

EMPLOYEE CATEGORIES
HOG 51 through HOG 64

51 *General considerations*

Definitions for terms such as exclusive representative, employee, professional, supervisor, labor organization are found in section 7103 of the Statute. In addition, section 7112 prohibits the inclusion in any bargaining unit of specific categories of employees (e.g., confidential, engaged in federal personnel work).

The Authority alone is empowered to determine bargaining unit eligibility. See *U.S. Small Business Administration (SBA)*, 32 FLRA 847 (1988). The Authority makes such determinations based on testimony as to an employee's actual duties at the time of the hearing, rather than on duties that may exist in the future. See *Department of Housing and Urban Development, Washington, D.C.*, 35 FLRA 1249, 1256-1257 (1990). Evidence such as a position description for a position may be useful in making unit determinations, but is not controlling. The hearing addresses whether the incumbent is performing all work listed in the position description, or is performing other work not listed in the position description. Some cases involve special circumstances which are also addressed at the hearing.

For more guidance and discussion about general considerations in deciding unit eligibility, see RCL 15.

Relevant questions to consider:

For information and questions related to specific statutory exclusions, consult the Table of Contents for the employee category(ies) at issue. **In all unit eligibility cases, Hearing Officers obtain information relating to the Agency or Activity's mission, organization and functions. This information is crucial for understanding how the disputed employee performs his/her work and how it relates to the accomplishment of the Agency or Activity's mission.** The following questions pertain to special unit determination situations:

1. Where an employee has recently been placed in the position in question:
 - a) Obtain a copy of the vacancy announcement, position description and performance standards for the position.
 - b) What duties are the employee currently performing?

- c) What has the newly-hired employee been told regarding his or her duties?
 - d) What types of training has this new employee attended, or what type of training is this new employee scheduled to attend?
 - e) Develop a record, if possible, of the duties of the predecessor in the position.
 - f) Are there other similarly-situated employees and what do they do or have they done?
2. Is the employee an employee of an agency as defined in 5 U.S.C. 7103(a)(2) and (3)?
3. In cases that the parties dispute whether new employees are automatically part of an existing unit (as compared to accretion - see *HOG 39C and RCL 3C*), what is the unit definition?
- a) Is it "sufficiently broad" to include the disputed positions?
 - b) Did the parties include these employees previously and then remove them from the unit?
 - c) Were the employees excluded on a statutory basis previously?
 - d) Were the employees in a separate bargaining unit at the activity?
4. If the employees were transferred from another facility, they cannot be considered under *Department of the Army, Headquarters, Fort Dix, Fort Dix, New Jersey (Fort Dix)*, 53 FLRA 287 (1997). See *RCL 15 and compare to RCL 3*.