68 FLRA No. 1

UNITED STATES
DEPARTMENT OF THE NAVY
NAVAL UNDERSEA WARFARE CENTER
DIVISION KEYPORT
(Agency)

and

BREMERTON METAL TRADES COUNCIL
AFL-CIO
(Union/Petitioner)

SF-RP-14-0002

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ORDER DENYING
APPLICATION FOR REVIEW

October 9, 2014

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Before the Authority: Carol Waller Pope, Chairman, and Ernest DuBester and Patrick Pizzella, Members

I. Statement of the Case

In the attached decision, Regional Director (RD) Jean M. Perata of the Federal Labor Relations Authority held that various disestablishments, reestablishments, and changes in organizational coding of certain Agency detachments did not result in meaningful changes in the duties, functions, or job circumstances of the employees at issue here. As a result, the RD found that it was inappropriate to apply "accretion" to include those employees in the bargaining unit that the Union represents.[1] Therefore, she did not address whether the Union's petitioned-for unit would otherwise be appropriate under the criteria set forth in § 7112(a) of the Federal Service Labor-Management Relations Statute (the Statute).[2] There are three substantive questions before us.

The first question is whether the RD committed various clear and prejudicial errors regarding substantial factual matters. Because the Union does not demonstrate that the RD made any factual errors, the answer is no.

The second question is whether the RD failed to apply established law because she did not address the appropriate-unit criteria of § 7112(a). Because the RD found no meaningful changes in the employees' duties, functions, or job circumstances, accretion is not permitted, regardless of whether the petitioned-for unit would satisfy the appropriate-unit criteria. Thus, the RD did not err by failing to address those criteria.

The third question is whether the RD failed to apply established law or committed a prejudicial procedural error by failing to consider the Union's closing brief (the closing brief) before issuing her decision. Even assuming that the Union properly filed the closing brief, and that the RD erred by not considering it before issuing her decision, we have reviewed that brief, and we find that it provides no basis for finding that the RD erred in concluding that accretion was not appropriate. Accordingly, we find no reason to reverse the RD.

II. Background and RD's Decision

A. Background

As relevant here, the Agency initially had facilities in Keyport, Bangor, and Indian Island, Washington, as well as in Hawthorne, Nevada (collectively, the Keyport). The Agency later established detachments in Hawaii; San Diego, California; and Guam (collectively, the detachments). The bargaining unit (the unit) at issue here was initially established at the Keyport. Over time, additional employees at the Keyport were added to the unit, while Agency employees located at the detachments were not.

Further, over the years, the detachments went through various changes. The titles and categories of some of the detachments changed, and some detachments were disestablished, reestablished, or combined. These various changes also resulted in changes to the organizational codes that are used to identify specific organizational divisions throughout the Agency.

The detachment employees at issue in this case are demonstration-project (project) employees who are under different pay plans than the Keyport employees in the unit. The Union filed a petition alleging that the detachment employees must be included in the unit, without an election, under the principle of accretion. Specifically, the Union claimed that the organizational and coding changes were "triggering actions" that justified accreting them into the unit.[3]

B. RD's Decision

After holding a hearing, the RD issued her decision. The RD found that, in 1977, the Assistant

[1] RD's Decision at 6.
[2] 5 U.S.C. § 7112(a).
[3] RD's Decision at 6.

Secretary of Labor for Labor-Management Relations (the Assistant Secretary) – in *Department of the Navy, Navy Torpedo Station, Keyport, Washington* (*Torpedo Station*)[4] – ordered an election among general-schedule (GS) nonprofessional employees of two of the Keyport sites: Keyport and Bangor, Washington. The RD noted the Assistant Secretary's statement that, "as the Activity's Hawaii detachment is such a great distance from Keyport, the employees . . . should be excluded from either of the petitioned[-]for GS units."[5] The RD also discussed various other changes to the unit, and various organizational changes within the Agency – specifically, the "simultaneous disestablishments [and] establishments of the detachments"[6] and "changes to the organizational coding"[7] – that occurred over the years. Despite these changes, she found it "undisputed that at no time have [detachment] employees been members of the unit."[8]

Addressing the accretion issue, the RD explained that, when employees have been expressly excluded from a bargaining unit, they may not be accreted to that unit unless there have been meaningful changes in their duties, functions, or job circumstances that eliminated the original distinctions that led to their exclusion. According to the RD, "[t]he hearing record does not include any specific reference to 'meaningful changes[,'] but it can be extrapolated that that was the argument [the Union] was seeking to make."[9]

The RD determined that the changes to the detachments did not result in such meaningful changes.[10] In particular, she found that: the changes "had little or no direct impact on" the detachment employees; the "simultaneous disestablishments resulted in no break in continuity"; and the detachments remained basically "unchanged since the bargaining unit was established."[11] The RD further determined that one specific change – "placing the detachments' nonprofessional employees under the . . . [p]roject" – was not a meaningful change warranting accretion, because that change made the project employees "*more* distinct" from the GS employees in the unit.[12]

The RD concluded that, because no meaningful changes had occurred, the employees in the detachments could not be accreted to the unit. Consequently, she dismissed the Union's petition.

The Union filed an application for review (the application) of the RD's decision, and the Agency filed an opposition to the Union's application.

III. Preliminary Matter: Sections 2422.31(b) and 2429.5 of the Authority's Regulations bar the Union's reliance on Section 302 of the collective-bargaining agreement.

To support one of its arguments, the Union cites Section 302 of the collective-bargaining agreement between the Agency and the Union. According to the Union, Section 302 states that the unit employees are subject to the agreement while assigned to a detachment.[13] In its opposition, the Agency argues that the Union is raising a fact not presented below, because the agreement was not discussed at the hearing or entered as an exhibit.[14]

Under § 2422.31(b) of the Authority's Regulations, "[a]n application may not raise any issue or rely on any facts not timely presented to the [h]earing [o]fficer or [the RD],"[15] and § 2429.5 of the Regulations likewise precludes a party from raising any "evidence, factual assertions, [or] arguments . . . that could have been, but were not, presented in the proceedings before the [RD] [or the] [h]earing [o]fficer."[16]

There is no basis in the record for finding that, before the RD, the Union cited Section 302, quoted its wording, or introduced that provision into evidence. Even in its closing brief – which (as discussed below) the Union claims the RD failed to consider – the Union makes a general argument that employees assigned to a detachment were "covered under a [b]argaining [a]greement," but does not cite Section 302.[17] As the Union did not rely on Section 302 below, §§ 2422.31(b) and 2429.5 of the Authority's Regulations preclude it from doing so now. Thus, we do not consider the alleged wording of Section 302.

IV. Analysis and Conclusions

A. The Union's arguments do not establish that the RD committed clear and prejudicial errors regarding substantial factual matters.

The Union argues that the RD committed four clear and prejudicial errors regarding substantial factual matters.

[4] 7 A/SLMR 879, 881 n.2 (1977).
[5] RD's Decision at 3.
[6] *Id.* at 6.
[7] *Id.* at 5.
[8] *Id.* at 3-4.
[9] *Id.* at 6 n.4.
[10] *Id.* at 5-6.
[11] *Id.* at 6.
[12] *Id.* (emphasis added).
[13] Application at 4.
[14] Opp'n at 1.
[15] 5 C.F.R. § 2422.31(b).
[16] *Id.* § 2429.5.
[17] Application, Attach. 1(a) (Closing Br.) at 5.

First, the Union argues that the RD erred in finding it undisputed that "at no time have [detachment] employees been members of the unit."[18] In this regard, the Union argues that bargaining-unit employees have been assigned to the detachments.[19] But, other than Section 302 of the agreement – which is not properly before us, as discussed in Section III above – the Union cites no evidence to support its argument. Further, the Union's argument regarding the location where existing unit employees are assigned does not prove that the RD erred on a substantial factual matter because unit employees can be assigned outside a unit or even to a different unit. Thus, the Union provides no basis for finding that the RD erred in this regard.

Second, the Union alleges that the RD erroneously found that the "changes in leadership 'had little or no direct impact on employees'" and that the record did not include any "specific reference to meaningful changes."[20] The Union claims that the "realign[ments]" of the detachments under different organizational codes are significant changes, resulting in, "[f]or the first time in the history of the detachments," personnel having a "direct link in the chain of command" to Keyport department heads instead of only local leadership.[21] And the Union contends that the change is "huge" in the work life of the employees because the chain of command governs the routing of all administrative processes, including grievances and pay.[22]

As an initial matter, the RD found changes in "reporting requirements"[23] – not "changes in leadership," as the Union alleges.[24] And, in any event, changes in the identities of managers, by themselves – without corresponding changes to employees' duties, functions, or job circumstances – are not meaningful changes that warrant application of the accretion doctrine.[25] Further, the Union does not cite any evidence that shows that the alleged changes in the chains of command affected employees' duties, functions, or job circumstances. Thus, the Union provides no basis for finding that the RD erred in this regard.

Third, the Union argues that the RD erred in finding that the detachment employees are all project employees. In this regard, the Union claims that "the records for this case reflect that these employees consist of [wage-grade (WG)], GS[,] *and* [project] personnel."[26] For support, the Union cites "Agency Exhibit 3(h),"[27] although it appears that the Union intended to cite Joint Exhibit 3(h). That exhibit is a list of staffing levels, with no information on pay plans other than the following two general "[n]otes" that: (1) for San Diego, "GS/WG employees [are] included in count based on title/series grade"; and (2) for Hawaii, "GS/WG/NG employees [are] included in count based on title/series/grade."[28] That exhibit does not support the Union's argument, and is undercut by other record evidence that actually lists the pay plans of the employees. Specifically, Joint Exhibits 3(c)-(g) indicate that the otherwise-unit-eligible detachment employees are under project pay plans, and that none are GS employees.[29] Thus, record evidence supports the RD's finding, and the Union provides no basis for concluding that the RD erred in this regard.

Fourth, the Union contests the RD's finding – based on her reading of *Torpedo Station* – that the unit certification excludes employees at the Hawaii detachment.[30] According to the Union, "the content and [the] makeup of the Hawaii [d]etachment was totally different then and now," and the stipulation in *Torpedo Station* was that only employees within a *specific activity* of the Hawaii detachment were excluded.[31] In *Torpedo Station*, the Assistant Secretary described the parties' stipulation as follows: "The parties stipulated [that,] as there are no GS employees located at the Activity's Indian Island location[,] and as the Activity's Hawaii Detachment is such a great distance from Keyport, the employees at these locations should be excluded from either of the petitioned[-]for GS units."[32] The Union provides no basis for finding that the RD misread *Torpedo Station* or otherwise made a clear and prejudicial error concerning a substantial factual matter when she found that the unit certification excludes employees at the Hawaii detachment.

For the above reasons, the Union does not demonstrate that the RD committed clear and prejudicial errors concerning substantial factual matters.

[18] Application at 4.
[19] *Id.*
[20] *Id.* at 6 (quoting RD's Decision at 6).
[21] *Id.*
[22] *Id.*
[23] RD's Decision at 6.
[24] Application at 6.
[25] *U.S. Dep't of the Interior, Bureau of Reclamation, Columbia-Cascades Area Office, Yakima, Wash.*, 65 FLRA 491, 493 (2011) (*Interior*); *Def. Logistics Agency, Def. Supply Ctr. Columbus, Columbus, Ohio*, 53 FLRA 1114, 1123-24 (1998) (*Logistics*).
[26] Application at 5-6 (emphasis added).
[27] *Id.* at 6.
[28] Joint Ex. 4(3)(h).
[29] Joint Exs. 3(c)-(g).
[30] Application at 4.
[31] *Id.* at 4-5 (citing Joint Ex. 4(a) at 2).
[32] *Id.* at 4 (quoting Joint Ex. 4(a) at 2 n.2).

B. The RD did not fail to apply established law when she did not resolve whether the Union's petitioned-for unit is appropriate.

The Union argues that the RD failed to apply established law because she did not consider whether the unit it proposed "is appropriate on a functional basis" under § 7112(a) of the Statute.[33] According to the Union, its proposed unit meets the appropriate-unit criteria set forth in § 7112(a).[34]

As the RD explained, where a union seeks to accrete employees that have been "specifically excluded from the unit description in a bargaining certificate," those employees may be accreted into the certified unit only where there have been "meaningful changes" in the employees' duties, functions, or job circumstances that eliminate the original distinctions between the excluded employees and the employees in the unit.[35] If there have not been such meaningful changes, then accretion is not permitted, and the RD need not evaluate whether the petitioned-for unit is appropriate under § 7112(a) of the Statute.[36]

As stated previously, the RD found that no meaningful changes had occurred in the employees' duties, functions, or job circumstances, and the Union has not shown that the RD erred in this finding. As a result, there was no basis for the RD to assess whether the petitioned-for unit is appropriate under the criteria set forth in § 7112(a) of the Statute. Thus, the Union has not demonstrated that the RD failed to apply established law by not making that assessment.

C. The Union has not demonstrated that the RD's failure to consider its closing brief before issuing her decision provides a basis for reversing the RD.

The Union argues that the RD failed to apply established law by not entering its closing brief into the record as required by § 2422.30(e) of the Authority's Regulations,[37] which pertinently provides that "[w]hen a hearing has been held, . . . any posthearing briefs[] become a part of the record."[38] The Union also argues that the RD committed a prejudicial procedural error regarding the closing brief when she stated that "it can be extrapolated" from the brief that the Union was attempting to make an argument regarding meaningful changes.[39] According to the Union, the RD's failure to consider the closing brief resulted in a loss of "significant information" that "directly contributed to an incorrect extrapolation" of the Union's views of the evidence.[40] Specifically, the Union argues that the RD did not consider its views on the impact of the changes – which it claims were not "de minimis"[41] – and that "[o]ne of the points of [its] case" was that Keyport employees were detailed to the detachments when the detachments were initially established and during subsequent "reorganization[s]," and that some unit employees were permanently assigned to the detachments without notice to the Union, triggering accretion and "a duty to bargain."[42]

It is unclear from the record whether the Union successfully filed the closing brief with the Regional Office before the RD issued her decision. The Union contends that, before the RD issued her decision, it submitted the brief to the Regional Office both "electronically" and "via U.S. [P]ostal Service,"[43] and, to support this contention, has submitted a copy of the brief, which includes a signed certificate stating that it had served the Regional Office and the Agency by those methods.[44] However, internal Regional Office communications indicate that the Regional Office may have received the closing brief only by email, which went to the Hearing Officer's junk-mail folder and was not discovered until after the RD issued her decision. Assuming, without deciding, that the Union filed the brief only by email, § 2429.24 of the Authority's Regulations does not permit email filing of posthearing briefs in representation cases.[45]

In any event, we need not decide whether the Union properly mailed the closing brief through the U.S. Postal Service as well as by email. Even if the brief were properly mailed – and the RD erred in some way by failing to consider it before she issued her decision – we have reviewed the brief and find, for the following reasons, that it provides no basis for reversing the RD.

[33] *Id.* at 2 (quoting 5 U.S.C. § 7112(a) (internal quotations mark omitted)).
[34] *Id.* at 2.
[35] *Id.* at 3 (quoting *Logistics*, 53 FLRA at 1123-24).
[36] *See Interior*, 65 FLRA at 492-93; *see also U.S. Dep't of the Interior, Bureau of Reclamation, Pac. Nw. Region, Grand Coulee Power Office, Wash. & Hungry Horse Field Office, Mont.*, 62 FLRA 522, 524 (2008) (stating that, in accretion cases, the Authority first considers whether there is a change in the agency's organization or operations before evaluating whether the petitioned-for unit is appropriate); *U.S. Dep't of the Army, U.S. Army Reserve Command, Fort McPherson, Ga. & U.S. Dep't of the Army, First U.S. Army, Fort Gillem, Ga.*, 57 FLRA 95, 96 (2001) (citing *U.S. Dep't of the Navy, Naval Air Warfare Command, Aircraft Div., Patuxent River, Md.*, 56 FLRA 1005, 1006-07 (2000)).
[37] Application at 3.
[38] 5 C.F.R. § 2422.30(e).
[39] Application at 7 (quoting RD's Decision at 6 n.4).
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.* at 3.
[44] Closing Br. at 7.
[45] 5 C.F.R. § 2429.24(e)-(g).

In the closing brief, the Union argued that: the Agency made various organizational changes (including changes in organizational codes) and movements of employees;[46] there were "many different changes in working conditions and the changes in the makeup of Keyport's work force and bargaining units," which are "the basis for the beginning of talks with management regarding accretion of unit, and the triggering events which led to" the filing of the clarification petition;[47] the petitioned-for unit meets the appropriate-unit criteria of § 7122(a);[48] and "from the moment the [A]gency transferred the very first bargaining[-]unit member to one of the detachments permanently, knowing that the member was covered under a [b]argaining [a]greement, [t]he [U]nion and the FLRA should have been notified[,] and a situation of accretion existed."[49]

The closing brief does not cite any specific effects that the organizational changes had on employees' duties, functions, or job circumstances. And, as stated in Section IV.B. above, absent such changes, it is immaterial whether the petitioned-for unit would otherwise be appropriate. Finally, with regard to the Union's claims regarding de minimis changes and the duty to bargain, those claims apply in unfair-labor-practice cases involving a unilateral change to conditions of employment[50] – not this representation case. As such, the Union's arguments in the closing brief provide no basis for finding that the RD erred and, thus, the RD's failure to consider that brief provides no basis for setting aside her decision.

V. Order

We deny the Union's application for review.

[46] Closing Br. at 3-4.
[47] *Id.* at 3.
[48] *Id.* at 4-5.
[49] *Id.* at 5.
[50] *See, e.g., U.S. Dep't of the Air Force, 325th Mission Support Group Squadron, Tyndall Air Force Base, Fla.*, 65 FLRA 877, 880 (2011).

BEFORE THE
FEDERAL LABOR RELATIONS AUTHORITY
SAN FRANCISCO REGION

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DEPARTMENT OF THE NAVY
NAVAL UNDERSEA WARFARE CENTER,
KEYPORT
(Agency)

and

BREMERTON METAL TRADES COUNCIL, AFL-CIO
(Union/Petitioner)

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SF-RP-14-0002

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DECISION AND ORDER

Statement of the Case

This petition was filed on October 18, 2013, with the Federal Labor Relations Authority (Authority) under section 7111(b) of the Federal Service Labor-Management Relation Statute (Statute).

The Petitioner in this case is the Bremerton Metal Trades Council, AFL-CIO (BMTC). BMTC is the exclusive representative of the nonprofessional employees of Naval Undersea Warfare Center, Division Keyport (NUWC Keyport) located at Keyport, Bangor, Indian Island, and Hawthorne Nevada. BMTC has filed their Petition to seek a clarification and/or amendment to the Certification currently in effect pursuant to Case 9-CU-90005 and 9-AC-10007. Specifically, it sought a finding that non-supervisory personnel at NUWC's Hawaii, San Diego, and Pacific detachments ("the detachments") must be included in the Certification under the principle of accretion because of a "shared community of interest" with the NUWC, and because such inclusion would "promote effective dealings with and efficiency of operations of the activity". The BMTC asserts that despite the express exclusion of those detachments from their unit description, the simultaneous disestablishment and establishment of those detachments in 2004, the establishment of NUWC Keyport San Diego and Pacific detachments by Naval instructions in 2003 and creation of the NUWC Guam on-site office in 2014 constituted triggering events which justify their

non-professional employees inclusion under BMTC's representation.[1]

NUWC Keyport concurs that the detachments' employees are NUWC Keyport employees and that they have a community of interest with other NUWC Keyport employees currently represented by the petitioner. Further, they acknowledge that the represented NUWC Keyport employees and the unrepresented detachment employees support the same mission, have similar or related duties, are subject to the same general working conditions, have common supervision and a chain of command ending with the Commanding Officer located at NUWC Keyport, and their personnel servicing and labor relations are all handled centrally by the NUWC Keyport Human Resource Office. However they note that those conditions have been the same since the Hawaii and San Diego were initially established in 1974 and 1976 respectively, and that the detachments have been expressly excluded from the unit certification since that time. Further, they assert that the disestablishment and establishment of the detachments over the years did not constitute triggering actions sufficient to justify accretion.

A Hearing Officer of the Authority held a hearing in this case on April 28, 2014, and the Agency filed a post-hearing brief. Because the record does not reflect that there have been any meaningful changes in the job duties, functions or circumstances since the exclusion from the unit of NUWC Keyport's Hawaii and San Diego detachments and the Guam on-site office, the principle of accretion does not apply. Therefore the Authority finds that BMTC's Petition for clarification of unit must be dismissed.

Issues

The issue presented in the case is whether NUWC Keyport's non-professional employees working at the detachments in Hawaii and San Diego, and the on-site office in Guam have accreted to the BMTC and should be included in the BMTC's bargaining unit. As a preliminary matter there must be a determination as to whether the simultaneous disestablishment and establishment of the detachments and changes in the organizational coding used to refer to divisions of the detachments constituted triggering acts reflecting meaningful changes in the employees' duties, functions or job circumstances. Absent such meaningful changes, there can be no finding of accretion. A careful review of the evidence in this case and testimony at the hearing establishes that no meaningful changes have occurred, and I find that there is no accretion.

Factual Background

NUWC Keyport, as it is currently named, was established in 1914 by the U.S. Department of the Navy. In 1974 Hawaii became NUWC's first detachment. In 1976 the Southern California San Diego detachment was established.

On October 4, 1977 the Assistant Secretary of Labor for Labor-Management Relations of the Department of Labor issued a Decision and Direction of Elections. *Dep't of the Navy, Navy Torpedo Station, Keyport, Wa.*, 7 A/SLMR 879 (1977). The Assistant Secretary ordered an election among General Schedule nonprofessional employees of the Keyport and Bangor sites. When ordering the election, the Assistant Secretary provided that "as the Activity's Hawaii detachment is such a great distance from Keyport, the employees…should be excluded from either of the petitioned for GS units." *Id.*, 881 at note 2. An election was ordered among the nonprofessional employees of NUWC Keyport, which was then known as the Navy Torpedo Station, as follows:

> All nonprofessional General Schedule employees of the Navy Torpedo Station, Keyport, **working at the Keyport and Bangor sites**, excluding employees engaged in Federal personnel work in other than a purely clerical capacity, professional employees, management officials, firemen, guards, and supervisors as defined in Executive Order 11491, as amended.

On June 4, 1980, a Clarification of Unit and Amendment of Certification was issued including General Schedule employees located on Indian Island into the unit. A second Clarification of Unit was issued on November 30, 1989, including Hawthorne, Nevada Detachment's employees in the BMTC unit.

In 1991 the Regional Director of the San Francisco Region, FLRA issued an Amendment of Certification that changed the name of the exclusive representative of the bargaining unit from the International Association of Machinists and Aerospace Workers, AFL-CIO to the BMTC. Since that time the BMTC has been the exclusive representative of nonprofessional NUWC Keyport employees located at Keyport, Bangor, Indian Island, and Hawthorne. It is undisputed that at no time have NUWC Keyport

[1] Since its initial establishment the Hawaii detachment has been merged with the on-site office in Guam, and is now called the Pacific detachment. It will be referred to hereafter as the Hawaiian detachment for purposes of simplicity as it has been referred to as such in the record. The San Diego detachment was originally called the Southern California detachment but its name was changed during the course of its history.

employees at the Hawaii and San Diego detachments or the site located in Guam, been members of the unit.

On December 23, 1991 an OPNAV 5450 Notice was issued to establish Naval Surface and Undersea Warfare Centers. This Notice impacted the Hawaii and San Diego detachments. Testimony at the hearing confirmed that duties and responsibilities of employees were not affected by the title changes.

A June 25, 1996 Memorandum from the Chief of Naval Operations (OPNAV) effectuated the disestablishment of the San Diego detachment, among other locations. The document then provided that "Subject disestablished detachments will be re-established as component organizations under the command and support of COMNAVSEASYSCOM." Testimony at the hearing confirms that there was no difference or impact in the duties and responsibilities of the employees as a result of the name changes. This resulted in San Diego being changed from a Category 1 detachment to a Category 2 detachment.[2]

On January 22, 2002 another OPNAV 5450 Notice was issued. It disestablished the Pearl Harbor and Waianae detachments, while simultaneously establishing a new detachment consisting of a consolidation of the disestablished detachments.

On February 5, 2014, NAVSEA issued a new 5450 Instruction reestablishing San Diego as a Category 1 detachment. Again, duties and job functions of the employees remained unchanged.

Unlike the employees located at NUWC Keyport, the employees at issue in the Hawaii and San Diego detachments and the Guam on-site office are all Demonstration Project employees. Testimony reflects that their transformation from GS employees to Demonstration Project employees occurred in approximately 2001. The key difference between Demonstration Project employees and General Schedule employees has to do with pay. General Schedule employees are paid on a GS, grade-and-step scale. But Demonstration Project employees are paid under pay bands. They are eligible for continuing bonus points at the end of every year, and that determines their pay level for the following year. The record reflects that BMTC does not currently represent any Demonstration Project employees, and that such employees are excluded from the unit.[3]

The various reorganizations and establishments resulted in changes to the organizational codes used to identify specific organizational divisions NUWC Keyport. Thus Hawaii was originally coded as Code 90 for all of the detachment operations. Currently Hawaii's employees have been subdivided into divisions under Code 20 and Code 30, but the work done by the employees is the same as the work they did under Code 90. Testimony establishes that the actual job functions and the nature of the employees' duties did not change as a result of the organizational structure changes.

The parties concur that the detachments' employees share in a community of interest with the nonprofessional bargaining-unit employees. Specifically, they are all NUWC Keyport employees, support the same mission, have similar or related duties, are subject to the same general working conditions, have common supervision and a chain of command that ends with the Commanding Officer located at NUWC Keyport, and their personnel servicing and labor relations are handled centrally by the NUWC Keyport Human Resource Office.

Analysis and Conclusions

The doctrine of accretion involves the inclusion of a group of employees into an existing unit without an election, based on a "triggering event" or change in agency operations or organization. *See Federal Deposit Insurance Corporation*, 67 FLRA 430 at 431 (2014) *(FDIC).* The doctrine is applied narrowly because it precludes employee self-determination. *Id.* (citing *U.S. Dep't of the Interior, Bureau of Reclamation, Columbia-Cascades Area Office, Yakima, Wash.*, 65 FLRA 491, 493 (2011) (*Interior*). *See also U.S. Dep't of the Navy, Naval Air Warfare command, Aircraft Div., Patuxent River, Md.* 56 FLRA 1005, 1006 (2000) (*Patuxent* River). When employees previously were expressly excluded from a unit that now seeks to add them, the standards are even more stringent. There must be "meaningful changes in the employees' duties, functions, or job circumstances that eliminate the original distinctions that led to their exclusion in the first place. *If there have not been meaningful changes, then accretion is not permitted*." (emphasis added) *See FDIC* at 431. Thus" [e]mployees … who are specifically excluded from the unit description in a bargaining certificate…may only be accreted into that unit where there have been

[2] Category 1 sites are formally recognized by OPNAV as detachments. Category 2 sites are not listed in the Standard Navy Distribution List, but are recognized within the Naval Sea Systems Command as detachments.

[3] The parties stipulated that if the Regional Director concludes that any detachment employees accreted into the Union's bargaining unit, the employees would be added to the Union's bargaining unit as Demonstration Project employees.

'meaningful changes' in the employees' duties, functions, or job circumstances that eliminate the original distinctions between employees." *Id.* Citing *Federal Trade Commission*, 35 FLRA 576, 584 (1990) (*FTC*). When there has been no change in agency operations, the inclusion of additional employees in an existing unit is permitted only through a petition seeking an election. *Nat'l Assn of Government Employees/Serv. Employees Int'l Union, Local 5000, AFL-CIO-CLC*, 52 FLRA 1068, 1080 (1997) (*NAGE*).

The record does not establish that there have been any meaningful changes in the duties or functions of the non-professional employees at the Hawaii or San Diego detachments, or at the on-site office in Guam. NUWC Keyport changed its organization, by removing the detachments and their employees from Code 90 to other Codes and divisions in NUWC Keyport. But the record reflects that the actual work performed by the employees remained unchanged after the revision. The evidence also establishes that the San Diego detachment was changed from a Category 1 detachment to a Category 2 detachment in 1976, and in 2014 was once again reestablished as a Category 1 detachment. Those changes, according to testimony, had no real impact on the employees or their functions.

It would appear that the "triggering actions" that BMTC is claiming constituted the "meaningful changes" in the job circumstances for the employees, were the Department of Navy's revisions of the organization (or the simultaneous disestablishments/establishments of the detachments).[4] But, testimony in the hearing establishes that the various organizational changes related to the disestablishments/establishments had to do with merging of detachments, and reporting requirements, not employees' job duties. Such changes had little or no direct impact on the employees at issue. The simultaneous disestablishments resulted in no break in continuity, and the detachments have remained, for the large part, unchanged since the bargaining unit was established.

One change that occurred was placing the detachments' nonprofessional employees under the Demonstration Project in 2001. But that isn't a meaningful change that would lead to finding accretion, because converting the detachment employees to the Demonstration Project made them more distinct from the General Schedule employees in the BMTC bargaining unit.

In conclusion, based on the facts and evidence from the hearing and in light of the applicable law, I find that the nonprofessional employees of the Hawaii and San Diego detachments, including the on-site office in Guam, have not accreted to the BMTC bargaining unit.

Order

Because I find that an accretion is not warranted by the facts or the law in this matter, I am dismissing the Petition.

Right to Seek Review

Under section 7105(f) of the Statute and section 2422.31(a) of the Authority's Regulations, a party may file an application for review with the Authority within sixty days of this decision. The application for review must be filed with the Authority by August 29, 2014 and addressed to the Chief, Office of case Intake and Publication, Federal Labor Relations Authority, docket Room, Suite 201, 1400 K Street, NW, Washington DC 20424-0001. The parties are encouraged to file an application for review electronically through the Authority's website, www.flra.gov .[5]

Dated: June 30, 2014

Jean M. Perata, Regional Director
Federal Labor Relations Authority
San Francisco Region

[4] The hearing record does not include any specific reference to "meaningful changes", but it can be extrapolated that that was the argument BMTC was seeking to make.

[5] To file an application for review electronically, go to the Authority's website at www.flra.gov, select **eFile** under the **Filing a Case** tab and follow the instructions.