68 FLRA No. 39

UNITED STATES
DEPARTMENT OF THE NAVY
NAVAL FACILITIES
ENGINEERING COMMAND SOUTHEAST
JACKSONVILLE, FLORIDA
(Agency)

and

INTERNATIONAL ASSOCIATION
OF MACHINISTS
AND AEROSPACE WORKERS
LOCAL LODGE 192
(Petitioner/Labor Organization)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
(Interested Party)

AT-RP-13-0017

_____

ORDER DENYING
APPLICATION FOR REVIEW

January 27, 2015

_____

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) Richard S. Jones of the Federal Labor Relations Authority (the FLRA) determined that a group of technicians fall within the express terms of an existing certification for a bargaining unit represented by the American Federation of Government Employees (AFGE), and that including the technicians in AFGE's unit (the AFGE unit) would not render that unit inappropriate. Additionally, the RD found that the technicians are not "assigned to" the Agency's Public Works Department within the meaning of the certification of a unit of public-works employees represented by the International Association of Machinists and Aerospace Workers (IAMAW).[1] The RD concluded that the technicians are included in the AFGE unit, and declined to consider whether including them in the unit represented by IAMAW (the IAMAW unit) would render that unit inappropriate. There are two substantive questions before us.

The first question is whether the RD's decision "raises an issue for which there is an absence of precedent" within the meaning of § 2422.31(c)(1) of the Authority's Regulations[2] because, as IAMAW alleges, "[t]here is an absence of precedent concerning how to interpret the language in a certification by the Authority."[3] As the RD relied on relevant Authority precedent with respect to how to interpret certifications, the answer is no.

The second question is whether the RD failed to apply established law when he declined to consider whether including the technicians in the IAMAW unit would render that unit inappropriate under the criteria set forth in § 7112(a) of the Federal Service Labor-Management Relations Statute (the Statute).[4] Because the RD found that the technicians fall within the express terms of the AFGE unit's certification, and that including the technicians in the AFGE unit would not render it inappropriate, established law does not require the RD to determine whether including the technicians in the IAMAW unit would render that unit inappropriate. Therefore, the answer is no.

II. Background and RD's Decision

A. Background

As relevant here, the Agency has Florida facilities in both Jacksonville and Pensacola. Several years ago, the FLRA certified AFGE as the exclusive representative of a unit of employees that includes "[a]ll non-professional employees of the Naval Facilities Engineering Command – Southeast, U.S. Department of the Navy," and excludes, in pertinent part, "[n]on-professional employees of the Public Works Department Pensacola."[5] Around the same time, the FLRA certified IAMAW as the exclusive representative of a unit of employees that includes, in relevant part, "[a]ll non-professional employees assigned to the U.S. Department of the Navy, Naval Facilities Engineering Command, Southeast, Public Works Department Pensacola, Pensacola, Florida."[6]

Several years after the FLRA certified those units, the Agency established an infrastructure-assessment program, and hired technicians to inspect Agency facilities and evaluate long-term

[1] RD's Decision at 6 (internal quotation marks omitted).

[2] 5 C.F.R. § 2422.31(c)(1).
[3] Application at 3.
[4] 5 U.S.C. § 7112(a).
[5] RD's Decision at 2.
[6] *Id.*

maintenance needs. These technicians are split between the Jacksonville and Pensacola facilities, but they are all supervised by a manager in Jacksonville. Only the five technicians who are "forward deployed" to Pensacola are at issue here.[7]

The technicians regularly interact with employees of the Agency's Public Works Department (public-works employees) who are in the IAMAW unit. When the Agency hired the technicians for the Pensacola facility, three of the five were previously public-works employees and, thus, in the IAMAW unit. And when the Agency hired the technicians, it did not tell them whether they were in the AFGE unit or the IAMAW unit. One of the technicians was the vice president of the IAMAW local, and continued to use official time to represent public-works employees and to negotiate a contract for the IAMAW unit even after he became a technician.

Approximately six months after the Agency hired the technicians, the Agency informed IAMAW that the technicians belonged to the AFGE unit. IAMAW filed a petition seeking to clarify the bargaining-unit status of the technicians.

B. RD's Decision

Before the RD, IAMAW asserted that the technicians are in the IAMAW unit because they are "assigned to" the Pensacola facility within the meaning of the IAMAW unit's certification.[8] In contrast, AFGE and the Agency both argued to the RD that the technicians are in the AFGE unit because they fall within the express terms of the AFGE unit's certification, which includes "[a]ll non-professional employees of" the Agency, with certain exclusions.[9]

After holding a hearing, the RD issued his decision. The RD noted that, under *Department of the Army Headquarters, Fort Dix, Fort Dix, New Jersey* (*Fort Dix*),[10] "[n]ew employees are automatically included in an existing bargaining unit where their positions fall within the express terms of a bargaining certificate and where their inclusion does not render the bargaining unit inappropriate."[11] In addition, the RD stated that this holding "applies not only to new employees hired into previously existing positions, but also to employees in newly created positions that fall within the express terms of the existing certification."[12]

The RD found that it was "undisputed" that the technicians are non-professional employees "of" the Agency, and he found that the technicians are therefore included within the express terms of the AFGE unit's certification.[13] Regarding the IAMAW unit's certification, which includes all non-professional employees "assigned to" the Public Works Department in Pensacola, the RD did not adopt IAMAW's interpretation of "assigned to" as meaning "geographically located at."[14] Rather, citing *SSA, Office of Disability Adjudication & Review, Dallas Region, Dallas, Texas* (*SSA Dallas*),[15] the RD noted that "assign" can also mean "to give someone a particular job or duty."[16] Accordingly, he interpreted the IAMAW unit's certification as including only Pensacola employees "assigned to" the Public Works Department – in other words, public-works employees.[17] And, despite the technicians' physical presence in Pensacola, he found that the technicians are not public-works employees included in the IAMAW unit's certification. Accordingly, because the RD found that the technicians fall within the express terms of only the AFGE unit, the RD applied *Fort Dix* and found that the technicians should be included in the AFGE unit unless their inclusion would render the unit inappropriate.

Addressing the appropriate-unit issue, the RD found that including the technicians in the AFGE unit would not render that unit inappropriate under the appropriate-unit criteria set forth in § 7112(a)(1) of the Statute. Further, the RD noted that IAMAW "[did] not argue that including the [technicians] in AFGE's unit would render that unit inappropriate."[18] Rather, IAMAW argued that including the technicians in the IAMAW unit would be consistent with the parties' bargaining history and the technicians' impression that they were in the IAMAW unit, and would not render the IAMAW unit inappropriate. However, based on his finding that the technicians fall within the terms of the AFGE unit's certification, and that including them in the AFGE unit would not render that unit inappropriate, the RD found that he did not need to determine whether including the technicians in the IAMAW unit would render that unit inappropriate. Moreover, even if he were to address that issue, the RD explained that "the bargaining history

[7] *Id.* at 3.
[8] *Id.* at 6 (internal quotation marks omitted).
[9] *Id.* at 2.
[10] 53 FLRA 287, 294 (1997).
[11] RD's Decision at 5 (quoting *Fort Dix*, 53 FLRA at 294) (internal quotation marks omitted).
[12] *Id.* (citing *SSA, Office of Disability Adjudication & Review, Falls Church, Va.*, 62 FLRA 513, 514-15 (2008)).
[13] *Id.* at 6 (internal quotation marks omitted).
[14] *Id.* (internal quotation marks omitted).
[15] 66 FLRA 1 (2011).
[16] RD's Decision at 6 (citing *SSA Dallas*, 66 FLRA at 1-2) (internal quotation marks omitted).
[17] *Id.* (internal quotation marks omitted).
[18] *Id.* at 7.

presented in the record would not be dispositive" because "[o]nly the [FLRA] can determine bargaining[-]unit eligibility, and thus the historical treatment of the [technicians] is not controlling."[19]

Based on the foregoing, the RD found that because the technicians "fall within the express terms of [the AFGE unit's] existing certification" and their inclusion would not render the AFGE unit inappropriate, there was "nothing for the [FLRA] to clarify."[20] Accordingly, he dismissed IAMAW's petition.

IAMAW filed an application for review of the RD's decision, and the Agency and AFGE filed oppositions to IAMAW's application.

III. Analysis and Conclusions

A. The RD's decision does not raise an issue for which there is an absence of precedent.

According to IAMAW, "[t]here is an absence of precedent concerning how to interpret the language in a certification by the [FLRA],"[21] and this resulted in the RD misinterpreting the word "assigned" in the IAMAW unit's certification.[22] However, in *SSA Dallas*, the Authority upheld a regional director's determination that employees who were "physically located at" an agency's district office, but "organizationally located within" an agency's regional office, were "assigned to" the regional office within the meaning of a certification.[23] Here, the RD relied on *SSA Dallas* to interpret "assigned" as referring to an organizational assignment rather than a geographic one.[24] Thus, the RD relied upon relevant Authority precedent with respect to how to interpret the term "assigned" in a unit certification,[25] and the RD's decision does not "raise[] an issue for which there is an absence of precedent" within the meaning of § 2422.31(c)(1) of the Authority's Regulations.[26]

B. The RD did not fail to apply established law when he did not resolve whether including the technicians in the IAMAW unit would render that unit inappropriate.

IAMAW argues that the RD failed to apply established law when he declined to consider whether including the technicians in the IAMAW unit would render that unit inappropriate.[27] Specifically, IAMAW asserts that the technicians fall within the express terms of the IAMAW unit's certification,[28] and that the parties' actions reflect that the technicians were originally included in the IAMAW unit.[29] IAMAW also asserts that including the technicians in either the AFGE unit or the IAMAW unit would result in an appropriate unit.[30] Therefore, according to IAMAW, *SSA Dallas* and *U.S. Department of the Air Force, Randolph Air Force Base, San Antonio, Texas* (*Randolph AFB*)[31] show that the RD should have "implement[ed] the automatic-inclusion principles" of *Fort Dix*[32] and included the technicians in the IAMAW unit.[33]

As an initial matter, IAMAW's argument is premised on its position that the technicians fall within the express terms of the IAMAW unit's certification. However, reading the two unit certifications together, the RD found that the technicians fall within the express terms of the AFGE unit's certification and that IAMAW represents only public-works employees, which the technicians are not.[34] And IAMAW has not established that the RD erred in this respect.

Additionally, despite IAMAW's assertion that the parties' actions reflect that the technicians were originally included in the IAMAW unit, the RD correctly explained[35] that the parties' bargaining history is not determinative because only the FLRA can determine bargaining-unit eligibility.[36]

And regarding the RD's appropriate-unit determination, the decisions cited by IAMAW do not show that the RD failed to apply established law. As previously discussed, *SSA Dallas* involved employees who were "physically located at" an agency's district office, but "organizationally located within" that agency's regional office.[37] The regional director in that case concluded that the employees were "assigned to" the regional office within the meaning of the regional-office

[19] *Id.* at 7 n.2 (citing *AFGE, Local 3529*, 57 FLRA 633, 636 (2001) (*Local 3529*); *U.S. Small Bus. Admin.*, 32 FLRA 847 (1988), *recons. granted*, 36 FLRA 155 (1990)).
[20] *Id.* at 7.
[21] Application at 3.
[22] *Id.* at 2-3 (internal quotation marks omitted).
[23] 66 FLRA at 1-2.
[24] RD's Decision at 6 (citing *SSA Dallas*, 66 FLRA at 1-2) (internal quotation mark omitted).
[25] *See id.* (internal quotation mark omitted).
[26] 5 C.F.R. § 2422.31(c)(1).
[27] Application at 3-6.
[28] *Id.* at 3.
[29] *See id.* at 1, 5.
[30] *Id.* at 5.
[31] 64 FLRA 656 (2010) (Member Beck dissenting).
[32] Application at 6.
[33] *See id.* at 5-6.
[34] *See* RD's Decision at 6.
[35] *Id.* at 7 n.2.
[36] *E.g., SSA Dallas*, 66 FLRA at 2 (employees were included in the regional-office unit "despite the fact that they were treated as being" in the district-office unit); *Local 3529*, 57 FLRA at 636 (FLRA not bound by agreement between parties to exclude certain positions from a unit).
[37] 66 FLRA at 1.

unit's certification,[38] and the Authority upheld that determination "despite the fact that [the employees] were treated as being in the [district-office] unit."[39] In addition, the Authority in *SSA Dallas* held that where a regional director finds that employees fall within the express terms of a unit certification based on the employees' organizational assignment, the regional director need consider only whether the employees' inclusion would render *that* unit inappropriate.[40] That is, once a regional director determines that employees fall within the express terms of a unit's certification, and that the inclusion of the employees does not render that unit inappropriate, "*Fort Dix* [does] not require the [regional director] to assess whether [an alternative] unit would [also] be appropriate."[41] Consistent with *SSA Dallas*, the RD in this case found that: (1) the technicians fall within the express terms of the AFGE unit's certification based on their organizational assignment; (2) including the technicians in that unit would not render that unit inappropriate; and (3) as a result, he did not need to determine whether including them in the IAMAW unit would render that unit inappropriate. Thus, *SSA Dallas* does not show that the RD failed to apply established law, and IAMAW's reliance on *SSA Dallas* is misplaced.

The Authority's reasoning in *Randolph AFB* also supports the RD's analysis in this case. In *Randolph AFB*, the reorganization of an agency changed the unit status of certain employees.[42] Although the employees fell within the express terms of the certification of their new unit, a regional director nevertheless determined that including the employees in their previous unit would not render the previous unit inappropriate.[43] However, on review, the Authority held that the regional director failed to correctly apply *Fort Dix*.[44] Specifically, because, as here, the employees undisputedly fell within the plain terms of a unit's certification, the Authority held that the regional director in *Randolph AFB* should have done what the RD did here – find that the employees belonged to that unit unless their inclusion would render the unit inappropriate.[45] Accordingly, IAMAW's reliance on *Randolph AFB* is misplaced.

In sum, because the RD found that the technicians fall within the express terms of the AFGE unit's certification (and not the IAMAW unit's certification), and it is undisputed that including the technicians in the AFGE unit would not render it inappropriate, established law does not require the RD to determine whether the technicians might also be included in the IAMAW unit without rendering that unit inappropriate.[46] Thus, IAMAW has not demonstrated that the RD failed to apply established law by declining to make that determination.

IV. Order

We deny IAMAW's application for review.

[38] *Id.*
[39] *Id.* at 2.
[40] *Id.*
[41] *Id.*
[42] *See Randolph AFB*, 64 FLRA at 656-57.
[43] *Id.* at 657-58.
[44] *Id.* at 658-59.
[45] *Id.* at 659.
[46] *See, e.g.*, *SSA Dallas*, 66 FLRA at 2.

BEFORE THE
FEDERAL LABOR RELATIONS AUTHORITY
ATLANTA REGIONAL OFFICE

_____

U.S. DEPARTMENT OF THE NAVY
NAVAL FACILITIES
ENGINEERING COMMAND SOUTHEAST
JACKSONVILLE, FLORIDA
(Agency)

And

INTERNATIONAL ASSOCIATION
OF MACHINISTS
AND AEORSPACE WORKERS
LOCAL LODGE 192
(Petitioner/Labor Organization)

And

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
(Interested Party)

_____

AT-RP-13-0017

_____

DECISION AND ORDER
DISMISSING PETITION

_____

I. Introduction

The International Association of Machinists and Aerospace Workers, Local Lodge 192 ("IAM&AW") filed the petition in this case seeking to clarify the bargaining unit status of employees who work as Engineering Technicians for the Infrastructure Conditions Assessment Program (ICAP). IAM&AW asserts that these employees, who are located in Pensacola, Florida, fall within the language of its certification and are therefore represented by IAM&AW. IAM&AW further asserts that including the employees in its unit would not render the unit inappropriate.

The Agency and AFGE both assert that the ICAP employees fall within AFGE's certification and that including the employees in AFGE's certification would not render the unit inappropriate. The Agency and AFGE further assert that the ICAP employees do not fall within IAM&AW's certification and including the employees in that certification would render the unit inappropriate.

The Region held a hearing in this matter and the parties also entered into a Joint Stipulation. All three parties filed briefs, which I have fully considered. Based on the entire record of this proceeding, I find that the Pensacola-based ICAP employees fall within the express terms of AFGE's certification and that including the employees in AFGE's unit would not render that unit inappropriate.

II. Findings

1. Certifications

In 2008, in Case No. AT-RP-06-0024, IAM&AW was certified as the exclusive representative of the following unit of employees:

> **INCLUDED:** All non-professional employees assigned to the U.S. Department of the Navy, Naval Facilities Engineering Command, Southeast, Public Works Department Pensacola, Pensacola, Florida and the Public Works Department Whiting Field.
>
> **EXCLUDED**: Supervisors, management officials, professional employees and employees described in 5 U.S.C. 7116(b)(2), (3), (4), (6) and (7).

(Jt. Ex. 1; Jt. Stip. ¶ 3)

On November 26, 2008, after an election, AFGE was certified as the exclusive representative of the following unit of employees:

> **INCLUDED**: All non-professional employees of the Naval Facilities Engineering Command - Southeast, U.S. Department of the Navy.
>
> **EXCLUDED**: Non-professional employees of the Public Works Department Pensacola, the Public Works Department Whiting Field, and the Public Works Department Charleston, all professional employees, management officials, supervisors, and employees described in 5 U.S.C. 7116(b)(2), (3), (4), (6) and (7).

(A. Ex. 15; Jt. Stip. ¶ 4); *U.S. Dep't of the Navy, Naval Facilities Engineering Command, Southeast, Jacksonville, Fla.*, 62 FLRA 480 (2008)

2. Infrastructure Condition Assessment Program

In 2012, the Agency launched ICAP and created Engineering Technician positions to support the program. (T. 41, 81; A. Ex. 3) The program was designed to provide the Agency with information about how much restoration and modernization money it needs to sustain its facilities so the Agency can allocate money appropriately and make maintenance plans. (T. 41) The Engineering Technicians who work for ICAP inspect NAVFAC SE facilities for long-range maintenance needs, which includes heating, ventilation, and cooling; electrical; plumbing; structural; and lighting. (T. 12-13, 125; Jt. Stip ¶ 7)

On a daily basis, the ICAP employees interact with Facilities Management Specialists who work for the local Public Works Departments. (T. 102) The ICAP employees discuss access to buildings with the local employees, review findings from their inspections, and train them on how to conduct inspections and assessments. (T. 52, 58, 78, 101)

The ICAP Engineering Technicians work for the Agency's Public Works Business Line, Facilities Management and Sustainment Product Line Division, Facilities Sustainment Branch. (T. 12-13; Jt. Stip ¶ 5; A. Ex. 2) The mission of the Public Works Business Line is to support Public Works Departments for the readiness to sustain the warfighters. (T. 39-40) Caleb Romero, the Facilities Management Supervisor, is the ICAP employees' supervisor. (T. 12-13, 41; Jt. Stip ¶ 8) Romero is located in Jacksonville, where the Public Works Business Line is operated. (T. 40) Romero assigns work, tracks time and attendance, approves training and travel, evaluates employees' performance, and disciplines employees. (T. 12-13, 106-07; Jt. Stip ¶ 8)

When the Agency established ICAP, it hired nine Engineering Technicians, five of whom are forward deployed to Pensacola and are the subject of this petition. (T. 12-13; Jt. Stip ¶ 5, 6; A. Ex. 5) The other ICAP Engineering Technicians are physically located in Jacksonville, where the program is based, and they are represented by AFGE. (T. 12-13, 53-54, 138, 168; Jt. Stip ¶ 6) The ICAP employees are split between Jacksonville and Pensacola for operational purposes. (T. 52-53)

The ICAP position description states that it is a position with NAVFAC SE, Public Works Business Line "forwardly deployed at Public Works Department (PWD) Ft. Worth, Jacksonville or Pensacola." (IAM Ex. 2) It further states that the position is "under the operational control" of the "FM&S core" but is "physically located in the applicable FMD Requirements Branch at PWD Ft. Worth, in Fort Worth Texas; PWD Pensacola, in Pensacola, Florida; or PWD Jacksonville, in Jacksonville, Florida . . . ." (IAM Ex. 2)

The ICAP employees can be deployed to any facility within the NAVFAC SE region, and occasionally, the ICAP inspection teams are a mixture of Jacksonville-based and Pensacola-based employees. (T. 45-48, 95; A. Ex. 12) The Pensacola-based ICAP employees spend approximately 50% of their time traveling to perform inspections in places such as Panama City, Florida; New Orleans, Louisiana; and Meridian, Mississippi. (T. 45-46, 48)

When the Pensacola ICAP employees are not traveling, they work in the Public Works Department building at NAS Pensacola. (T. 12-13, 92, 102; Jt. Stip ¶ 6) The supervisors for the Public Works Department in Pensacola do not have supervisory authority over the ICAP employees who are stationed there. (Tr. 61-62; 127-28; 139, 144-46) The Pensacola-based ICAP employees interact on a daily basis with employees who are represented by IAM&AW. (T. 102)

3. Public Works Department Pensacola

According to NAVFAC's "Public Works Department Management Guide," a Public Works Department "is a forward deployed organizational element of one of . . . NAVFAC's Facilities Engineering Commands . . . ." (A. Ex. 28 p. 1-1) The mission of the Public Works Department in Pensacola is to provide safe and adequate facilities for the war fighters. (T. 120)

The non-ICAP Engineering Technicians (also referred to as Facilities Management Specialists) who work for the Public Works Department Pensacola are represented by IAM&AW. (T. 12-13; Jt. Stip ¶ 3) Larry Maxwell, who is located in Pensacola, supervises the employees. (T. 12-13, 119; Jt. Stip ¶ 9; A. Ex. 8) Maxwell approves their time and attendance and travel, assigns work, evaluates their performance, and disciplines the employees. (T. 125-26) John Remich is the non-ICAP Engineering Technicians' second-line supervisor, and their chain of command eventually runs up to the Agency's Operations Officer and Commanding Officer at NAS Jacksonville. (T. 12-13; Jt. Stip ¶ 9)

The non-ICAP Engineering Technicians are the liaisons between the Public Works Department and the tenants of NAS Pensacola. (T. 141) They inspect buildings at NAS Pensacola and provide information to their supervisor so he can prioritize maintenance and repair projects. (T. 123) They sometimes develop cost estimates for small projects of 30 hours or less. (T. 123) The ICAP Engineering Technicians have trained the non-ICAP employees on how to perform ICAP duties, but the non-ICAP employees do not have the ability to perform these duties on a full-time basis. (T. 131-32) Unlike the ICAP Engineering Technicians, the non-ICAP employees do not travel beyond the Pensacola, Florida commuting area unless they are attending training. (T. 122, 125, 141-42) NAVFAC SE has final approval for travel and training for Public Works Department Pensacola employees. (T. 175-76)

4. Bargaining Unit History

When the Pensacola-based ICAP Engineering Technicians were hired, Labor Relations Specialist Betty Joe Kersey did not inform the employees as to whether they were in the AFGE or IAM&AW unit. (T. 152, 165-66) Three of the five Pensacola ICAP employees used to work for the Public Works Department in Pensacola and were represented by IAM&AW. (T. 151) At the time the ICAP employees were hired, the BUS code section of their SF-50s listed one of two codes: NV3661 or NV5875. (T. 155-56; Jt. Ex. 6) NV5875 is the current BUS code for AFGE; NV3661 was an old AFGE BUS code. (T. 155-56)

Romero testified that he knew the ICAP positions were supposed to be under the "core bargaining unit" which refers to the bargaining unit for the Agency's core functions in Jacksonville. (T. 42) Romero told employees they would be part of "our bargaining unit," but he did not specify what that meant. (T. 42)

Dwight Norstum worked for the Public Works Department in Pensacola before he accepted his ICAP position. (T. 89) When Norstum applied for the ICAP position, it was his understanding that the position was based at the Public Works Department in Pensacola. (T. 94) He later received an email from the Agency stating he had been selected for the Engineering Technician position "at the Navy Facility Engineering Command (NAVFAC), Public Works Department in Pensacola, Florida." (Jt. Ex. 4) His current working conditions are generally the same as when he worked for the Public Works Department, and he supports the same mission. (T. 103)

Norstum is currently a dues-paying member of IAM&AW and is also the Vice-President. (T. 89, 105) In January 2013, Romero approved official time for Norstum to represent an IAM&AW employee. (T. 63-64, 97-98; IAM Ex. 14) However, the official time was charged to AFGE, and Norstum's email to Romero requesting the time did not specify that it was an IAM&AW-represented employee. (T. 64; IAM Ex. 14)

Also in January 2013, the Agency approved official time for Norstum to participate in contract negotiations for IAM&AW. (T. 166) IAM&AW Representative Billy Booth contacted Romero to approve the time, and Romero never told Booth that Nostrum was not in the IAM&AW unit. (T. 67-68, 174-75) Norstum's performance of IAM&AW duties in January did not disrupt his ICAP work. (T. 80)

In March 2013, as the Agency was preparing for furloughs, Kersey called a meeting with AFGE, IAM&AW and the ICAP employees to clear up which bargaining unit the ICAP employees belonged to. (T. 155) Before the meeting, she sent Billy Booth, an IAM&AW representative, an email stating that the Pensacola-based ICAP employees belonged to the AFGE unit. (T. 173; IAM Ex. 8) Norstum didn't know until March 2013 that he was put in the AFGE bargaining unit. (T. 109)

The Agency's Human Resources Office at NAS Jacksonville and the Office of Civilian Human Resources, Stennis Operations Center, provide labor/employee relations, employee services and benefits, training, staffing, classification and equal opportunity services to all of the Agency's employees. (Jt. Stip. ¶ 10)

III. Analysis and Conclusions

1. Interpretation of AFGE and IAM&AW Certifications

It is well-established that "[n]ew employees are automatically included in an existing bargaining unit where their positions fall within the express terms of a bargaining certificate and where their inclusion does not render the bargaining unit inappropriate." *Dep't of the Army Headquarters, Fort Dix, Fort Dix, N.J.*, 53 FLRA 287, 294 (1997) (*Fort Dix*). The Authority interprets *Fort Dix* broadly. Its holding applies not only to new employees hired into previously existing positions, but also to employees in newly created positions that fall within the express terms of the existing certification. *See Soc. Sec. Admin., Office of Disability Adjudication & Review, Falls Church, Va.*, 62 FLRA 513, 514-15 (2008).

In this case, AFGE and the Agency both argue that the Pensacola-based ICAP employees fall within the express terms of AFGE's certification, whereas IAM&AW argues that the employees fall within the

express terms of IAM&AW's certification. If the "included" language of each certification is read in isolation, it appears that the employees could arguably fall under the express terms of either one. AFGE is certified as the exclusive representative ***of*** "All non-professional employees of the Naval Facilities Engineering Command-Southeast, U.S. Department of the Navy," and it is undisputed that the Pensacola-based ICAP employees are "of" -- in other words, work for-- NAVFAC SE.

IAM&AW is certified as the exclusive representative of "All non-professional employees assigned to the U.S. Department of the Navy, Naval Facilities Engineering Command, Southeast, Public Works Department Pensacola, Pensacola, Florida and the Public Works Department Whiting Field." IAM&AW's interpretation of its certification is that "assigned to" means employees who are geographically located at the Public Works Department in Pensacola. This interpretation is supported by one of the definitions of "assign" which is "to send (someone) to a particular group or place as part of a job."[1] However, another definition of "assign"—"to give someone a particular job or duty"—supports AFGE's and the Agency's interpretation of IAM&AW's certification, which is that it only includes people who work for the Public Works Department in Pensacola. *Id; Soc. Sec. Admin., Office of Disability Adjudication and Review, Dallas Region, Dallas, Tex.*, 66 FLRA 1, 1-2 (2011) (regional office employees geographically located at district office fell within express terms of NTEU's certification, which included all nonprofessional employees assigned to the regional office).

If AFGE's entire certification is read together—both the "included" and "excluded" language—the answer as to which union represents the employees becomes clearer. AFGE's certification excludes "[n]on-professional employees of the Public Works Department Pensacola, the Public Works Department Whiting Field . . ." These excluded employees are the employees IAM&AW represents, and the Pensacola-based ICAP employees do not fit within the exclusion because they are not "of," i.e., they do not "work for" the Public Works Department Pensacola. Accordingly, I find that the Pensacola-based ICAP employees fall within the express terms of AFGE's certification and should be included in that unit unless the addition of the ICAP employees would render the unit inappropriate.

[1] "Assign." Merriam-Webster.com. Merriam-Webster, http://www.merriam-webster.com/dictionary/assign (last visited May 30, 2014).

2. Appropriate Unit Issue

The Authority will not find any unit to be appropriate for exclusive recognition unless the unit meets all three of the criteria set out in Section 7112(a)(1). In order for a unit to be found appropriate the evidence must show that:

a) the employees in the unit share a clear and identifiable community of interest;

b) the unit promotes effective dealings with the agency; and

c) the unit promotes efficiency of the operations of the agency.

See, U.S. Dep't of the Navy, Fleet and Industrial Supply Ctr., Norfolk, Va., 52 FLRA 950 (1997), citing *Defense Mapping Agency, Aerospace Ctr., St. Louis, Mo.*, 46 FLRA 502 (1992).

The Pensacola-based ICAP employees share a community of interest with other employees represented by AFGE, including the ICAP employees who work in locations other than Pensacola. All of the ICAP employees share the same mission-- to support Public Works Departments for the readiness to sustain warfighters; are part of the same organizational structure; have the same chain of command; have the same job duties; are subject to the same general working conditions; and are governed by the same personnel and labor relations policies that are administered by the Human Resources Office in Jacksonville and the Office of Civilian Human Resources, Stennis Operation Center. *See U.S. Dep't of the Air Force, Air Force Material Command, Wright-Patterson Air Force Base*, 47 FLRA 602 (1993) (setting forth community of interest factors).

Including the Pensacola-based ICAP employees in the AFGE unit would promote effective dealings with the Agency and efficiency of operations because the Pensacola-based ICAP employees and other Agency employees are governed by the same personnel policies administered by the same two offices; and the same bargaining agreement would apply to all ICAP employees, saving times and resources. *See U.S. Dep't of the Navy, Fleet and Industrial Supply Ctr., Norfolk, Va.*, 52 FLRA 950, 961-62 (1997) (effective dealings factors include locus and authority of office that administers personnel policies and past collective bargaining experience; efficiency of operations factors include factors related to cost, productivity, and resources). Accordingly, I find that including the Pensacola-based ICAP employees in the AFGE unit would not render the unit inappropriate.

IAM&AW does not argue that including the Pensacola-based ICAP employees in AFGE's unit would render that unit inappropriate, and, as seen above, the record would not support such a finding. Rather, IAM&AW argues that including the employees in its unit would be appropriate, pointing to the bargaining history discussed above where the parties seemed to be under the impression that the employees were in its unit. Based on my finding that the employees at issue here come within the unit description of AFGE's unit, and that AFGE's unit is appropriate, I need not and do not make a finding as to whether the unit would also be appropriate if the employees were to be placed in IAM&AW's unit.[2]

IV. Order

Here, the ICAP employees at the Agency fall within the express terms of AFGE's existing certification. Additionally, there has been no showing that the inclusion of the ICAP employees in AFGE's existing unit would render the unit inappropriate under section 7112(a) of the Statute. Under these circumstances, the ICAP employees were automatically included in AFGE's bargaining unit upon their assignments and there is nothing for the Authority to clarify. *Fort Dix*, 53 FLRA at 295. Accordingly, further proceedings on the petition are not warranted and it is dismissed. *National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Northeast Region*, 24 FLRA 922, 927 (1986).

V. 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 **December 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.[3]

[2] In any event, I note that the bargaining history presented in the record would not be dispositive of the issue. Only the Authority can determine bargaining unit eligibility, and thus the historical treatment of the employees is not controlling. See *AFGE, Local 3529*, 57 FLRA 633, 636 (2001) (Authority not bound by a Memorandum of Agreement between the parties regarding the eligibility of the employees); *U.S. Small Business Admin.*, 32 FLRA 847 (1988), *reconsideration granted* 36 FLRA 155 (1990) (arbitrator not empowered to decide an employee's unit status).

[3] 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.

Richard S. Jones, Regional Director
Atlanta Regional Office
Federal Labor Relations Authority
225 Peachtree Street, NE, Suite 1950
Atlanta, Georgia 30303

Dated: October 29, 2014