65 FLRA No. 106

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
COLUMBIA-CASCADES AREA OFFICE
YAKIMA, WASHINGTON
(Activity)

and

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS
LOCAL 77, AFL-CIO
(Union/Petitioner)

SF-RP-10-0010

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ORDER DENYING
APPLICATION FOR REVIEW

February 11, 2011

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Before the Authority: Carol Waller Pope, Chairman, and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This case is before the Authority on an application for review (application) filed by the Union under § 2422.31(c) of the Authority's Regulations.[1] The Activity filed an opposition to the Union's application.

In his decision, the Regional Director (RD) granted the Union's petition in part, and denied it in part. The RD found that the Activity was the successor employer of the Union's prevailing rate[2] employee bargaining unit, but denied the accretion of two wage grade[3] employees to the unit. The Union seeks review of the RD's decision denying accretion.[4]

For the reasons that follow, we deny the Union's application for review.

II. Background and RD's Decision and Order

A. Background

In 2009, the Pacific Northwest Region of the Bureau of Reclamation reorganized. RD's Decision at 6. The Upper and Lower Columbia area offices were combined to form the Columbia-Cascades Area Office (CCAO). *Id.* at 6-7. As a result of the reorganization, the Lower Columbia area office was closed. *Id.* at 7. The Green Springs Power Plant (GSPP) in Ashland, Oregon reported to the Lower Columbia area office. Only two employees are assigned to the GSPP; both are wage grade employees. *Id.* at 6-7, 9-10.

The Union represents a bargaining unit of prevailing rate employees assigned to the CCAO. *Id.* at 1. Wage grade employees are specifically excluded from the Union's unit description. *Id.* at 15. The prevailing rate employees of the Union's bargaining unit and the wage grade employees of the GSPP were reassigned to the newly created CCAO. *Id.* at 5.

The Union filed a petition seeking a determination that the GSPP wage grade employees

1 Section 2422.31(c) of the Authority's Regulations provides, in pertinent part:

> (c) *Review*. The Authority may grant an application for review only when the application demonstrates that review is warranted on one or more of the following grounds:
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> (1) The decision raises an issue for which there is an absence of precedent;
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> (2) Established law or policy warrants reconsideration; or
>
> (3) There is a genuine issue over whether the Regional Director has:
>
> (i) Failed to apply established law;
>
> (ii) Committed a prejudicial procedural error;
>
> (iii) Committed a clear and prejudicial error concerning a substantial factual matter.

2 Prevailing rate employees, also known as hourly employees, have the right to negotiate pay and pay practices in accordance with § 9(b) of the Prevailing Rate Systems Act and § 704 of the Civil Service Reform Act of 1978. These employees can also negotiate other conditions of employment that are otherwise not negotiable under the Federal Service Labor-Management Relations Statute (the Statute). RD's Decision at 4.

3 In contrast to prevailing rate employees, wage grade, also known as wage board employees, have their wages established by management based on special wage survey criteria established by the Office of Personnel Management and found in 5 C.F.R. § 532. RD's Decision at 5.

4 The RD's Decision is based on a stipulated record.

had accreted to the prevailing rate employee bargaining unit. The Activity disagreed. However, both parties agreed that the certification issued to the Union for its prevailing rate employee bargaining unit should be amended to show that CCAO is the successor employer for the bargaining unit. *Id.* at 2.

B. RD's Decision and Order

The RD found that the CCAO is the successor employer of the Union's prevailing rate employee bargaining unit.[5] The RD also found that the GSPP's two wage grade employees did not accrete to the Union's prevailing rate unit. Therefore, the RD dismissed the portion of the petition seeking accretion. *Id.* at 12-16.

Regarding the accretion issue, the RD found that the 2009 reorganization was a "triggering event" or change in agency operations and organization that satisfied a precondition for finding accretion. *Id.* at 14. However, the RD also found that other circumstances did not support the conclusion that the 2009 reorganization caused the accretion of the GSPP wage grade employees to the Union's prevailing rate unit. The RD found that accretion had not occurred because the reorganization did not bring about a "meaningful change" in the wage grade employees' duties, functions, or job circumstances. *Id*. at 15.

As to duties and functions, the RD found that the 2009 reorganization did not change the type of work performed by the wage grade employees. *Id.* As to job circumstances, the RD found that the reorganization also did not produce any meaningful changes. For example, the RD found that both before and after the reorganization there was no interaction or coordination between the two groups of employees. *Id.* at 16. Similarly, the RD found that the reorganization had not changed the limited interchange that the wage grade employees had with the prevailing rate employees. *Id*. Further, although after the reorganization the wage grade employees shared a first level supervisor with some prevailing rate employees, the RD did not view this change as meaningful, given that the employees have the same second level supervisor. *Id.* In addition, the RD found that the 2009 reorganization had not changed the way in which the wage grade employees received training or the frequency of their training. *Id.*

The RD also considered that after the reorganization both types of employees had the same area manager who had the authority to "set working conditions" for them. *Id.* However, as with the other job circumstances the RD considered, the RD concluded that the area manager's authority to set working conditions for both types of employees was also not a "meaningful change." *Id.* The RD noted in this regard that the prevailing rate unit continued to be distinguished by "unique features and special working conditions." *Id.* For example, as noted earlier, prevailing rate employees are unique in that they can negotiate their wages through collective bargaining. In contrast, wage grade employees have their wages established by management based on special wage survey criteria established by the Office of Personnel Management (OPM). Furthermore, the RD found that, historically, there had been limited interchange between these two groups of employees, and no interchange of jobs. *Id.* Consequently, the RD found that having the same area manager was not a "meaningful change" for the wage grade employees. *Id.* Accordingly, the RD found that the facts of the case do not support the conclusion that the 2009 reorganization caused the accretion of the wage grade employees to the Union's prevailing rate unit. *Id.*

In arriving at this conclusion, the RD rejected the Union's reliance on *International Communication Agency*, 5 FLRA 97 (1981) (*ICA*). *Id.* at 16-17. In *ICA*, the Authority found that wage grade radio broadcast technicians whose work location was New York City accreted to an existing prevailing rate unit of radio broadcast technicians in Washington, D.C. The Authority reached this conclusion without engaging in a "meaningful change" analysis.

The RD distinguished *ICA*. The RD noted specifically that it was only after *ICA* was decided that the Authority began applying the "triggering event" precondition, and the "meaningful change" requirement that framed the RD's analysis in the instant case. *Id.* at 17. The RD also cited a variety of factual differences between the cases. *Id.*

Finally, the RD rejected arguments that accretion accorded with public policy underlying federal collective bargaining, and that accretion should be found because the two groups were already thoroughly integrated, a proposition the RD rejected. *Id.*

5 The RD's determination regarding successorship is not at issue in this case.

III. Positions of the Parties

A. Union's Application for Review

The Union claims that the RD failed to apply established law by not finding that the GSPP employees accreted to its unit. Application at 2. In particular, the Union argues that the change in supervisory structure, given the area manager's authority over both groups of employees, was a "meaningful change." *Id.* at 4. According to the Union, after the 2009 reorganization, the area manager had the authority to set working conditions for both wage grade and prevailing rate employees, "impact[ing] everything that an employee does every day." *Id.* at 4-5.

The Union also claims that the RD misapplied the Authority's decision in *ICA*. *Id.* at 5. The Union argues that the instant case presents circumstances similar to those present in *ICA*, and therefore that the same result is warranted. The Union points out that considerations that led the Authority to find accretion in that case are also applicable here, such as the Authority's finding in *ICA* that accretion "will lead to more effective agency dealings." *Id.* at 6.

Finally, the Union claims that the accretion of the GSPP employees to its unit is in line with the public policy behind granting collective bargaining rights to federal employees. *Id.* at 7. The Union asserts that having two groups of employees doing the same work for the same employer, but subject to different conditions of employment and benefits can lead to lowered morale and dissatisfaction. According to the Union, "[t]he accretion of the GSPP employees into [its] unit is the only appropriate avenue for remedying the situation." *Id.* at 8.

B. Activity's Opposition

The Activity claims that the Union has not established grounds under 5 C.F.R. § 2422.31(c) for granting review of the RD's decision. Opp'n at 1.

First, interpreting the Union's "meaningful change" position as a challenge to a factual finding by the RD, the Activity claims the Union has not shown that the RD committed a clear prejudicial error concerning a substantial factual matter. *Id.* at 2. Second, the Activity contends that the RD did not misapply *ICA*. The Activity argues that the RD specifically considered the application of *ICA*, but found it distinguishable. *Id.* at 2-3. Finally, the Activity asserts that the Union's claim -- that accretion comports with public policy -- does not establish grounds for review under 5 C.F.R. § 2422.31(c). *Id.* at 3.

IV. The RD did not fail to apply established law.

The legal framework for resolving accretion issues is set forth in the Authority's case law. Accretion involves the addition of a group of employees to an existing bargaining unit without an election, based on a "triggering event" or change in agency operations or organization. *U.S. Dep't of the Interior, Bureau of Reclamation, Pacific Nw. Region, Grand Coulee Power Office, Wash.*, 62 FLRA 522, 524 (2008) (*Grand Coulee Power Office, Wash.*). Because accretion precludes employee self-determination, the accretion doctrine is narrowly applied. *See id.*

Where employees sought to be accreted have been "specifically excluded from the unit description in a bargaining certificate," these employees may "only be accreted into that unit" where there have been "meaningful changes" in the employees' duties, functions, or job circumstances that eliminate the original distinctions between employees and thus warrant their inclusion into the unit. *Def. Logistics Agency, Def. Supply Ctr., Columbus, Columbus, Ohio,* 53 FLRA 1114, 1123-1124 (1998) (*DLA Columbus*).

The Union claims that the RD failed to apply established law when he found that having the same area manager, who could establish working conditions for both groups of employees after the 2009 reorganization, was not a "meaningful change" in the GSPP employees' duties, functions, or job circumstances Application at 4-5. However, as discussed below, the Union fails to substantiate its claim.

The Union argues that having the same area manager is a "meaningful change" because the area manager "impacts everything that an employee does every day." *Id.* at 4-5. However, the Union fails to explain how a change in manager, or having the same manager as employees in the prevailing rate bargaining unit, changed GSPP employees' duties, functions, or job circumstances so as to constitute a "meaningful change." Therefore, the Union fails to demonstrate that the change in manager supports its claim that the RD failed to apply established law. *Accord DLA Columbus*, 53 FLRA at 1123-24 (finding no accretion where employees had new supervision after a reorganization, but continued to perform the same duties and functions, and where the

reorganization did not result in any interchange of jobs with the other group of employees).

Furthermore, contrary to the Union's contentions, the RD did not fail to apply established law by not applying *ICA*. As the RD noted, *ICA* is distinguishable. After *ICA* issued, the Authority altered its accretion analysis and began applying the "meaningful change" rationale on which the instant case was decided. *See, e.g.*, *DLA Columbus*, 53 FLRA at 1123-24. Thus, *ICA* was decided before the Authority established its current legal framework for use in accretion cases. Accordingly, the Union fails to demonstrate that the RD erred by reaching a result that differed from the result in *ICA*.

For the reasons stated above, we find that the RD did not fail to apply established law.[6]

V. Order

The application for review is denied.

6 The Union's contention that the public policy behind granting collective bargaining rights justifies accretion does not provide a basis for granting review of the RD's Decision. 5 C.F.R. § 2422.31(c). It is true that collective bargaining principles underlie many of the Authority's determinations under the Statute. However, there is no showing in this case that the Authority's accretion analysis, which the Union does not dispute, is inconsistent with those principles.