

**67 FLRA No. 146**

NATIONAL FEDERATION  
OF FEDERAL EMPLOYEES  
FD-1, IAMAW  
AFL-CIO  
(Labor Organization/Petitioner)

and

GENERAL SERVICES ADMINISTRATION  
SOUTHEAST SUNBELT REGION 4  
(Agency)

AT-RP-14-0011

ORDER GRANTING  
APPLICATION FOR REVIEW  
AND REMANDING  
TO THE REGIONAL DIRECTOR

September 15, 2014

Before the Authority: Carol Waller Pope, Chairman, and  
Ernest DuBester and Patrick Pizzella, Members  
(Member Pizzella dissenting)

**I. Statement of the Case**

The National Federation of Federal Employees (NFFE) filed an application for review of the attached decision of Federal Labor Relations Authority (FLRA) Regional Director Richard S. Jones (RD). NFFE petitioned the RD to clarify the status of employees who were previously represented by the American Postal Workers Union (APWU), but were no longer represented by APWU at the time of NFFE's petition. In the petition, NFFE argued that automatic inclusion of the unrepresented employees is proper because the employees fall within the express terms of NFFE's certification.

Noting that NFFE's certification on May 18, 2007, excluded "currently represented" employees, the RD determined that "the word 'currently' in the '[e]xcluded' portion of the certification should be read to mean" employees currently represented "*at that time*."<sup>1</sup> The RD concluded, therefore, that the certification's exclusionary language barred automatic inclusion of the employees in NFFE's unit because they were represented by APWU on the day that NFFE was certified.

The question before us is whether the RD failed to apply established law by determining that automatic inclusion of the unrepresented employees was improper because they were represented by APWU on the day that NFFE was certified. Because established law holds that automatic-inclusion principles are to be applied broadly, and because these employees fall within the express terms of the Union's certification, the answer is yes. As no questions have been raised as to the appropriateness of the unit thus clarified, we remand this matter to the RD for further action consistent with this decision.

**II. Background and RD's Decision**

On May 18, 2007, NFFE was certified as the exclusive representative of "all" professional and non-professional General Services Administration (GSA), Sunbelt Region, Region 4 employees.<sup>2</sup> Pertinently, the Union's certification excluded "[a]ll employees *currently represented under exclusive recognition*" by another labor organization.<sup>3</sup>

At that time, two Region 4 non-professional-employee units were represented by two other labor organizations, APWU and the Laborers' International Union of North America (LIUNA).<sup>4</sup> On September 24, 2007, a few months after NFFE's certification, APWU disclaimed its interest in the Region 4 unit, and the FLRA revoked APWU's certification.<sup>5</sup> The employees previously represented by APWU did not petition for representation by an alternative labor organization, and neither NFFE nor LIUNA sought to clarify the status of those employees at that time.<sup>6</sup>

NFFE filed the petition in this case to clarify the bargaining-unit status of the employees previously represented by APWU.<sup>7</sup> In its petition, NFFE argued that it already represented the employees because their work locations fall within the express terms of its certification – Sunbelt Region, Region 4 – and "that the word 'all' in the certification is fully inclusive."<sup>8</sup> NFFE further argued that the exclusionary language in the certification – excluding employees "currently represented" – "should be read to mean that the employees *formerly* represented by APWU are now, or 'currently,' not represented by another labor organization and therefore [NFFE] now represents them."<sup>9</sup>

<sup>2</sup> *Id.* at 1-2.

<sup>3</sup> *Id.* at 2 (emphasis added).

<sup>4</sup> *Id.* at 2-3.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.*

<sup>7</sup> *See id.* at 1.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 4 (emphasis added).

<sup>1</sup> RD's Decision at 4.

The RD found that the revocation of APWU's certification did not automatically place those employees in NFFE's unit for three reasons. First, the RD found that the language of NFFE's certification – excluding all employees *currently* represented – “should be read to mean the status of representation [on May 18, 2007].”<sup>10</sup> In the RD's view, the employees did not fall within NFFE's certification language because they were represented by APWU on May 18, 2007.

Second, the RD analyzed the applicability of automatic inclusion principles under *Department of the Army, Headquarters, Fort Dix, Fort Dix, New Jersey (Fort Dix)*.<sup>11</sup> The RD found *Fort Dix* inapplicable. The RD contrasted the cases. The RD found that *Fort Dix* applied to *new* employees, hired after the union's original certification. “But, here,” the RD continued, “the employees at issue are not ‘new[,]’” as the RD found required by *Fort Dix*, because “[a]t the time [NFFE] was certified, [the employees] were already there and were represented by . . . APWU.”<sup>12</sup>

Third, the RD considered NFFE's “implicit alternative” argument – that the employees had accreted to NFFE's unit – but found accretion inapplicable because there has been “no change in agency operations or organization.”<sup>13</sup> For these reasons, the RD concluded that the employees were not subject to automatic inclusion, and he amended NFFE's certification to expressly exclude them.<sup>14</sup>

The Union filed an application for review of the RD's decision. The Agency did not file an opposition to the Union's application.

### III. Analysis and Conclusions:

The Union argues that: (1) the RD failed to apply established law when he did not properly implement the automatic-inclusion principles under *Fort Dix* and *U.S. Department of the Air Force, Randolph Air Force Base, San Antonio, Texas (Randolph)*<sup>15</sup>; and (2) there is an absence of precedent concerning how to interpret the language in a certification.<sup>16</sup> For the reasons that follow, we conclude that by determining not to apply Authority precedent set forth in *Fort Dix* and *Randolph*, the RD failed to apply established law. As such, we do not address the Union's remaining argument.

#### A. Established Law

Under 5 C.F.R. § 2422.31(c)(3)(i), the Authority may grant an application for review when the application demonstrates that the RD failed to apply established law.<sup>17</sup> Authority precedent under *Fort Dix* and *Randolph* provides that “[n]ew employees are automatically included in an existing bargaining unit where their positions fall within the express terms of a bargaining certifica[tion] and [their] inclusion [would] not render the bargaining unit inappropriate.”<sup>18</sup>

The Authority interprets *Fort Dix*'s automatic-inclusion principles broadly and has explicitly rejected the assertion that they should be interpreted narrowly.<sup>19</sup> In broadly interpreting *Fort Dix* over the past seventeen years, the Authority has applied the automatic-inclusion principles not only to “new” employees who fall within the express terms of a union's certification, but also to existing employees who were placed in newly created positions by an agency, current employees who sought and filled competitive vacancies, and relocated employees.<sup>20</sup>

#### B. Application of Established Law

The RD should have applied the automatic-inclusion principles set forth in *Fort Dix*. The RD's narrow interpretation of *Fort Dix* – based on a finding that the employees were not “new” because “[a]t the time [NFFE] was certified, [the employees] were already there and were represented by . . . APWU”<sup>21</sup> – is inconsistent with Authority precedent that *Fort Dix* is to be interpreted broadly.<sup>22</sup> This case involves employees who became newly unrepresented when the FLRA revoked APWU's certification. Simply because the employees are not “new” employees – in the strictest sense of the term – does not render *Fort Dix* inapplicable. As set forth above, Authority precedent applies

<sup>17</sup> *Randolph*, 64 FLRA at 658.

<sup>18</sup> *Id.* (citing *Fort Dix*, 53 FLRA at 294; *U.S. Dep't of the Air Force, Carswell Air Force Base, Tex.*, 40 FLRA 221, 229-30 (1991); *U.S. Army Air Def. Artillery Ctr. & Fort Bliss, Fort Bliss, Tex.*, 31 FLRA 938 (1988); *U.S. Dep't of Commerce, Nat'l Oceanic & Atmospheric Admin., Nat'l Marine Fisheries Serv., N.E. Region*, 24 FLRA 922, 926 (1986)).

<sup>19</sup> *Id.* at 658-59; see *U.S. Dep't of Def., Def. Commissary Agency*, 59 FLRA 990, 991-92 (2004) (rejecting agency's request to reconsider *Fort Dix*'s presumption that new categories of employees falling within express terms of a unit certification are included in the unit).

<sup>20</sup> *Randolph*, 64 FLRA at 658-59; *SSA, Office of Disability Adjudication & Review, Falls Church, Va.*, 62 FLRA 513, 514-15 (2008) (*Falls Church*); *SSA, Office of Disability Adjudication & Review, Dallas Region, Dallas, Tex.*, 66 FLRA 1, 1-2 (2011).

<sup>21</sup> RD's Decision at 4.

<sup>22</sup> See *Randolph*, 64 FLRA at 658.

<sup>10</sup> *Id.*

<sup>11</sup> 53 FLRA 287 (1997).

<sup>12</sup> RD's Decision at 4 (citing *Fort Dix*, 53 FLRA at 294).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 4-5.

<sup>15</sup> 64 FLRA 656 (2010).

<sup>16</sup> Application at 2, 5.

*Fort Dix*'s automatic-inclusion principles to a broad array of situations, including those of new, existing, and relocated employees, to ensure effective employee representation consistent with the terms of an existing unit certification. The RD should therefore have found *Fort Dix* applicable to the newly unrepresented employees at issue in this case.

Moreover, the unrepresented employees' positions fall within the express terms of NFFE's bargaining-unit certification. The certification excludes "[a]ll employees *currently* represented under exclusive recognition."<sup>23</sup> The RD interpreted "currently" – without identifying any case precedent to support his analysis – "to mean the status of representation [on May 18, 2007]."<sup>24</sup>

This constricted interpretation of the certification's terms, and the RD's decision to effectively date-stamp the applicability of the certification, is contrary to Authority precedent.<sup>25</sup> Under Authority precedent, certifications are dynamic: "Bargain[ing]-unit certifications do not become stale over time, if they continue to accurately describe the organization and employees within their scope."<sup>26</sup> This is true of the certification in this case. The RD erred when he analytically replaced the word "currently" in the certification with "May 18, 2007" – destroying any *current* significance of that part of the certification. As *Fort Dix* implies, a certification's coverage should be determined consistent with its terms' applicability at the particular time at issue.<sup>27</sup> The employees in this case are not represented by another labor organization. Therefore, we find that the employees' positions fall within the express terms of NFFE's certification.<sup>28</sup>

We therefore conclude that by failing to apply *Fort Dix* in this case, the RD failed to apply established law. In light of this ruling, we do not address the Union's remaining argument.<sup>29</sup>

As neither party raises any challenges as to the appropriateness of NFFE's bargaining unit clarified in this manner, we have no reason to determine that including the employees previously represented by APWU in NFFE's unit would render the unit inappropriate.<sup>30</sup>

#### IV. Order

We remand this matter to the RD for further processing consistent with this decision.

<sup>23</sup> RD's Decision at 2 (emphasis added).

<sup>24</sup> *Id.* at 4.

<sup>25</sup> See *Randolph*, 64 FLRA at 659 (citing *Fort Dix*, 53 FLRA at 295).

<sup>26</sup> *Id.* at 659 (citing *Fort Dix*, 53 FLRA at 295) (rejecting RD's suggestion that passage of twenty-five years from issuance of certification foreclosed inclusion of employees in unit); see also 5 C.F.R. § 2422.32(b) (grounds on which a certification may be revoked do not include age of certification).

<sup>27</sup> See *Fort Dix*, 53 FLRA at 295.

<sup>28</sup> The employees here are uniquely situated because their positions fall within the express terms of NFFE's certification and because they previously were excluded from the unit *solely* because another union represented them. Therefore, the dissent's assertion, that our application of *Fort Dix* allows *any* union holding a certification to now force any unrepresented employees into the union's bargaining unit, is entirely unfounded. Additionally, the dissent's accretion discussion – including the references to "agency shop[s]" and "union shop[s]," Dissent at 8 – is both inapplicable to this case, and as "rash and wrong" as when the dissent first offered it, *FDIC*, 67 FLRA 430, 433 (2014) (Member Pizzella dissenting).

<sup>29</sup> See, e.g., *U.S. Dep't of the Army, Military Traffic Mgmt. Command, Alexandria, Va.*, 60 FLRA 390, 395 n.7 (2004).

<sup>30</sup> See *Randolph*, 64 FLRA at 659; see *Falls Church*, 62 FLRA at 515.

**Member Pizzella, dissenting:**

I disagree with the majority that the automatic inclusion principle of *Department of the Army, Headquarters, Fort Dix, Fort Dix, New Jersey (Fort Dix)*<sup>1</sup> applies to the circumstances of this case and that the Regional Director failed to apply established law. I would deny the National Federation of Federal Employees' (NFFE's) application for review.

On May 18, 2007, NFFE prevailed in a representational election and was certified as the exclusive representative of professional and non-professional employees of the General Services Administration, Sunbelt Region, Region 4.<sup>2</sup> The certification categorically excluded *all employees* who were "*currently represented*" by another union<sup>3</sup> "*at that time*."<sup>4</sup> On May 18, 2007, seventeen nonprofessional employees in North Carolina were represented by the American Postal Workers Union (APWU) and had been represented by APWU since 1972.<sup>5</sup>

On September 24, 2007, for reasons that are not clear from the record, APWU abandoned those seventeen employees and "disclaimed its interest in that unit."<sup>6</sup> The separation appears to have been amicable and, by all appearances, the former-APWU employees were doing fine on their own for the next seven years.

But, in 2014,<sup>7</sup> NFFE decided that it ought to take unilateral action to force those employees into its bargaining unit. To the Authority, NFFE's action is called a "clarification" petition.<sup>8</sup> In many parts of the country, however, it might be called a "shotgun" wedding.

NFFE argues that, under the inclusion principle that the Authority established in *Fort Dix*, the seventeen employees located in North Carolina should be "automatically included" in its unit even though the certification language, to which it agreed in 2007, clearly excluded employees who were "*currently represented*" by another union.<sup>9</sup>

The Regional Director determined that the word "*currently* . . . mean[s] the status of representation *at that time* [the date on which NFFE was certified –] May 18,

2007."<sup>10</sup> That same language excluded, and continues to exclude, another five employees, also located in North Carolina, who are represented by the Laborers International Union of North America (LIUNA).<sup>11</sup> Obviously, those words were intended to exclude any employees located in North Carolina.

The fact that APWU chose to leave town on September 24, 2007<sup>12</sup> does not change the fact that those seventeen employees were excluded, by definition, from the certification agreed upon four months earlier. For all we know, APWU left because those employees asked them to leave. But, whatever the case may be, it does not appear that any of the seventeen employees were concerned about a lack of representation because no one ever filed a petition with the Authority to seek clarification or to request representation.<sup>13</sup> This petition was initiated by, and entirely for the benefit of, NFFE.

I also disagree with my colleagues that the Regional Director erred by failing to apply *Fort Dix* in this case. *Fort Dix* held "that *new* employees (hired into *previously existing positions*) automatically become part of an existing bargaining unit when they fall within the existing certification for that bargaining unit."<sup>14</sup> Subsequently, the Authority applied *Fort Dix* to "other situations – employees *placed* operationally or geographically *under another organization* as the result of a reorganization<sup>15</sup> and employees hired into *newly created positions*."<sup>16</sup>

None of those circumstances apply here. The employees are not new, were not placed into newly created positions, and were not operationally or geographically placed under another organization. In applying the "automatic[]" inclusion" principle of *Fort Dix* to the circumstances of this case, my colleagues do not just apply it "broadly,"<sup>17</sup> they apply it in such a manner that any union holding a certification may now simply force any group of employees who are not

<sup>1</sup> 53 FLRA 287 (1997).

<sup>2</sup> RD's Decision at 1.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 2 (emphasis added).

<sup>10</sup> *Id.* at 4 (former emphasis added, latter emphasis in original).

<sup>11</sup> *Id.* at 3. Interestingly, LIUNA continues to represent the five non-professional employees in Raleigh, North Carolina. Those employees are not at issue in this case.

<sup>12</sup> *Id.*

<sup>13</sup> See 5 U.S.C. § 7111(b)(2) ("any person [may seek] clarification of, or an amendment to, a certification then in effect or a matter relating to representation").

<sup>14</sup> *U.S. Dep't of the Air Force, Randolph AFB, San Antonio, Tex.*, 64 FLRA 656, 660 (2010) (*Randolph*) (Dissenting Opinion of Member Beck) (emphasis added).

<sup>15</sup> *Id.* at 660 (Member Beck dissenting) (citing *U.S. Dep't of the Navy, Fleet & Industrial Supply Ctr., Norfolk, Va.*, 52 FLRA 950, 953-54 (1997) (emphasis added)).

<sup>16</sup> *Id.* (Member Beck dissenting) (citing *U.S. Dep't of Def., Def. Logistics Agency, Def. Supply Ctr. Columbus, Columbus, Ohio*, 60 FLRA 523 (2004) (emphasis added)).

<sup>17</sup> Majority at 4.

currently represented and with whom they have any connection (no matter how attenuated) into their bargaining unit without the bother of showing interest or conducting an election.

This is a slope down which I am unwilling to slide, and it is a far steeper slope than the one down which my colleagues slid in *U.S. Department of the Air Force, Randolph Air Force Base, San Antonio, Texas (Randolph)*<sup>18</sup> (a decision with which I would not have joined). In that case, the majority permitted the American Federation of Government Employees (AFGE) to forcibly subsume employees, who were represented by the National Association of Government Employees, into an AFGE unit simply because the agency changed the office that provided human resource services to those employees.<sup>19</sup> In *Randolph*, not one NAGE employee sought the change from NAGE to AFGE. Instead, the matter was pursued entirely by, and for the benefit of, representatives of AFGE.

In *FDIC*, I shared my concerns with the accretion doctrine, in general, and, specifically, how it was applied by the majority in that case.<sup>20</sup> I do not need to repeat those concerns here. But it is worth repeating the point that accretion shares some of the same attributes of “agency shop” or “union shop” provisions that require employees to provide indirect support to a union as a condition of public employment.<sup>21</sup> The automatic inclusion principle of *Fort Dix*, at least as it is applied by the majority in this case and in *Randolph*, shares some of those same attributes.

My colleagues may disagree with this analogy but that does not make it “rash and wrong.”<sup>22</sup> The Federal Service Labor-Management Relations Statute unmistakably guarantees federal employees the right “to organize, bargain collectively, and participate through labor organizations of their own choosing.”<sup>23</sup> And that right “presupposes” the concomitant right “not to associate”<sup>24</sup> and “to refrain from any such activity” that

“assist[s]” a labor organization.<sup>25</sup> But the employees in North Carolina, who were abandoned by APWU, have never been asked whether they would rather continue without representation or given the option to vote for, or against, representation by NFFE.

That seems about as fair to me as a divorce court ordering an abandoned wife to marry her brother-in-law – seven years after her husband abandoned her, simply because the brother-in-law asked the court for a marriage certificate – without ever asking *her* if she wants to get remarried, to her brother-in-law or to anyone else.

Unlike the majority, I would conclude that the Regional Director did not err and that he applied established law.

Thank you.

<sup>18</sup> 53 FLRA 287 (1997).

<sup>19</sup> *Randolph*, 64 FLRA at 660 (Dissenting Opinion of Member Beck) (“In contrast to *Fort Dix* . . . this case presents the question whether a different union should displace the incumbent union when no change has occurred in the composition of the workforce, their duties, location, or organizational command.”)

<sup>20</sup> 67 FLRA 430, 433 (2014) (*FDIC*) (Dissenting Opinion of Member Pizzella).

<sup>21</sup> See *Knox v. SEIU, Local 1000*, 132 S. Ct. 2277, 2289 (2012) (*Knox*).

<sup>22</sup> Majority at 5 n.28 (quoting *FDIC*, 67 FLRA at 433).

<sup>23</sup> 5 U.S.C. § 7101(a)(1) (emphasis added).

<sup>24</sup> *Mulhall v. Unite Here Local 355*, 618 F.3d 1279, 1287 (11<sup>th</sup> Cir. 2010) (quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (citing *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 234-35 (1977) (emphases added)).

<sup>25</sup> 5 U.S.C. § 7102 (emphasis added); see also *SEIU, AFL-CIO, Local 556*, 1 FLRA 563, 563 (1979) (employees have the right to join, not join, maintain, or drop their membership).

**BEFORE THE  
FEDERAL LABOR RELATIONS AUTHORITY  
ATLANTA REGION**

GENERAL SERVICES ADMINISTRATION,  
SOUTHEAST SUNBELT REGION 4  
(Agency)

and

NATIONAL FEDERATION  
OF FEDERAL EMPLOYEES,  
FD-1, IAMAW, AFL-CIO  
(Labor Organization/Union/Petitioner)

Case No. AT-RP-14-0011

**DECISION AND ORDER  
CLARIFYING UNIT DESCRIPTION**

**I. INTRODUCTION**

The Petitioner, National Federation of Federal Employees, FD-1, IAMAW, AFL-CIO (the Union) filed the petition in this case seeking to clarify the bargaining unit status of non-professional and professional General Services Administration (GSA) Sunbelt Region 4 (the Agency) employees located in North Carolina. According to the Union, it represents both non-professional and professional GSA Sunbelt Region 4 employees in North Carolina and contends that the respective unit descriptions should be amended to make that clear.

The Agency contends that the Union does not represent the GSA Sunbelt Region 4 non-professional employees in North Carolina and that there are no GSA Sunbelt Region 4 professional employees.

The Region conducted an investigation, which included reviewing certifications and the election held in Case No. AT-RP-07-0001, when the unit descriptions were most recently defined. Although the parties did not reach a Stipulation of Facts, they both provided information and their respective positions. No facts are in dispute. Accordingly, no hearing is necessary.

**II. FACTS**

On May 18, 2007, following representation elections, the National Federation of Federal Employees, IAMAW, AFL-CIO was recognized as the exclusive representative of professional and non-professional employees of the General Services Administration, Sunbelt Region, Region 4. These units were certified as being included in nationwide units. Specifically, the non-professional employees were certified as included in

the unit of non-professional employees certified in Case No. 3-UC-40000-001 (June 13, 1984); and the professional employees were certified as included in a unit of professional employees certified in Case No. 3-UC-1-002 (September 10, 1980).

The units were described as follows:

Included: All non-professional employees of the General Services Administration, Sunbelt Region, Region 4.<sup>1</sup>

Excluded: All employees currently represented under exclusive recognition, professional employees, supervisors, management officials, and employees, described in 5 USC 7112(b)(2), (3), (4), (6) and (7).

and

Included: All professional employees of the General Services Administration, Sunbelt Region, Region 4.

Excluded: All employees currently represented under exclusive recognition, non-professional employees, supervisors, management officials, and employees, described in 5 USC 7112(b)(2), (3), (4), (6) and (7).

There were no employees located in North Carolina, either professional or non-professional, who voted or were eligible to vote in the elections that resulted in the certifications in Case No. AT-RP-07-0001. At that time, May 18, 2007, there were no professional employees employed by the Agency in North Carolina, nor are there any today. The non-professional employees in North Carolina, as described below, were already represented in two different units by two other labor organizations.

One group of non-professional employees in North Carolina was represented by the American Postal Workers Union (APWU), as certified on January 27, 1972, in Case No. 40-3055(RO), as follows:

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<sup>1</sup>Sunbelt Region 4 covers several states including North Carolina.

- Included: All GSA employees in Area 4, Region 4 (North Carolina and South Carolina).
- Excluded: Management officials, professional employees engaged in Federal personnel work than a purely clerical capacity, all GSA employees in Raleigh, North Carolina, and guards and supervisors as defined in the Executive Order.

As seen above, all North Carolina non-professional employees, except those located in Raleigh, were represented by the APWU. The Raleigh non-professional employees were and still are represented by the Laborer's Local 700, Laborers' International Union of North America (LIUNA), as certified on August 6, 1976 in Case No. 40-06705 (RO), as follows:

- Included: All General Services Administration employees located in Raleigh, North Carolina.
- Excluded: Professional employees, management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, guards and supervisors as defined in the Order.

Thus, there were no employees in North Carolina eligible to vote in either the professional or non-professional elections that resulted in the certifications on May 18, 2007.

Thereafter, on September 24, 2007, in Case No. AT-RP-07-0033, the Atlanta Regional Director issued an order revoking the above-referenced certification for the APWU. As noted in the Decision and Order in that case, APWU had clearly and unequivocally disclaimed its interest in that unit and confirmed that the only purpose for that petition was to disclaim its interest. Thus, the petition was not filed to seek certification for an alternate labor organization.

Currently, there are 22 General Services Administration, Sunbelt Region 4 non-professional employees in North Carolina, and there are no General Services Administration, Sunbelt Region 4 professional employees. LIUNA represents 5 of the non-professional employees.

### III. POSITIONS OF THE PARTIES

Both parties agree that the 5 non-professional employees represented by LIUNA at the time of the May 18, 2007 certification continue to be represented by LIUNA. According, this Decision and Order has no effect on LIUNA's certified unit.

The Agency contends that the remaining 17 non-professional employees in North Carolina are currently unrepresented as of September 24, 2007, when APWU's certification was revoked.

The Union disagrees, and contends that there are no unrepresented GSA Sunbelt Region 4 employees in North Carolina. In this regard, the Union asserts that North Carolina is a part of the Sunbelt Region, Region 4 and that the word "all" in the certification is fully inclusive. The Union asserts that the exclusionary language in the cert – excluding all employees currently represented under exclusive recognition – should be read to mean that the employees formerly represented by APWU are now, or "currently," not represented by another labor organization and therefore the Union now represents them.

### IV. ANALYSIS AND CONCLUSIONS

Based on the evidence in this case, I find that the certification issued to National Federation of Federal Employees, IAMAW, AFL-CIO, on May 18, 2007, excludes the non-professional employees in North Carolina. The word "currently" in the "Excluded" portion of the certification should be read to mean the status of representation *at that time*. In other words, the certification that issued on May 18, 2007 clearly did not include any employees in North Carolina. For the reasons that follow, I do not conclude that the subsequent revocation of APWU's unit automatically placed those employees in the Union's unit.

The Union's reliance on the plain language of the certification to support its assertion that it represents the employees at issue appears to be based on the Authority's holding in *Dep't of the Army, Headquarters Fort Dix, Fort Dix, N.J.*, 53 FLRA 287 (1997) (*Fort Dix*). There, the Authority held that new employees are automatically included in an existing unit where their positions fall within the express terms of a bargaining certificate and where their inclusion does not render the bargaining unit inappropriate. 53 FLRA at 294. But, here, the employees at issue are not "new." At the time the current unit was certified, they were already there and were represented by the APWU. *Fort Dix* does not apply here because the civilian policemen in that case were hired after the incumbent's original certification.

I have also considered the Union's implicit alternative argument, although not expressly asserted, that APWU's decertification was a "triggering event" whereby the Authority could consider accreting these employees into its unit. 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, Columbia-Cascades Area Office, Yakima, Wash.*, 65 FLRA 491, 493 (2011). Here, there has been no change in agency operations or organization. Moreover, accretion must be applied narrowly because accretion precludes employee self-determination. *Id.* This case provides a perfect illustration of this policy. The employees at issue were not given the opportunity to vote on representation in the election held in 2007. In fact, at the time, their chosen representative was another labor organization. As noted above, when APWU chose to disclaim interest there was no intervention by the Union or any other labor organization to seek representation of those employees.

**ACCORDINGLY, I FIND** that the non-professional General Services Administration, Sunbelt Region, Region 4 employees within North Carolina that are not located in Raleigh, North Carolina are unrepresented and that there are no professional General Services Administration, Sunbelt Region, Region 4 employees in North Carolina. Thus, I will issue an Order, as set forth below, clarifying the certification of the non-professional unit to exclude employees of the Agency in North Carolina. I will take no action with respect to the certification of the professional unit because there was been no change in circumstances (there were and still are no professional employees in North Carolina) that require any changes to the existing certification.

#### V. Order

The unit description for the General Services Administration non-professional Certification for Inclusion in Existing Unit (as certified in 3-UC-40001-001 on June 13, 1984) issued on May 18, 2007 in Case No. AT-RP-07-0001 is amended as follows:

**INCLUDED:** All non-professional employees of the General Services Administration, Sunbelt Region, Region 4

**EXCLUDED:** All employees currently represented under exclusive recognition, employees located in North Carolina, professional employees, supervisors, management officials, and employees described in 5 USC 7112(b)(2), (3), (4), (6) and (7)

#### VI. Right to Seek Review

Under section 7105(f) of the Statute and section 2422.31(a) of the Authority's Regulations, a party may seek review of this Decision by filing an application for review with the Federal Labor Relations Authority. The application for review must be filed with 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 application for review must be received by the Authority in Washington by **July 18, 2014**.

The application for review may be filed electronically through the Authority's website, [www.flra.gov](http://www.flra.gov).<sup>2</sup>

Dated: May 19, 2014 \_\_\_\_\_

Richard S. Jones  
Regional Director  
Federal Labor Relations Authority,  
Atlanta Region  
South Tower, Suite 1950  
225 Peachtree Street  
Atlanta, Georgia 30303

<sup>2</sup> To file an application for review electronically, go to the Authority's website at [www.flra.gov](http://www.flra.gov), select eFile under the Filing a Case tab and follow the detailed instructions.