

14 **Units including supervisors**

Section 7135 of the Statute states the circumstances in which recognition may be granted or continued in units which include supervisors. Section 7135(a)(2) provides that nothing shall preclude:

the renewal, 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.

Mixed units of supervisors and nonsupervisory personnel: The Authority's view that section 7135(a)(2) permits the "grand fathering" of mixed units of both supervisory and nonsupervisory personnel has been rejected by the courts. *United States Department of Energy v. FLRA (Department of Energy)*, 880 F.2d 1163 (10th Cir. 1989), noting that section 7112(b)(1) of the Statute prohibits supervisors from being included in bargaining units established under the Statute unless their inclusion is expressly authorized by section 7135(a)(2) of the Statute. The court held that section 7135(a)(2) allows the Authority "to recognize only exclusive units of supervisors, not mixed units." *Id.* at 1167 (footnote omitted). See also *U.S. Department of Energy, Western Area Power Administration, Golden, Colorado v. FLRA*, No. 87-2062 (10th Cir. 1989).

However, the continuation of mixed units of supervisory and nonsupervisory personnel has been found to be a permissive subject of bargaining. *U.S. Department of Interior v. FLRA*, 23 F.3d 518 (DC Cir. 1994). Thus, if a union has historically represented such a mixed unit, the agency may agree in bargaining to continue to recognize the mixed unit, but is not required to do so. Similarly, the agency may timely notify a union that it no longer wishes to be bound by a prior agreement in this permissive area of bargaining. See also, *U.S. Department of Interior v. FLRA*, 26 F.3d 179 (DC Cir. 1994) further discussing the permissive nature of bargaining over continued inclusion of supervisors in mixed units.

Units limited to supervisors: 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 *Department of Energy, Western Area Power Administration*, 38 FLRA 935 (1990).

It is anticipated that few, if any, petitions will be filed concerning the establishment of either mixed units or supervisor-only units. If petitions are filed seeking to exclude supervisors from existing mixed units, relevant information would include evidence to show whether the agency gave timely notice to the union of its intention to remove supervisors from the existing mixed unit.

See HOG 50 for specific guidance on developing a record about this topic at hearing.