

28 *Temporary employees*

Agencies may hire employees to “temporary” or “term” appointments of fixed durations, as defined in 5 C.F.R. 316. Temporary or term employees may be included in a unit with other employees, as long as their inclusion would otherwise be appropriate. In addition, a separate unit of temporary employees is appropriate, as long as the unit meets the criteria of section 7112(a)(1) of the Statute.

Temporary employees share a community of interest with permanent employees where the evidence shows that they “manifest a substantial and continuing interest in the terms and conditions of employment along with permanent employees.” See *U.S. Department of Agriculture, Region Forester Office, Forest Services, Region 3, Santa Fe National Forest, Santa Fe, New Mexico*, 1 A/SLMR 417 (1971); *U.S. Department of Agriculture, Forest Service, Francis Marion and Sumter National Forests*, 2 A/SLMR 596 (1972).

Therefore, an important consideration in determining whether temporary employees share a community of interest with permanent employees is whether the temporary employees have a **reasonable expectation of continued employment**. See *U.S. Army Engineer Activity, Capital Area, Fort Myer, Virginia*, 34 FLRA 38, 42 (1989). In addition to the standard community of interest criteria, there are a variety of other factors considered in determining whether temporary employees have a reasonable expectation of continued employment.

Nature of appointment. The types of appointments under which temporary employees serve may have a bearing on whether they share a community of interest with permanent employees. This is particularly so since tenure, the period of time an employee may reasonably expect to serve under the current appointment, is granted and governed by the type of appointment. For example, pursuant to 5 CFR 316.301, a person serving a term appointment has a maximum tenure of four years. A person serving a temporary appointment is normally given an appointment of less than one year (5 C.F.R. 316.305). On the other hand, the CFR does not cover employees employed by nonappropriated fund (NAF) instrumentalities. In cases where the type of appointment given NAF employees is at issue, it is necessary to refer to agency regulations defining types of appointments. See *Department of the Air Force, Langley Air Force Base, Virginia*, 40 FLRA 111 (1991).

Varieties of appointments. Not all agencies use the same types of appointments to hire temporaries, nor do they use the same terms to

describe appointments that represent less than permanent, full-time employment. Also, the government has instituted and abolished many types of appointments, some of which may still be reflected in recognitions and certifications. Therefore, it may be necessary to develop on the record the history of temporary employment at the agency. Thus, the inclusion or exclusion of particular employees is not dependent on the type of appointment. Once a determination is made whether these employees have a reasonable expectation of continued employment, then temporary employees are subject to the same eligibility criteria as applied to permanent employees.

Tenure vs. work schedule. Tenure should not be confused with work schedules. It is not necessary to work full time to be a permanent employee. For example, individuals with permanent competitive service appointments may have part time or intermittent work schedules. These employees enjoy permanent tenure and work less than 40 hours per week, or less than 26 pay periods a year, respectively. In contrast, temporary employees may work 40 hours per week, 26 pay periods a year, but have limited tenure because of the temporary appointment.

Probationary periods. Employees who are serving in their initial, probationary period are not considered temporary. Probationary employees are commonly included in bargaining units, if they have a reasonable expectation of permanent employment upon their completion of their probationary period. *Department of the Navy, Navy Exchange, Mayport, Florida*, 1 A/SLMR 143 (1971).

See HOG 64 for specific guidance about this topic at hearing.

Other references:

U.S. Small Business Administration, Lower Rio Grande Valley District Office, 16 FLRA 180, 181 (1984) employees on six-month, temporary appointments; contrast with *USDA, Animal and Plant Health Inspection Service, Plant Protection Quarantine, Pink Bollworm Rearing Facility*, 6 FLRA 261 (1981).

Federal Mediation and Conciliation Service, 5 FLRA 28 (1981), summer employees and a temporary appointment of one year.

U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Northeast Region, 24 FLRA 922 (1986), one year appointments, with an extension of three years.

Department of Interior, Bureau of Mines, Twin Cities Research Center, Twin Cities, Minnesota, 9 FLRA 109 (1982), intermittent or WAE, "when actually employed".

U.S. Corps of Engineers, Kansas City District, Kansas City, Missouri, 15 FLRA 548 (1984) "Stay-in-School Program".

F.E. Warren, 48 FLRA 650 (1993) for types of temporary appointments in a nonappropriated fund activity.

Army and Air Force Exchange Service, Panama Area Exchange, 7 FLRA 514 (1981), regularly scheduled, intermittent.

Federal Deposit Insurance Corporation, 34 FLRA 50 (1989) temporary employees at the FDIC, which has unique appointment authorities.

U.S. Department of Agriculture, Region Forester Office, Forest Services, Region 3, Santa Fe National Forest, Santa Fe, New Mexico, 1 A/SLMR 417 (1971) seasonal employees under temporary appointments have a reasonable expectation of continuous employment, as many of whom work specified periods of time each year, and share a community of interest with other employees in the proposed unit. See also U.S. Department of Interior, National Park Service, Rocky Mountain National Park, Estes Park, Colorado, 48 FLRA 1404 (1994). Regional Director dismissal of petition seeking to represent only Wage Grade employees (including WG seasonal employees) upheld because Wage Grade employees shared a community of interest with the General Schedule employees at the Park. However, there are some cases in which the parties agreed to exclude seasonal employees.

