

REORGANIZATIONS



IMPACT ON BARGAINING UNITS
AND

IMPACT ON BARGAINING OBLIGATIONS



APPROPRIATE UNIT

- An (not the) appropriate unit
- Criteria Established – 5 U.S.C. 7112(a)
 - Employees Share in a Clear and Identifiable Community of Interest
 - Unit Promotes Effective Dealings with the Operations of the Agency
 - Unit Promotes Efficiency of Operations of the Agency Involved



APPROPRIATE UNIT

- Statute talks of an appropriate unit
 - Statute does not describe THE appropriate unit
 - Statute does not require THE MOST appropriate unit
 - An organization may have many appropriate units
 - Each unit must satisfy the criteria of section 7112(a)



COMMUNITY OF INTEREST

- Purpose: To ensure that it is possible for employees to deal collectively with management
- Factors to consider – whether employees:
 - Are part of same organizational structure
 - Support same mission
 - Are subject to same chain of command
 - Have similar/related duties
 - Are subject to same general working conditions
 - Are governed by same personnel, LMR policies
 - Are serviced by same personnel office



EFFECTIVE DEALINGS

- Pertains to the relationship between management and the union
- Factors to consider –
 - Past collective bargaining experience of parties
 - Level at which LMR policy is set by agency
 - Location and scope of authority of personnel office which will administer the policies



EFFICIENCY OF OPERATIONS

- Whether the proposed unit bears a rational relationship to operational and organizational structure of the agency
- Factors to consider –
 - Effect of unit on agency costs, use of resources, productivity
 - Level at which LMR policy is set by agency
 - Location and scope of authority of personnel office administering policies



AGENCY REORGANIZATIONS

- Successorship Standard
 - Developed to address what happens to collective bargaining units and employees' elected representative when an agency reorganizes its operations

Lead Authority decision on successorship – *U.S. Navy, Naval Facilities Engineering Service, Port Hueneme*, 50 FLRA 363 (1995)



SUCCESSORSHIP STANDARD

- Successorship Standard
 - Is a three-part standard
 - A gaining entity is a successor and a union remains the exclusive representative of employees when all three successorship parts are met



SUCCESSORSHIP STANDARD

- Part One – Characteristics of the Unit
 - An entire unit (or portion) is transferred;
and
 - Transferred employees are in an appropriate unit after the transfer;
and
 - Constitute a majority of the employees in this unit



SUCCESSORSHIP STANDARD

- Part Two – Continuity
 - Gaining entity must have similar mission as former & employees perform similar duties, under similar working conditions
 - The gaining and former entities
 - Need not have the exact mission
 - Often, part of a mission is transferred
 - Employees need not be performing the exact same duties, just similar ones
 - For employees, was the change of employer transparent



SUCCESSORSHIP STANDARD

- Part Three – 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



ELECTION NEEDED?

- If one union is involved and remaining employees in 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
 - Simple majority requirement

Authority's lead case: *Bureau of Land Management, Sacramento, California & BLM, Ukiah District Office*, 53 FLRA 1417 (1998) (BLM)



ELECTION NEEDED?

- If one union is involved and does not meet the simple majority standard
- An election will be ordered AS LONG AS
 - There is evidence that a genuine representation question exists
 - Representation question exists when 30% of employees in unit seek an election

Authority's lead case: *U.S. Department of the Navy, Naval Facilities Engineering Command, Southeast, Jacksonville, Florida*, 62 FLRA 480, 489 (2008)



ELECTION NEEDED?

- If more than one union's employees are involved –
- An election is not necessary if one union is “sufficiently predominant”
 - More than 70% of the employees in the post-transfer unit had been represented by one union

Authority's lead case: *U.S. Army Aviation Missile Command, Redstone Arsenal, Alabama*, 56 FLRA 126 (2000) (*Redstone*)



ELECTION NEEDED?

- Where employees at issue could be part of two petitioned-for appropriate units and no union is sufficiently predominant
 - Employees vote on union to represent them
 - Employees' vote determines scope of unit – self-determination election

Defense Logistics Agency, Defense Supply Center Columbus, Columbus, Ohio, 53 FLRA 1114, 1133-1134 (1998); Department of the Navy, Naval District Washington, 60 FLRA 469 (2004)



COMPETING CLAIMS

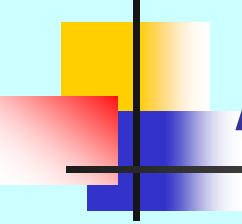
- Reorganization occurs and different parties argue different theories – Examples:
 - One party argues successorship to one appropriate unit, while another party argues successorship to a different, appropriate unit
 - One party argues successorship, another accretion
 - One party argues successorship, the other automatic inclusion in existing unit
- How does the Authority deal with this?



TWO SUCCESSORSHIP CLAIMS

- If there are competing successorship claims alleging different, appropriate units
 - If it is found that a 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

Authority's lead case: *U.S. Department of the Navy, Commander, Naval Base, Norfolk, Virginia*, 56 FLRA 328 (2000)



CLAIMS OF SUCCESSORSHIP & ACCRETION

- One union claims that through successorship, it remains the exclusive representative
- Another union claims employees accreted to its existing unit
- First, determine if there is successorship and if not, proceed to accretion

Authority lead decision: *Department of Navy, Fleet & Industrial Supply Center, Norfolk, Virginia*, 52 FLRA 950 (1997)

WHEN SUCCESSORSHIP & ACCRETION ARE CLAIMED

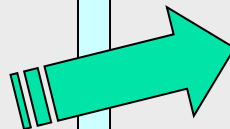
Are the transferred employees included in and constitute a majority of, a separate, appropriate unit in the gaining organization?

YES

Apply the remaining *Port Hueneme* criteria to determine if the gaining employer is the successor and if union continues to represent employees. If successorship fails, then

NO

Apply the accretion criteria to determine if the employees accreted into an existing unit.





ACCRETION

- Inclusion of a group of employees in an existing unit without an election
- Based on a change in agency operations or organization
- Precludes employee self-determination
- Accretion is narrowly applied

Department of Navy, Naval Air Warfare Command, Aircraft Division, Patuxent River, Maryland, 56 FLRA 1005, 1006 (2000)



ACCRETION

- What happens when unrepresented employees accrete to an existing unit?
 - Existing unit employees must constitute a simple majority in the expanded unit, to avoid a question of representation, and election. *BLM.*
- What happens when represented employees accrete to an existing unit?
 - The “sufficiently predominant” standard applies. *Redstone.*



SUCCESSORSHIP & AUTOMATIC INCLUSION

- Successorship evaluates whether previously represented employees who are transferred retain their representative, even though the existing certificate does not reference that entity

Social Security Administration, Kissimmee District Office, Kissimmee, Florida, 62 FLRA 18, 23 (2007); Social Security Administration, Office of Disability Adjudication and Review, Falls Church, Virginia, 62 FLRA 513, 515 (2008)



SUCCESSORSHIP & AUTOMATIC INCLUSION

- *Fort Dix* automatic inclusion principle:
 - Employees are automatically included in a unit where their positions fall within the express terms of a bargaining certificate & unit remains appropriate with their inclusion
 - Bargaining certificate does not need amendment to show inclusion

Authority's lead decision: *Department of Army, Headquarters, Fort Dix, Fort Dix, New Jersey*, 53 FLRA 287, 294 (1997)



BARGAINING OBLIGATIONS

- What happens to bargaining obligations?
 - While the petitions are being processed, parties are obligated to --
 - Maintain existing recognitions
 - Adhere to terms of existing contracts
 - Fulfill all representational and bargaining responsibilities

See: FLRA's Rules & Regulations, 5 C.F.R. 2422.34

Authority's lead decision: *Department of Navy, Naval Weapons Station, Yorktown*, 55 FLRA 1112 (1999)



MATTERS TO CONSIDER

- When an agency/activity is reorganizing
 - Pre-petition meeting with unions involved
 - Section 2422.13(a) FLRA Regulations
 - Contact an FLRA Regional Office
 - Keep good records
 - Employees impacted by reorganization by bargaining unit status (BUS) code prior to and after reorganization
 - Information/issuances regarding reorganization (e.g., OPNAV Notes; Federal Register announcements, etc.)



OTHER FLRA DECISIONS

- *Social Security Administration, District Office Valdosta, Georgia, 52 FLRA 1084 (1997)*
(successorship in a consolidated unit)
- *Department of the Navy, Naval Supply Center, Puget Sound, Bremerton, Washington, 53 FLRA 173 (1997)*
(same reorganization as in *FISC*, different result)
- *Defense Logistics Agency, Defense Supply Center Columbus, Columbus, Ohio, 53 FLRA 1114 (1998)*
(reorganization involving two unions, functional unit)



OTHER FLRA DECISIONS

- *Department of the Navy, Commander, Naval Base, Norfolk, Virginia, 56 FLRA 328 (2000) (competing successorship claims)*
- *Department of the Navy, Naval District Washington, 60 FLRA 469 (2004) (functional units involved)*
- *U.S. Department of Homeland Security, Bureau of Customs and Border Protection, 61 FLRA 485 (2006)*
- *U.S. Department of Veterans Affairs, VA Connecticut Healthcare System, West Haven, Connecticut, 61 FLRA 864 (2006)*



OTHER FLRA DECISIONS

- *Social Security Administration, Kissimmee District Office, Kissimmee, Florida, 62 FLRA 18 (2007) (successorship in consolidated unit)*
- *U.S. Department of Commerce, National Weather Service, Silver Spring, Maryland, 62 FLRA 472 (2008)(successorship not found; employees accreted into nationwide unit)*



OTHER FLRA DECISIONS

- *U.S. Department of the Navy, Naval Facilities Engineering Command, Southeast, Jacksonville, Florida, 62 FLRA 480 (2008) (after reorganization several units found appropriate)*
- *U.S. Department of Interior, Bureau of Reclamation, Pacific Northwest Region, Grand Coulee Power Office, Washington and Hungry Horse Field Office, Montana, 62 FLRA 522 (2009) (triggering event needed before accretion principles can be applied)*



OTHER FLRA DECISIONS

- *U.S. Department of Navy, Commander, Navy Region Mid-Atlantic, 63 FLRA 8 (2008)*(successorship found to bargaining unit of about 16 employees)
- *U.S. Department of Navy, Carrier Planning Activity, Chesapeake, Virginia, 63 FLRA 63 (2009)*
(successorship found in professional unit; election ordered in nonprofessional unit)
- *U.S. Department of Navy, Fleet Readiness Center Southwest, San Diego, California, 63 FLRA 245 (2009)*(successorship denied, accretion found)



OTHER FLRA DECISIONS

- *U.S. Department of Army, Army Materiel Command, Headquarters, Joint Munitions Command, Rock Island, Illinois, 63 FLRA 394 (2009) (successorship found to two different Army activities, located at Rock Island; reorganization had substantially changed the appropriateness of existing unit)*
- *U.S. Department of the Navy, Commander, Navy Region Mid-Atlantic, Program Director, Fleet and Family Readiness, Norfolk, Virginia, 64 FLRA No. 143 (2010) (successorship not found, and accretion was found)*



ADVISORY

- These materials have been provided by the Federal Labor Relations Authority. They are intended to supplement the discussion portion of the training presentation and must be understood in the context of that discussion.
- While this handout will assist in understanding various legal issues, it does not represent legal advice or guidance. Also, since each case depends upon its own unique facts and the application of various legal precedent, this handout should not be relied upon to predict the legal outcome in any particular case.