd Infantry Brigade (Panama)*, [7 FLRA 471](#), 478-80 (193rd Infantry) (1981);
- *Long Beach Veterans Admin., Med. Ctr., Long Beach, Cal.*, [7 FLRA 434](#), 443 (1981) (*Long Beach*);
- *Int'l Assoc. of Machinists & Aerospace Eng'rs, Local 830, AFL-CIO*, [6 FLRA 480](#), 482-83 (1981) (*Local 830*);
- *Dep't of Def., Dependents Schs.*, [6 FLRA 297](#), 307-10 (1981) (*Dependents Schs.*);
- *Dep't of Health & Human Servs., Pub. Health Serv., Office of the Assistant Sec'y for Health, Wash., D.C.*, [6 FLRA 60](#), 63 (1981) (*Pub. Health Serv.*);
- *Army & Air Force Exch. Serv., Dall., Tex.*, [5 FLRA 657](#), 660-61 (1981) (*Air Force Exch.*);
- *Trident Refit Facility, Banger, Bremerton, Wash.*, [5 FLRA 606](#), 608 (1981) (*Trident Refit*);
- *Dep't of the Army, Headquarters, U.S. Army Ament Materiel Readiness Command, Rock Island, Ill.*, [5 FLRA 346](#), 350 (1981) (*Rock Island*);
- *Panama Canal Comm'n*, [5 FLRA 104](#), 113-17 (1981) (*PCC*);
- *Dep't of Def., U.S. Military Enlistment Processing Command, Headquarters, W. Sector, Oakland Army Base, Oakland, Cal.*, [5 FLRA 3](#), 5 (1981) (*Oakland Army Base*); and
- *Dep't of the Air Force, 6th Missile Warning Squadron, Otis Air Force Base, Mass.*, [3 FLRA 112](#), 113-14 (1980) (*Otis AFB*).

The Authority has addressed the **effective-dealings** criterion in numerous cases, including:

- *Fleet & Family*, [64 FLRA 782](#), 787 (2010);
- *USCB*, [64 FLRA 399](#), 403-04 (2010);
- *Travis AFB*, [64 FLRA 1](#), 7 (2009);
- *Fleet Readiness Ctr.*, [63 FLRA 245](#), 251-52 (2009);
- *Carrier Planning Activity*, [63 FLRA 63](#), 65 (2009);

- *Mid-Atl.*, [63 FLRA 8](#), 13-14 (2008);
- *Eng'g Command Se.*, [62 FLRA 480](#), 488 (2008);
- *JMC I*, [62 FLRA 313](#), 318-19 (2007);
- *Info. Tech. Servs.*, [61 FLRA 879](#), 884 (2006);
- *VA Conn.*, [61 FLRA 864](#), 869 (2006);
- *Fort Belvoir*, [60 FLRA 701](#), 705-06 (2005);
- *Naval Dist. Wash.*, [60 FLRA 469](#), 474 (2004);
- *Lackland AFB*, [59 FLRA 739](#), 742 (2004);
- *Miss. Arm.*,; [57 FLRA 337](#), 342 (2001);
- *Dep't of the Navy, Naval Computer and Telecomm. Area, Master Station-Atlanta Base Level, Commc'ns Dep't, Reg'l Operations Div., Norfolk, Va.*, [57 FLRA 230](#), 235-36 (2001) (then-Member Wasserman dissenting) (*Commc'ns Dep't*);
- *82nd Training Wing*, [57 FLRA 154](#), 156 (2001);
- *Sheppard Air Force Base, Wichita Falls, Tex.*, [57 FLRA 148](#), 150 (2001);
- *Fort McPherson*, [57 FLRA 95](#), 97 (2001);
- *U.S. Dep't of the Treasury, IRS*, [56 FLRA 486](#), 492 (2000) (*IRS*);
- *Commander I*, [56 FLRA 328](#), 335-36 (2000);
- *SEC*, [56 FLRA 312](#), 316-17 (2000);
- *N.Y. Nat'l Guard*, [56 FLRA 139](#), 144 (2000);
- *DOD*, [55 FLRA 657](#), 664 (1999);
- *Wright-Patterson AFB I*, [55 FLRA 359](#), 364 (1999);
- *Nat'l Park Serv.*, [55 FLRA 311](#), 315 (1999);
- *Sacaton*, [53 FLRA 1200](#), 1218-20 (1998);
- *Owyhee*, [53 FLRA 1221](#), 1227 (1998);
- *Puget Sound*, [53 FLRA 173](#), 182 (1997);
- *FISC*, [52 FLRA 950](#), 966 (1997);
- *Walter Reed*, [52 FLRA 852](#), 856-57 (1997);
- *Shiprock*, [49 FLRA 1375](#), 1384-85 (1994);
- *OPM*, [48 FLRA 1228](#), 1236-37 (1993);
- *DOJ*, [48 FLRA 620](#), 636-38 (1993);
- *Norfolk Naval*, [47 FLRA 1297](#), 1302 (1993);
- *AFGE*, [47 FLRA 969](#), 973 (1993);
- *Wright-Patterson AFB II*, [47 FLRA 602](#), 611 (1993);
- *New London*, [46 FLRA 1354](#), 1363 (1993);
- *Caribbean*, [46 FLRA 832](#), 844-45 (1992);
- *Aerospace Ctr.*, [46 FLRA 502](#), 509-10 (1992);

- *HHS*, [43 FLRA 1245](#), 1255 (1992);
- *DPRO-Thiokol*, [41 FLRA 316](#), 328-331 (1991);
- *Grand Forks AFB*, [40 FLRA 1025](#), 1030 (1990);
- *VA*, [35 FLRA 172](#), 180 (1990);
- *Fort Carson*, [34 FLRA 30](#), 34-35 (1989);
- *FAA*, [20 FLRA 224](#), 229 (1985);
- *Farmers*, [20 FLRA 216](#), 222 (1985);
- *LOC*, [16 FLRA 429](#), 432 (1984);
- *Nat'l Park Serv. S.F.*, [15 FLRA 338](#), 340-41 (1984);
- *Naval Station*, [14 FLRA 702](#), 704 (1984);
- *Detachment 4*, [14 FLRA 166](#), 168 (1984);
- *Fish & Wildlife Serv.*, [14 FLRA 153](#), 155 (1984);
- *INS*, [12 FLRA 309](#), 312 (1983);
- *MSPB*, [12 FLRA 137](#), 141 (1983);
- *Materiel Dev.*, [11 FLRA 156](#), 161 (1983);
- *Navy*, [10 FLRA 396](#), 399 (1982);
- *Fort Buchanan*, [9 FLRA 143](#), 144-45 (1982);
- *Marine Corps*, [8 FLRA 15](#), 23 (1982);
- *Exch. Serv.*, [7 FLRA 514](#), 516 (1981);
- *193rd Infantry*, [7 FLRA 471](#), 480 (1981);
- *Long Beach*, [7 FLRA 434](#), 443-44 (1981);
- *Local 830*, [6 FLRA 480](#), 483 (1981);
- *Dependents Schs.*, [6 FLRA 297](#), 307-10 (1981);
- *Pub. Health Serv.*, [6 FLRA 60](#), 63 (1981);
- *Air Force Exch.*, [5 FLRA 657](#), 661-62 (1981);
- *Trident Refit*, [5 FLRA 606](#), 608 (1981);
- *Rock Island*, [5 FLRA 346](#), 350 (1981)
- *PCC*, [5 FLRA 104](#), 113-17 (1981);
- *Oakland Army Base*, [5 FLRA 3](#), 5 (1982); and
- *Otis AFB*, [3 FLRA 112](#), 113-14 (1980).

The Authority has addressed the **efficiency-of-operations** criterion in numerous cases, including:

- *USCB*, [64 FLRA 399](#), 404 (2010);
- *Travis AFB*, [64 FLRA 1](#), 7-8 (2009);
- *Fleet Readiness Ctr.*, [63 FLRA 245](#), 252 (2009);

- *Carrier Planning Activity*, [63 FLRA 63](#), 65;
- *Mid-Atl.*, [63 FLRA 8](#), 14 (2008);
- *Eng'g Command Se.*, [62 FLRA 480](#), 488 (2008);
- *JMC I*, [62 FLRA 313](#), 319 (2007);
- *Info. Tech. Servs.*, [61 FLRA 873](#), 884-85(2006);
- *VA Conn.*, [61 FLRA 864](#), 869 (2006);
- *Fort Belvoir*, [60 FLRA 701](#), 705-06 (2005);
- *Naval Dist. Wash.*, [60 FLRA 469](#), 474 (2004);
- *Lackland AFB*, [59 FLRA 739](#), 742 (2004);
- *Miss. Army*, [57 FLRA 337](#), 342 (2001);
- *82nd Training Wing*, [57 FLRA 154](#), 156-57 (2001);
- *Fort McPherson*, [57 FLRA 95](#), 97 (2001);
- *IRS*, [56 FLRA 486](#), 492 (2000);
- *Commander I*, [56 FLRA 328](#), 336 (2000);
- *SEC*, [56 FLRA 312](#), 317 (2000);
- *N.Y. Nat'l Guard*, [56 FLRA 139](#), 144 (2000);
- *DOD*, [55 FLRA 657](#), 664 (1999);
- *Wright-Patterson AFB I*, [55 FLRA 359](#), 364 (1999);
- *Nat'l Park Serv.*, [55 FLRA 311](#), 315 (1999);
- *Owyhee*, [53 FLRA 1221](#), 1227 (1998);
- *Sacaton*, [53 FLRA 1200](#), 1218-20 (1998);
- *Puget Sound*, [53 FLRA 173](#), 182-83 (1997);
- *FISC*, [52 FLRA 950](#), 967 (1997);
- *Walter Reed*, [52 FLRA 852](#), 856-57 (1997);
- *Shiprock*, [49 FLRA 1375](#), 1384-85 (1994);
- *OPM*, [48 FLRA 1228](#), 1236-37 (1993);
- *DOJ*, [48 FLRA 620](#), 636-38 (1993);
- *Norfolk Naval*, [47 FLRA 1297](#), 1302 (1993);
- *AFGE*, [47 FLRA 969](#), 973 (1993);
- *Wright-Patterson AFB II*, [47 FLRA 602](#), 611 (1993);
- *New London*, [46 FLRA 1354](#), 1363 (1993);
- *Caribbean*, [46 FLRA 832](#), 844-45 (1992);
- *Aerospace Ctr.*, [46 FLRA 502](#), 509-10 (1992);
- *HHS*, [43 FLRA 1245](#), 1255 (1992);
- *DPRO-Thiokol*, [41 FLRA 316](#), 328-331 (1991);
- *Grand Forks AFB*, [40 FLRA 1025](#), 1030 (1991);
- *VA*, [35 FLRA 172](#), 180 (1990);
- *Fort Carson*, [34 FLRA 30](#), 34-35 (1989);
- *FAA*, [20 FLRA 224](#), 229 (1985);
- *Farmers*, [20 FLRA 216](#), 222 (1985);
- *LOC*, [16 FLRA 429](#), 432 (1984);
- *Nat'l Park Serv. S.F.*, [15 FLRA 338](#), 340-41 (1984);

- *Naval Station*, [14 FLRA 702](#), 704 (1984);
- *Detachment 4*, [14 FLRA 166](#), 168 (1984);
- *Fish & Wildlife Serv.*, [14 FLRA 153](#), 155 (1984);
- *INS*, [12 FLRA 309](#), 312 (1983);
- *MSPB*, [12 FLRA 137](#), 141 (1983);
- *Materiel Dev.*, [11 FLRA 156](#), 161 (1983);
- *Navy*, [10 FLRA 396](#), 399 (1982);
- *Fort Buchanan*, [9 FLRA 143](#), 144-45 (1982);
- *Marine Corps*, [8 FLRA 15](#), 23 (1982);
- *193rd Infantry*, [7 FLRA 471](#), 480 (1981);
- *Exch. Serv.*, [7 FLRA 514](#), 516 (1981);
- *Long Beach*, [7 FLRA 434](#), 444 (1981)
- *Local 830*, [6 FLRA 480](#), 483 (1981);
- *Dependents Schs.*, [6 FLRA 297](#), 307-10 (1981);
- *Pub. Health Serv.*, [6 FLRA 60](#), 63 (1981);
- *Air Force Exch.*, [5 FLRA 657](#), 661-62 (1981);
- *Trident Refit*, [5 FLRA 606](#), 608 (1981);
- *Rock Island*, [5 FLRA 346](#), 350 (1981);
- *PCC*, [5 FLRA 104](#), 113-17 (1981);
- *Oakland Army Base*, [5 FLRA 3](#), 5 (1982); and
- *Otis AFB*, [3 FLRA 112](#), 113-14 (1980).

For some examples of cases concerning the **appropriateness of existing units after reorganizations, employee transfers, or creations of new organizational units**, see:

- *U.S. Dep't of the Air Force, Air Force Materiel Command, Eglin Air Force Base, Hurlburt Field, Fla.*, [66 FLRA 375](#), 377-78 (2011);
- *Eng'g Command*, [65 FLRA 272](#), 277-80 (2010);
- *Fleet & Family*, [64 FLRA 782](#), 787 (2010);
- *JMC II*, [63 FLRA 394](#), 403-05 (2010);
- *Eng'g Command Se.*, [62 FLRA 480](#), 487-88 (2008);
- *Nat'l Weather Serv.*, [62 FLRA 472](#), 475-76 (2008);
- *JMC I*, [62 FLRA 313](#), 317-19 (2007);
- *NIH*, [62 FLRA 84](#), 87-88 (2007);
- *Info. Tech. Servs.*, [61 FLRA 879](#), 883-85 (2006);
- *VA Conn.*, [61 FLRA 864](#), 867-69 (2006);
- *CBP*, [61 FLRA 485](#), 494-96 (2006);
- *MTMC*, [60 FLRA 390](#), 393-97 (2004);
- *Commc'ns Dep't*, [57 FLRA 230](#), 234-36 (2001);
- *Commander I*, [56 FLRA 328](#), 332-36 (2000);
- *Puget Sound*, [53 FLRA 173](#), 178-85 (1997); and
- *FISC*, [52 FLRA 950](#), 957-68 (1997).

The Authority has examined whether employees had a **separate and distinct community of interest** in numerous cases, including:

- *Eng'g Command*, [65 FLRA 272](#), 278-80 (2010);
- *Fleet & Family*, [64 FLRA 782](#), 786-87 (2010);
- *Fleet Readiness Ctr.*, [63 FLRA 245](#), 251 (2009);
- *Carrier Planning Activity*, [63 FLRA 63](#), 64-65 (2009);
- *U.S. Dep't of the Navy, Fleet & Indus. Supply Ctr.*, [62 FLRA 497](#), 501-02 (2008);
- *Eng'g Command Se.*, [62 FLRA 480](#), 487-88 (2008);
- *Nat'l Weather Serv.*, [62 FLRA 472](#), 476 (2008);
- *Info. Tech. Servs.*, [61 FLRA 879](#), 883-84 (2006);
- *VA Conn.*, [61 FLRA 864](#), 868-69 (2006);
- *CBP*, [61 FLRA 485](#), 495-96 (2006);
- *MTMC*, [60 FLRA 390](#), 394-95 (2004);
- *Lake Mead*, [57 FLRA 582](#), 585 (2001);
- *Dep't of the Army, Headquarters, Fort Dix, Fort Dix, N.J.*, [53 FLRA 287](#), 296 (1997);
- *FISC*, [52 FLRA 950](#), 965-66 (1997);
- *Walter Reed*, [52 FLRA 852](#), 856-57 (1997);
- *Shiprock*, [49 FLRA 1375](#), 1384-85 (1994);
- *Estes Park*, [48 FLRA 1404](#), 1409 (1994);
- *OPM*, [48 FLRA 1228](#), 1234-36 (1993);
- *DOJ*, [48 FLRA 620](#), 634-35 (1993);
- *AFGE*, [47 FLRA 969](#), 972-73 (1993);
- *Caribbean*, [46 FLRA 832](#), 843-44 (1992);
- *Aerospace Ctr.*, [46 FLRA 502](#), 509-10 (1992);
- *DPRO-Thiokol*, [41 FLRA 316](#), 328, 330-31 (1991);
- *SBA*, [34 FLRA 392](#), 399-400 (1990);
- *FAA* [20 FLRA 224](#), 228-29 (1985);
- *Naval Station*, [14 FLRA 702](#), 704 (1984);
- *Fish & Wildlife Serv.*, [14 FLRA 153](#), 155 (1984);
- *Navy*, [10 FLRA 396](#), 399 (1982);
- *Local 830*, [6 FLRA 480](#), 482-83 (1981);
- *Dependents Schs.*, [6 FLRA 297](#), 307-10 (1981);
- *Pub. Health Serv.*, [6 FLRA 60](#), 63 (1981);
- *PCC*, [5 FLRA 104](#), 113-17 (1981); and
- *Oakland Army Base*, [5 FLRA 3](#), 5 (1982).

The Authority has found these **functional units** appropriate:

- *Owyhee*, [53 FLRA 1221](#), 1225-27 (1998);
- *U.S. Dep't of the Treasury, Bureau of Engraving & Printing*, [49 FLRA 100](#), 106-109 (1994);
- *U.S. Dep't of the Air Force, Edwards Air Force Base, Cal.*, [35 FLRA 1311](#), 1314-15 (1990);
- *Local 2211*, [35 FLRA 576](#), 582-83 (1990); and
- *PCC*, [5 FLRA 104](#), 113-17 (1981).

Appendix B – Reorganization Cases

Successorship Found

- *U.S. Dep't of Navy, Commander, Navy Region Mid-Atlantic*, [63 FLRA 8](#) (2008) (successorship found to bargaining unit of about 16 employees)
- *U.S. Dep't of Navy, Carrier Planning Activity, Chesapeake, Va.*, [63 FLRA 63](#) (2009) (successorship found in professional unit; election ordered in nonprofessional unit)
- *U.S. Dep't of Army, Army Materiel Command, Headquarters, Joint Munitions Command, Rock Island, Ill.*, [63 FLRA 394](#) (2009) (successorship found to two different Army activities, located at Rock Island; reorganization had substantially changed the appropriateness of existing unit)

Successorship Not Found and Elections Ordered

- *U.S. Dep't of Homeland Sec., Bureau of Customs and Border Prot.*, [61 FLRA 485](#) (2006)
- *U.S. Dep't of the Navy, Naval Facilities Eng'g Command, S.E., Jacksonville, Fla.*, [62 FLRA 480](#) (2008) (after reorganization several units found appropriate)
- *Dep't of the Navy, Naval Dist. Wash.*, [60 FLRA 469](#) (2004) (functional units involved)
- *Def. Logistics Agency, Def. Supply Ctr. Columbus, Columbus, Ohio*, [53 FLRA 1114](#) (1998) (reorganization involving two unions, and functional unit)

Successorship and Consolidated Units

- *SSA, Dist. Office Valdosta, Ga.*, [52 FLRA 1084](#) (1997)
- *SSA, Kissimmee Dist. Office, Kissimmee, Fla.*, [62 FLRA 18](#) (2007)
- *U.S. Dep't of Veterans Affairs, VA Conn. Healthcare Sys., West Haven, Conn.*, [61 FLRA 864](#) (2006)

Successorship and Accretion Were Claimed

- *Dep't of the Navy, Naval Supply Ctr., Puget Sound, Bremerton, Wash.*, [53 FLRA 173](#) (1997) (successorship found, no need to decide accretion)
- *U.S. Dep't of Commerce, Nat'l Weather Serv., Silver Spring, Md.*, [62 FLRA 472](#) (2008) (successorship not found; employees accreted into nationwide unit)

- *U.S. Dep't of Navy, Fleet Readiness Ctr. S.W., San Diego, Cal.*, [63 FLRA 245](#) (2009) (successorship denied, accretion found)
- *U.S. Dep't of the Navy, Commander, Navy Region Mid-Atlantic, Program Dir., Fleet and Family Readiness, Norfolk, Va.*, [64 FLRA 782](#) (2010) (successorship not found, and accretion was found)