

25 **Security work**

Generally, employees engaged in intelligence, counterintelligence or national security work are excluded from bargaining units. Three sections of the Statute address these exclusions:

Section 7103(a)(3) specifically excludes from the definition of "agency" the following agencies engaged in national security work: (1) the Federal Bureau of Investigation; (2) the Central Intelligence Agency and (3) the National Security Agency. Thus, employees of these agencies cannot be in any bargaining units.

Section 7103(b)(1) allows the President to exclude employees of certain agencies or subdivisions from coverage of the Statute. This section provides:

The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that-

(A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

In the past, Presidents have excluded entire agencies or subdivisions thereof from coverage of the Statute. In accordance with section 7103(b)(1), Executive Order 12171 was issued, excluding from coverage of the Statute employees working in certain agencies or subdivisions of agencies. It was later amended by Executive Orders 12338 and 12632. The validity of the Executive Order has been upheld in *AFGE v. Reagan*, 870 F.2d 723 (D.C. Cir., 1982). The Executive Order, as amended, identifies numerous activities that are engaged in national security work and as such are excluded from coverage under Chapter 71 of Title 5 of the United States Code). See *Department of the Navy, Naval Telecommunications Center, Ward Circle*, 6 FLRA 498 (1981).

Section 7112(b)(6) excludes employees in certain categories from all bargaining units. This section applies to specific positions, rather than to an agency or subdivision. Section 7112(b)(6) excludes from any bargaining unit:

any employee engaged in intelligence,
counterintelligence, investigative, or security
work which directly affects national security.

Under section 7112(b)(6) the Activity must show (1) that the individual employee is engaged in the designated work, and (2) that the work directly affects national security. Neither security work, directly affects nor national security are defined in the Statute. The Authority defines:

- a. security work as a task, duty, function or activity relating to securing, guarding, shielding, protecting or preserving something. As used in context, security work includes “the design, analysis or monitoring of security systems or procedures.” *Department of Energy, Oak Ridge Operations, Oak Ridge, Tennessee (Oak Ridge)*, 4 FLRA 644 at 655 (1980). It would not include work involving the mere access to and use of sensitive information and material. *id.* at 655 citing *Cole v. Young*, 76 S. Ct. 861, 351 U.S. 536 (1956).
- b. directly affects is “a straight bearing or unbroken connection that produces a material influence or alternation.” *Oak Ridge*, 4 FLRA at 655 (citation omitted).
- b. national security includes “only 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 government in domestic and foreign affairs, against or from espionage, sabotage, subversion, foreign aggression and any other illegal acts with adversely affect the national defense.” *Id.* at 655-656.

In *U.S. Department of Justice (Justice II)*, 52 FLRA 1093 (1997), the Authority found that the work of employees of civilian, as well as military, agencies constitute security work which directly affects national security within the meaning of section 7112(b)(6) of the Statute. In addition, the Authority established a standard for considering whether employees of a civilian agency are engaged in “security work” which directly affects national security, within the meaning of section 7116(b)(6). The Authority

found that:

an employee is engaged in “security work” within the meaning of section 7112(b)(6) if the required tasks, duties, functions, or activities of the employee’s position include: (1) the designing, analyzing, or monitoring of security systems or procedures; or (2) the regular use of, or access to, classified information. If an employee is engaged in security work, as so defined, which directly affects national security, as discussed above, the employee may not be included in a bargaining unit. *Oak Ridge*, 4 FLRA at 655. (In a footnote the Authority reaffirmed the definition of directly affects in *Oak Ridge*.) *Justice II*, 52 FLRA at 1103.

See HOG 61 for specific guidance about this topic at hearing.

Other references:

Office of Personnel Management, 5 FLRA 238, 247-248 (1981).

U.S. Department of the Navy, U.S. Naval Station, Panama, 7 FLRA 489 (1981).

Defense Mapping Agency, Aerospace Center, Kansas City Office, Kansas City, Missouri, 13 FLRA 52 (1983).

U.S. Department of the Army, Army Ordnance Missile and Munitions Center and School, Redstone Arsenal, Alabama, 35 FLRA 987 (1990).

U.S. Attorneys Office, Washington, D.C., 37 FLRA 1077, 1084 (1990), *citing Defense Mapping Agency, Hydrographic/Topographic Center, Providence Office, Brookside Avenue, West Warwick, Rhode Island, Department of Defense*, 13 FLRA 128 (1983).

