

**68 FLRA No. 35**

UNITED STATES  
DEPARTMENT OF AGRICULTURE  
NATIONAL FINANCE CENTER  
NEW ORLEANS, LOUISIANA  
(Agency)

and

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 2341  
(Union/Petitioner)

DA-RP-12-0025

ORDER DENYING  
APPLICATION FOR REVIEW

January 23, 2015

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

**I. Statement of the Case**

The Agency filed an application for review (application) of the attached decision of Federal Labor Relations Authority Regional Director James E. Petrucci (RD). The Union petitioned the RD to clarify the bargaining-unit status of employees occupying eight positions in a nonprofessional unit at the Agency. The RD clarified the bargaining unit to include employees occupying seven of the eight positions, rejecting claims that they should be excluded variously as confidential employees under § 7112(b)(2) of the Federal Service Labor-Management Relations Statute (the Statute)<sup>1</sup> or as employees engaged in personnel work in other than a purely clerical capacity under § 7112(b)(3).<sup>2</sup> There are two questions before us.

The first question is whether the RD failed to apply established law in finding that the disputed employees are not either confidential employees or employees engaged in personnel work in other than a purely clerical capacity. Because the RD's conclusions are consistent with Authority precedent, the answer is no.

The second question is whether the RD committed clear and prejudicial errors concerning substantial factual matters in finding that the disputed employees are not either confidential employees or employees engaged in personnel work in other than a purely clerical capacity. Because the Agency does not directly challenge any of the RD's factual findings as unsupported by the record, and the Agency's challenge to the weight that the RD attributed to certain evidence does not provide a basis for finding that the RD committed clear errors in his factual findings, the answer is no.

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

The Agency provides financial, administrative, and human-resources-information services for more than 170 federal organizations. As relevant here, the Union petitioned the RD to clarify the bargaining-unit status of employees occupying eight positions: one workforce-services specialist position, three secretarial positions, two human-resources assistant positions, one training technician position, and one training-systems specialist position.

The RD clarified the bargaining unit to include the workforce-services specialist, the secretaries, the human-resources assistants, and the training technician. The RD also found that the training-systems specialist should be excluded as a management official.

Regarding the positions that the RD found to be included, he analyzed and rejected the Agency's claims that: (1) the workforce-services specialist and the secretaries should be excluded from the bargaining unit because they are confidential employees under § 7112(b)(2); and (2) the human-resources assistants and the training technician should be excluded from the bargaining unit because they are employees engaged in personnel work in other than a purely clerical capacity under § 7112(b)(3).

Analyzing the § 7112(b)(2)-exclusion claim, the RD applied § 7103(a)(13) of the Statute, which defines "a confidential employee" as "an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations."<sup>3</sup> The RD also applied the Authority's test for establishing that an employee is a confidential employee. The Authority will find that an employee is a confidential employee where: "(1) there is evidence of a confidential working relationship between an employee and the [employee's] supervisor or manager; and (2) the supervisor or manager

<sup>1</sup> 5 U.S.C. § 7112(b)(2).

<sup>2</sup> *Id.* § 7112(b)(3).

<sup>3</sup> RD's Decision at 22 (quoting 5 U.S.C. § 7103(a)(13)).

is significantly involved in labor-management relations.”<sup>4</sup> And the RD relied on the legal principles set forth in cases<sup>5</sup> such as *Red River Army Depot, Texarkana, Texas*;<sup>6</sup> *U.S. DOJ, Federal BOP, U.S. Penitentiary, Marion, Illinois*,<sup>7</sup> and *U.S. Department of Transportation, FAA, Standiford Air Traffic Control Tower, Louisville, Kentucky*.<sup>8</sup>

Applying this legal framework, the RD found that the workforce-services specialist and the secretaries are not confidential employees under § 7112(b)(2). Specifically, he found that the workforce-services specialist’s and the secretaries’ supervisors are not significantly involved in labor-management relations and do not “formulate or develop management policy in the field of labor-management relations [or] consult with management regarding grievances, arbitrations, disciplinary actions, or unfair[-]labor[-]practice charges.”<sup>9</sup> The RD also found that these supervisors do not “participate in contract negotiations or the development of contract proposals for collective[]bargaining with the Union.”<sup>10</sup>

As to the workforce-services specialist, the RD also found that this employee is “not involved in any management discussions concerning labor-relations matters and does not participate in the formulation or development of [Agency] labor-relations policies.”<sup>11</sup> And he found that the workforce-services specialist’s “mere access to labor[-]relations materials,” such as confidential information contained in employee personnel databases, “is not sufficient to establish confidential capacity within the meaning of the Statute.”<sup>12</sup>

Regarding the secretaries, the RD found that they have limited involvement in labor-management relations. For example, they do not attend meetings involving labor-management matters and do not advise management in preparing management’s decisions related to grievances, unfair labor practices, contract negotiations, or disciplinary actions. The RD weighed the secretaries’ access to employees’ confidential information for limited purposes, such as maintaining employee personnel files or performing time and attendance duties, and again found that “mere access to

confidential material is not sufficient to establish a confidential capacity within the meaning of the Statute.”<sup>13</sup>

Analyzing the § 7112(b)(3)-exclusion, the RD applied Authority precedent, which holds that an employee is engaged in personnel work in other than a purely clerical capacity where: “the character and extent of involvement of the incumbent is more than clerical in nature; the duties of the position in question are not performed in a routine manner[; and] . . . the incumbent must exercise independent judgment and discretion.”<sup>14</sup> He also applied the legal principles set forth in Authority decisions<sup>15</sup> such as *FDIC, San Francisco, California*,<sup>16</sup> *U.S. Department of HUD*,<sup>17</sup> and *U.S. Department of the Navy, U.S. Naval Station, Panama*.<sup>18</sup>

Applying this legal framework, the RD found that the human-resources assistants and the training technician are not engaged in personnel work in other than a purely clerical capacity under § 7112(b)(3). Specifically, he found that the human-resources assistants and training technician perform their duties in a “routine manner, and in accordance with established policies and procedures . . . described in [Agency] manuals and instructions,” and are “not required to exercise independent judgment or discretion.”<sup>19</sup> In addition, the RD distinguished the human-resources assistants from the management analysts at issue in *U.S. Department of the Army, Headquarters 101st Airborne Division, Fort Campbell, Kentucky (Fort Campbell)*,<sup>20</sup> a case cited by the Agency, explaining that the human-resources assistants “are not required to exercise independent judgment or discretion in carrying out their duties.”<sup>21</sup> The RD found, for example, that the human-resources assistants enter personnel actions previously decided by supervisors into a database, but do not themselves decide or advise supervisors on personnel matters, or create personnel policies. As to the training technician, the RD found that, for example, this employee “ensure[s] that facilities, training materials, and equipment are available

<sup>4</sup> *Id.* (citing *U.S. DOL, Office of the Solicitor, Arlington Field Office*, 37 FLRA 1371, 1377 (1990) (*DOL*); *U.S. Army Plant Representative Office, Mesa, Ariz.*, 35 FLRA 181, 186 (1990) (*Mesa*)).

<sup>5</sup> *Id.* at 22-23.

<sup>6</sup> 2 FLRA 659, 661 (1980) (*Red River*).

<sup>7</sup> 55 FLRA 1243, 1247 (2000) (*DOJ*).

<sup>8</sup> 53 FLRA 312, 319 (1997) (*FAA*).

<sup>9</sup> RD’s Decision at 23; *see also id.* at 24, 25, 26, 27.

<sup>10</sup> *Id.* at 23; *see also id.* at 24, 25, 26, 27.

<sup>11</sup> *Id.* at 23.

<sup>12</sup> *Id.* (citing *SSA*, 56 FLRA 1015, 1018 (2000)).

<sup>13</sup> *Id.* at 24; *see also id.* at 25, 26, 27-28.

<sup>14</sup> *Id.* at 20 (citing *USDA Forest Serv., Albuquerque Serv. Ctr, Albuquerque, N.M.*, 64 FLRA 239, 242 (2009) (*USDA*); *U.S. DOJ, INS, Wash., D.C.*, 59 FLRA 304, 306 (2003); *U.S. Dep’t of the Army, Headquarters, 101st Airborne Div., Fort Campbell, Ky.*, 36 FLRA 598, 602 (1990); *Dep’t of the Treasury, IRS, Wash., D.C. & IRS, Cincinnati Dist., Cincinnati, Ohio*, 36 FLRA 138, 144 (1990)).

<sup>15</sup> *Id.* at 20-21.

<sup>16</sup> 49 FLRA 1598, 1602 (1994).

<sup>17</sup> 34 FLRA 207, 214 (1990) (*HUD*).

<sup>18</sup> 7 FLRA 489, 493 (1981) (*Navy*).

<sup>19</sup> RD’s Decision at 21; *see also id.* at 22.

<sup>20</sup> 36 FLRA at 602. The Agency’s reliance on *Fort Campbell* is discussed further in Section IV.A.

<sup>21</sup> RD’s Decision at 21.

for scheduled training activities,<sup>22</sup> but does not develop training programs.

Accordingly, the RD clarified the bargaining unit to include the workforce-services specialist, the secretaries, the human-resources assistants, and the training technician.

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

### III. Preliminary Matter: Sections 2422.31(b) and 2429.5 of the Authority's Regulations bar one of the Agency's arguments.

The Agency references § 7112(b)(1) of the Statute in its application.<sup>23</sup> Section 7112(b)(1) excludes "management officials" from an appropriate bargaining unit.<sup>24</sup> To the extent that the Agency is arguing that the workforce-services specialist, the secretaries, the human-resources assistants, and the training technician should be excluded from the bargaining unit because they are management officials under § 7112(b)(1), the Authority's Regulations bar the Agency's argument.

Section 2422.31(b) of the Authority's Regulations precludes "[a]n application [for review from] rais[ing] any issue or rely[ing] on any facts not timely presented to the [h]earing [o]fficer or [the RD]."<sup>25</sup> Section 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."<sup>26</sup>

The record does not indicate that the Agency argued that the workforce-services specialist, the secretaries, the human-resources assistants, and the training technician should be excluded from the bargaining unit as management officials under § 7112(b)(1). Because the Agency could have raised this argument before the RD, but failed to do so, §§ 2422.31(b) and 2429.5 of the Authority's Regulations preclude it from doing so now.<sup>27</sup> Accordingly, we do not consider this argument.

### IV. Analysis and Conclusions

The Agency argues that the RD failed to apply established law<sup>28</sup> and committed clear and prejudicial factual errors concerning substantial factual matters<sup>29</sup> in concluding that the workforce-services specialist and the secretaries are not confidential employees under § 7112(b)(2), and that the human-resources assistants and the training technician are not engaged in personnel work other than in a purely clerical capacity under § 7112(b)(3).<sup>30</sup> As discussed below, the Agency does not support either basis for its challenge to the RD's findings.

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

Citing Authority case law, the Agency contends that the RD failed to apply established law because the evidence demonstrates that: (1) the workforce-services specialist and the secretaries have a confidential relationship with management under § 7112(b)(2);<sup>31</sup> and (2) the human-resources assistants and the training technician exercise independent judgment and discretion under § 7112(b)(3).<sup>32</sup>

The RD did not fail to apply established law when he determined that the workforce-services specialist and the secretaries are not confidential employees, and that the human-resources assistants and the training technician are not engaged in personnel work other than in a purely clerical capacity. Looking to pertinent Authority precedent on confidential employees under § 7112(b)(2),<sup>33</sup> the RD found that the workforce-services specialist's and the secretaries' supervisors are not significantly involved in labor-management relations.<sup>34</sup> Also consistent with Authority precedent, the RD found that these employees lack confidential involvement in labor-management-relations matters.<sup>35</sup>

The RD's determinations are likewise in line with Authority precedent on employees involved in personnel work other than in a purely clerical capacity under § 7112(b)(3). The RD found that the human-resources assistants and the training technician

<sup>22</sup> *Id.* at 22.

<sup>23</sup> Application at 3.

<sup>24</sup> 5 U.S.C. § 7112(b)(1).

<sup>25</sup> 5 C.F.R. § 2422.31(b).

<sup>26</sup> *Id.* § 2429.5.

<sup>27</sup> *SSA, Office of Disability Adjudication & Review, Nat'l Hearing Ctr., Chi., Ill.*, 67 FLRA 299, 301 (2014).

<sup>28</sup> 5 C.F.R. § 2422.31(c)(3)(i).

<sup>29</sup> *Id.* § 2422.31(c)(3)(iii).

<sup>30</sup> Application at 4-6.

<sup>31</sup> *Id.* at 2-6 (citing *U.S. Dep't of the Air Force, Edwards Air Force Base, Cal.*, 62 FLRA 159 (2007); *DOL*, 37 FLRA 1371; *Red River*, 2 FLRA 659).

<sup>32</sup> *Id.* at 3-6 (citing *Fort Campbell*, 36 FLRA 598; *HUD*, 34 FLRA 207; *Navy*, 7 FLRA 489).

<sup>33</sup> RD's Decision at 22-23 (citing *DOJ*, 55 FLRA at 1247; *FAA*, 53 FLRA at 319; *DOL*, 37 FLRA at 1377; *Mesa*, 35 FLRA at 186; *Red River*, 2 FLRA at 661).

<sup>34</sup> *Id.* at 23-27.

<sup>35</sup> *Id.* at 23-28.

perform their duties in a “routine manner, and in accordance with established policies and procedures . . . described in [Agency] manuals and instructions.”<sup>36</sup> The RD also found that these employees’ work does not require the exercise of independent judgment.<sup>37</sup>

The legal framework applied and the issues resolved by the RD in reaching these conclusions accurately reflect the legal framework and the issues recognized as relevant by Authority precedent. Regarding confidential employees, the Authority has held that an employee is not “confidential” unless (1) there is evidence of a confidential working relationship between an employee and the employee’s supervisor, and (2) the supervisor is significantly involved in labor-management relations.<sup>38</sup> The Authority has also held that labor-management-relations matters are limited to matters such as contract negotiations and the disposition of grievances.<sup>39</sup> Regarding employees involved in personnel work in other than a purely clerical capacity, the Authority has held that the character and extent of the employee’s involvement in personnel work must be more than clerical in nature; the position’s duties must not be performed in a routine manner; and the employee must exercise independent judgment and discretion.<sup>40</sup>

The Agency does not argue that the RD failed to apply the correct legal framework. In fact, the Agency relies on much of the same precedent as did the RD when the Agency sets forth its view of the applicable law. The Agency challenges only the RD’s application of that case law to the facts of this case. And, for the reasons above, we find that the RD’s conclusions are consistent with Authority precedent.

The Agency relies on *Fort Campbell*<sup>41</sup> – an Authority decision specifically distinguished by the RD.<sup>42</sup> And, as the factual scenario in *Fort Campbell* is dissimilar from the one before us, we also find it distinguishable. There, the Authority upheld the regional director’s determination that management analysts were excluded from the bargaining unit under § 7112(b)(3) because, in performing their duties, they exercised independent judgment “as to the appropriateness of the [a]ctivity’s organizational structure, staffing, method of operations[,] and capital

investments.”<sup>43</sup> Here, the RD found that the human-resources assistants do not exercise independent judgment – because, for example, these employees enter personnel actions previously decided by supervisors into a database, but do not themselves decide or advise supervisors on personnel matters, or create personnel policies.<sup>44</sup>

*Defense Mapping Agency, Hydrographic/Topographic Center, Providence Field Office (Defense Mapping)*<sup>45</sup> – another Authority decision relied on by the Agency<sup>46</sup> – is also distinguishable. The Agency relies on *Defense Mapping* to argue that the human-resources assistants should be excluded from the unit. In *Defense Mapping*, the employee at issue was “the resident expert on certain personnel matters,” who “sat in on bargaining sessions dealing with performance appraisals[,] and shortly after ratification of the collective[-]bargaining agreement conducted a training session for supervisors on the new performance appraisal system.”<sup>47</sup> Here, the human-resources assistants do not perform any comparable duties.

We therefore reject the Agency’s contention that the RD failed to apply established law.<sup>48</sup>

B. The RD did not commit clear and prejudicial errors concerning substantial factual matters.

The Agency contends that the RD committed clear and prejudicial errors concerning substantial factual matters because the evidence demonstrates that: (1) the workforce-services specialist and the secretaries have a confidential relationship with management within the § 7112(b)(2) exclusion;<sup>49</sup> and (2) the human-resources assistants and the training technician exercise independent judgment and discretion within the § 7112(b)(3) exclusion.<sup>50</sup>

We reject the Agency’s claims as unsupported. The RD made extensive factual findings supporting his determinations concerning the workforce-services specialist’s and the secretaries’ confidential relationship

<sup>36</sup> *Id.* at 21; *see also id.* at 22.

<sup>37</sup> *Id.* at 21; *see also id.* at 22.

<sup>38</sup> *U.S. Dep’t of the Interior, Bureau of Reclamation, Yuma Projects Office, Yuma, Ariz.*, 37 FLRA 239, 244 (1990); *Mesa*, 35 FLRA at 186.

<sup>39</sup> *Broad. Bd. of Governors*, 64 FLRA 235, 236-37 (2009).

<sup>40</sup> *SSA*, 56 FLRA at 1018; *accord USDA*, 64 FLRA at 242.

<sup>41</sup> Application at 6.

<sup>42</sup> RD’s Decision at 21.

<sup>43</sup> *Fort Campbell*, 36 FLRA at 604.

<sup>44</sup> RD’s Decision at 21.

<sup>45</sup> 13 FLRA 407 (1983).

<sup>46</sup> Application at 6.

<sup>47</sup> *Def. Mapping*, 13 FLRA at 407-08.

<sup>48</sup> *U.S. Dep’t of VA, N. Cal., Health Care Sys., Martinez, Cal.*, 66 FLRA 522, 524 (2012) (holding that RD did not fail to apply established law where activity challenges only regional director’s conclusion based on his application of Authority case law).

<sup>49</sup> Application at 4-5.

<sup>50</sup> *Id.* at 5-6.

with management,<sup>51</sup> and the human-resources assistants' and the training technician's exercise of independent judgment and discretion.<sup>52</sup>

Moreover, the record supports the RD's factual findings. Regarding a confidential relationship with management, the RD found that the workforce-services specialist and the secretaries do not act in a confidential capacity to their supervisors within the meaning of § 7112(b)(2).<sup>53</sup> Supporting this finding, the record discloses, for example, that the workforce-services specialist does not attend meetings where labor-management issues are discussed, or assist in management's decisions related to grievances, unfair labor practices, contract negotiations, or disciplinary actions.<sup>54</sup> And the record provides comparable support for the RD's findings on this question concerning the secretaries.<sup>55</sup>

Similarly, the record supports the RD's findings that the human-resources assistants and the training technician do not exercise independent judgment and discretion in performing their work.<sup>56</sup> The record discloses, for example, that the human-resources assistants input data and previously decided personnel actions into a database.<sup>57</sup> And the record provides comparable support for the RD's findings on this question concerning the training technician.<sup>58</sup>

The Agency does not directly challenge any of the RD's factual findings as unsupported by the record. Instead, rearguing the case that it presented to the RD, the Agency relies on assertedly contrary evidence to substantiate its claim that the RD erred. The Agency relies on evidence, for example, that the workforce-services specialist attends and participates in meetings where policies such as the telework program are discussed.<sup>59</sup> As another example, the Agency relies on evidence that the human-resources assistants perform such functions as "process[ing] incentive awards" and "keep[ing] the automatic personnel data system current."<sup>60</sup> But the Agency's disagreement with the weight the RD attributed to certain evidence does not provide a basis for finding that the RD committed clear and prejudicial errors in making substantial factual

findings.<sup>61</sup> For these reasons, we conclude that the Agency has not demonstrated that the RD failed to apply established law or committed clear and prejudicial errors concerning substantial factual matters.

## V. Order

We deny the Agency's application for review.

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<sup>51</sup> RD's Decision at 23-28.

<sup>52</sup> *Id.* at 21-22.

<sup>53</sup> *Id.* at 23-28.

<sup>54</sup> Tr. at 45-46, 50, 268-69, 272, 273.

<sup>55</sup> Tr. at 461, 467, 479, 488, 623, 629, 636, 678, 707, 718-19.

<sup>56</sup> RD's Decision at 21-22.

<sup>57</sup> Tr. at 70-72, 77, 98-99.

<sup>58</sup> Tr. at 180-81, 275-80.

<sup>59</sup> Application at 4 (citing Tr. at 48, 50-51).

<sup>60</sup> *Id.* at 6 (citing the transcript generally).

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<sup>61</sup> *E.g., U.S. DOD, Pentagon Force Prot. Agency, Wash., D.C.*, 62 FLRA 164, 170 (2007) (disagreement over evidentiary weight not sufficient to find that RD committed clear and prejudicial error concerning substantial factual matter); *Nat'l Credit Union Admin.*, 59 FLRA 858, 862 (2004) (same).

BEFORE THE  
FEDERAL LABOR RELATIONS AUTHORITY  
DALLAS REGION

U.S. DEPARTMENT OF AGRICULTURE  
NATIONAL FINANCE CENTER  
NEW ORLEANS, LOUISIANA  
(Agency)

and

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES, AFL-CIO  
LOCAL 2341  
(Union/Petitioner)

DA-RP-12-0025

DECISION AND ORDER

**I. Statement of the Case**

On September 14, 2012, the American Federation of Government Employees, AFL-CIO, Local 2341 (AFGE, Local 2341, or Union) filed the petition in this proceeding with the Dallas Regional Office of the Federal Labor Relations Authority seeking a unit clarification to determine whether certain positions should be included in the existing certified unit of non-professional Wage Grade and General Schedule employees at the National Finance Center, United States Department of Agriculture, New Orleans, Louisiana (NFC). On December 26, 2012, a Notice of Hearing issued, and hearing was conducted from January 30, 2013 to February 2, 2013 and on February 27, 2013.

On September 6, 1973, in Case No. 64-2200(RA)(25), a certification was issued by the United States Department of Labor certifying Local 2341 as the exclusive representative for the following bargaining unit of employees:

**Included:** All nonprofessional Wage Grade and GS employees of the National Finance Center, Office of Budget and Finance, U.S. Department of Agriculture, New Orleans, Louisiana, including full-time and intermittent employees, temporary full-time and

permanent part-time employees, and employees serving under either career, career conditional, or accepted appointments.

**Excluded:** All professional employees, management officials, employees engaged in personnel work in other than a purely clerical nature, employees serving under temporary appointments for less than 90 days, Stay-in-School employees and Summer Aids, confidential employees, and supervisors and guards as defined in E.O. 11491.

The issues presented in this matter are as follows:<sup>1</sup>

1. Whether the employees occupying the following positions should be excluded from the bargaining unit pursuant to Section 7112(b)(3) of the Statute because they are employees engaged in personnel work in other than a purely clerical capacity?
  - Human Resources Assistant, GS-203-06; and
  - Human Resources Assistant, Office Automation, GS-203-07
2. Whether the employees occupying the following positions should be excluded from the bargaining unit pursuant to Section 7112(b)(2) of the Statute because they are confidential employees?
  - Workforce Services Specialist, GS-301-09;
  - Secretary, Office Automation, GS-318-05/06/07; and
  - Training Technician, GS-1702-07

<sup>1</sup> Appendix A sets out the stipulations, as agreed to during the hearing, on those positions that are no longer in dispute. Inasmuch as the parties have agreed these positions are no longer in dispute, and I have approved the stipulation, these positions will not be addressed further. In addition, Appendix A sets out positions that cannot be decided because they are vacant. Inasmuch as the Authority does not resolve questions concerning the unit status of vacant positions, I will not address these positions further. *c.f.*, *U.S. Dep't. of Hous. & Urb. Dev., Headquarters*, 41 FLRA 1226, 1235 n.4 (1991). Accordingly, this decision will only determine the bargaining unit status of positions covered by this petition for which there currently remains an eligibility dispute.

3. Whether the employee occupying the following position should be excluded from the bargaining unit pursuant to Section 7112(b)(1) of the Statute because she is a management official?

- Training Systems Specialist, GS-301-11

The following chart identifies each currently disputed position covered by this petition, the incumbents of those positions, and NFC’s reason for seeking to exclude each position:

Disputed Position	Employee	NFC Reason for Exclusion
Human Resources Assistant (GS-203-06)	1. Kelisha Marie Polk	Personnel work
Human Resources Assistant, Office Automation (GS-203-07)	1. Sierra Nicole Duncan 2. Jenny Mervich Schmiderer 3. Duanetta Ruth Tate	Personnel work
Training Technician (GS-1702-07)	1. Diane Gibbs	Personnel work
Workforce Services Specialist (GS-301-09)	1. Edward Burrell Bush	Confidential employee
Secretary, Office Automation (GS-318-05)	1. Patricia Pittman Schmid 2. Rosa Edwina Ferrell 3. Tanisha Pappillion 4. Nicole Kimball Riley	Confidential employee
Secretary, Office Automation (GS-318-06)	1. Dorcus Ellis Whigham	Confidential employee
Secretary, Office Automation (GS-318-07)	1. Anita Bronakowski 2. Rhonda Wingerter Hughes 3. Elizabeth F. Allen 4. David Anthony	Confidential employee

	De La Fuente 5. Ruth Ann Golson 6. Lisa Lueders Monnier 7. Lisa Marie Natal 8. Linda Laine Perez 9. Ernel Mullet Robin 10. Kathleen Burtchaell Thibodeaux 11. Richard Glynn Turner 12. Celita Ann Wolfe	
Training Systems Specialist (GS-301-11)	1. Donna Gilbert	Management Official

**II. Findings<sup>2</sup>**

The U.S. Department of Agriculture (USDA) Secretary has delegated to the Deputy Secretary, the Assistant Secretary for Administration, and the Chief Financial Officer, the responsibility of carrying out the payroll, human resources, and financial systems for the National Finance Officer, the Assistant Chief Financial Officer for Financial Systems, and the Controller, Operations Division, under the Assistant Chief Financial Officer for Financial Operations, which includes all the employees that are located in New Orleans, Louisiana.

The NFC is part of USDA’s Office of Chief Financial Officer (OCFO), and provides systems and services to more than 170 federal organizations, representing all three branches of the government. NFC designs, develops, implements, and operates human resources, financial, administrative, and management information services. NFC provides centralized, automated, integrated systems and support services for payroll, personnel, administrative payments, accounts receivables, property management, budget, and accounting services. NFC is a designated Shared Service Center provider under the Office of Personnel Management (OPM), Human Resources Line of Business initiative (HRLOB).

<sup>2</sup> Consistent with the Authority’s determination in *Dep’t of Hous. & Urb. Dev., Wash., D.C.*, 35 FLRA 1249, 1256-1257 (1990), the eligibility determinations herein are based on testimony and other evidence establishing what an employee’s actual specific duties were at the time of the hearing, rather than on speculation regarding what those duties might be in the future. While a position description may be useful in making a unit determination, it is not controlling.

NFC's Human Resources System Suite supports core system services such as payroll and personnel action processing, as well as related human resources operational services, such as recruitment and position classification. NFC operates the Centralized Enrollment Clearinghouse System (CLER) for the Office of Personnel Management. CLER reconciles records between federal payroll offices and Federal Employee Health Benefits providers. NFC operates the Direct Premium Remittance System, which is used for billing and collecting health insurance premiums. NFC provides managed hosting services and data warehousing, and is developing cloud computing services.

NFC is divided into three divisions: Information Technology Services Division (ITSD); Government Employees Services Division (GESD); and the Deputy Director's Office. Each division is divided into directorates, and each directorate is further divided into branches.

The ITSD has three directorates: Technical Services, Operations, and IT Security. The Technical Services Directorate encompasses four branches: Data Management, Computer Resources Management, Product Engineer, and Server Engineering. The Operations Directorate has three branches: Office Services, Network Services, and Operations. The IT Security Directorate has three branches: Access Management, Security System Administration, and Information Systems Security.

The GESD covers six directorates: Applications Development, Payroll/Personnel Operations, Payroll Accounting, Client Services, HRLOB, and Insurance and Collections. The Applications Development Directorate has five branches: Personnel Applications Systems, Payroll Applications Systems, Web Applications Systems, Administrative Applications Systems, and Systems Requirements. The Payroll/Personnel Operations Directorate has two branches: the Payroll Processing Branch and the Personnel Processing Branch. The Payroll Accounting Directorate has three branches: Payment Certification and Recertification Reconciliation, Payroll Reconciliation, and Tax and Benefits Processing. The Client Services Directorate has three branches: Client Management, Training and Communications, and Staff Chief. The HRLOB has three branches: Operations, Implementations, and Human Resources Applications. The Insurance and Collections Directorate has two branches: Government Debt and Insurance Services and Consumer Insurance Programs.

The Deputy Director's Office oversees the offices of Administrative Management Staff, Human Resources Management Staff, and Risk Management Staff.

All of the employees at issue here work in one or more of these branches, directorates, and divisions of the NFC. The NFC, including locations in New Orleans, Denver, and Washington, D.C., employs approximately 1,200 to 1,300 employees, approximately 600 of which are bargaining unit employees in New Orleans, Louisiana.

**A. Human Resources Assistant,  
GS-203-06**

The Human Resources Assistant, GS-203-06 (HRA-6) position is in the Human Resources Management Staff (HRMS). The HRA-6 reports directly to Monique Price, the Acting Chief of the Classification, Compensation, and Recruitment Office (CCRO). Kelisha Marie Polk is the current incumbent of the HRA-6 position.<sup>3</sup>

The primary duty of the HRA-6 is to process payroll and personnel actions. Personnel actions include, among others, accession, change actions, promotions, pay increases, transfers, separations, awards, and performance appraisals. At the daily workload meeting, a Human Resources Specialist distributes personnel actions to the HRA-6 for processing in EmpowHR. If there are errors or system problems in EmpowHR, the HRA-6 may be required to process personnel actions in the Entry, Processing, Inquiry, and Correction System.

Because the HRA-6 processes personnel actions, the HRA-6 has access to employee information and documentation in EmpowHR, electronic Official Personnel Folders (OPF), Rumba, the Payroll/Personnel Inquiry System (PINQ), the Information/Research Inquiry System (IRIS), and the Special Payroll Processing System.

The HRA-6 also enters employee Bargaining Unit Status (BUS) codes in EmpowHR, but she does not make any determination as to which BUS code will be applied to an individual employee. In addition, although the HRA-6 also does not process adverse actions in EmpowHR, she may process a pay action related to an adverse action. The HRA-6 also does not enter an employee's performance appraisal information into EmpowHR, but she does file the performance appraisal in the employee's Official Personnel Folder (OPF). The HRA-6 does not currently scan files into eOPFs, although she has done it in the past.

The HRA-6 is not involved in the creation of personnel policies or NFC policies, does not advise supervisors or managers on personnel matters, and is not involved in

<sup>3</sup> The parties stipulated and agreed that Kelisha Marie Polk would be the representative employee for the Human Resource Assistant (GS-203-06) position because she is the only employee that occupies the position.

personnel or staffing studies. The HRA-6 does not respond to grievances and is not involved in Equal Employment Opportunity (EEO) or Merit Systems Protection Board (MSPB) matters.

Acting CCRO Chief Price testified that a function of the HRA-6 is to perform lower-graded vacancy announcement work and to assist the Human Resources Specialists, but because the office is under staffed, the incumbent is currently only processing actions. Thus, although the HRA-6 has been informed that she will perform additional duties in the future, the HRA-6 does not currently perform the following duties: prepare and upload vacancy announcements to USAJobs; review applications received as a result of vacancy announcements to ensure required documentation has been provided and determine whether an applicant is qualified for the position; prepare SF-39, Reference of Eligibles, and issue certificates of eligible referral; cooperate with EEO staff to integrate NFC affirmative action and special recruitment programs; work with EEO and workforce services staff to improve the quality of work life for NFC employees; and protect the integrity of the human resources management program by assisting in internal audits and quality assurance monitoring as needed.

#### **B. Human Resources Assistant, Office Automation, GS-203-07**

The Human Resources Assistant, GS-203-07 (HRA-7) position is in the HRMS. The current incumbents of the HRA-7 position are Sierra Nicole Duncan, Jenny Mervich Schmiderer and Duanetta Ruth Tate.<sup>4</sup>

The primary duty of the HRA-7 is to process personnel actions for employees of the NFC and the OCFO. At the daily workload meeting, the CCRO Lead distributes personnel actions to the HRA-7 in the form of a Request for Personnel Action, Standard Form 52 (SF-52). Personnel actions include, among others, accession, change actions, promotions, pay increases, transfers, separations, awards, and performance appraisals. After the HRA-7 receives a personnel action, the HRA-7 enters the action into the data control screen in EmpowHR. To determine what code to enter for each action, the HRA-7 uses reference publications and regulations. For example, Sierra Nicole Duncan testified that she references the Guide to Processing Personnel Actions, which is the OPM's instruction on how to prepare personnel actions.

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<sup>4</sup> Because the parties stipulated and agreed that Sierra Nicole Duncan would provide the representative testimony for the Human Resources Assistant, Office Automation (GS-203-07) position, I will rely on Duncan's testimony to also determine the status of Jenny Mervich Schmiderer and Duanetta Ruth Tate.

The day after the HRA-7 enters a personnel action into the system, the HRA-7 verifies that the action has been applied. If the action has not been applied because it has a SINQ error, the HRA-7 will determine why the action did not apply. If necessary, the HRA-7 will search the Personnel Input and Edit System (PINE) book to determine why the action did not apply. The HRA-7 will then correct the SINQ error and resubmit the action. The next day, the HRA-7 will confirm that the action has been applied to the system.

In EmpowHR, the HRA-7 can view an employee's name, identification number, the data control screen, and various tabs, like the personal data tab, conference station tab, employment 1 tab, employment 2 tab, and benefit tabs. Duncan testified that she does not know if she has access to the disciplinary actions tab in EmpowHR because she has not processed disciplinary actions. The HRA-7 can also view personnel actions, performance documents, and adverse actions in an employee's eOPFs. The HRA-7 does not, however, actually file paperwork in an employee's OPF. The HRA-7 also has access to some components of the NFC mainframe, such as personnel actions and awards.

Although the HRA-7 enters an employee's BUS code into EmpowHR, the HRA-7 does not make any determination as to which BUS code will be applied to an individual employee. The HRA-7 does not classify employee positions and is not involved in any personnel or staffing studies. The HRA-7 is also not involved in creating or recommending personnel or NFC policies. Nor does the HRA-7 advise supervisors, managers, or employees on personnel matters. The HRA-7 also does not respond to grievances.

The HRA-7 provides technical assistance to lower-graded HR assistants. For example, Duncan testified that she assists lower-graded HR assistants based on her knowledge of established policies and procedures. If she is unable to answer an employee's questions, she may refer the employee to another HRA-7 or to a Human Resources Specialist. The HRA-7 also responds to employees in the building who request information. For example, Duncan testified that she will directly respond to a new employee's question if she is processing the employee's hiring action.

Although the HRA-7s have been informed that they will review applications received from a vacancy announcement to ensure that the applicant submitted the required documentation, Duncan testified that the HRA-7s are not currently performing this duty.

### C. Training Technician, GS-1702-07

The Training Technician, GS-1702-07 (Training Technician) position is in the Employee Support Services Office (ESSO) of the HRMS. The Training Technician reports directly to ESSO Chief James Woods. The current incumbent of the Training Technician position is Diane Gibbs.<sup>5</sup>

The Training Technician's primary duties are to support Senior Training Specialists in training and development programs, and process training requests and tuition reimbursement requests. The Training Technician processes employees' request for training by using the Authorization, Agreement and Certification of Training, SF-182 Form (SF-182). When the Training Technician receives an SF-182 from an employee, the Training Technician verifies that the form is complete and includes the required signatures from the supervisors and, if necessary, the section head. If the SF-182 is not complete, the Training Technician typically returns it to the secretary of the section that requested the training. If the SF-182 is complete, the Training Technician assigns a document number to the SF-182 and then gives it to the Training Specialist for review and signature. The Training Specialist's signature indicates that payment for the training may proceed. The Training Technician is not involved in recommending whether an employee should be approved or disapproved for training. The Training Technician also does not conduct the training.

Under policy directives, NFC can pay for services up to \$3,000. If an employee requests training that costs less than \$3,000, the Training Technician registers the employee for the class, pays the vendor, obtains a receipt of payment, returns the original SF-182 to the section that requested it, and files a copy of the SF-182 according to the document number. If an employee requests training that costs more than \$3,000 or if the vendor does not accept credit cards, the Training Technician completes a Procurement Request, AD-700 Form (AD-700), and submits the form to the Training Specialist for review. After ESSO Chief James Woods signs the form, the Training Technician files the form and submits the original AD-700 to the accounting office.

The Training Technician logs all SF-182s on the X drive, which contains human resources information. The Training Technician also has access to the mainframe, the H drive, Citrix, OPF, and eOPF. The Training Technician does not currently have access to EmpowHR. She also

does not have administrative access to AgLearn, which is a system for managing training records and activity at USDA.

The Tuition Assistance Program offers reimbursement to NFC employees who take mission-related courses. The Training Technician provides assistance and counseling to employees on the Tuition Assistance Program, and processes tuition reimbursement requests. To participate in the Tuition Assistance Program, an employee must complete and submit a tuition assistance application. As part of the application, the employee must provide information about the course that they plan to take, and the guidelines that they have to meet. The Training Technician will contact the employee if the employee's application is missing documentation or a required signature. After the employee completes the course, the employee submits to the Training Technician a request for reimbursement form, a copy of the employee's grade, and documentation showing that the employee completed and paid for the course. The Training Technician will then submit the form to accounting so that the employee can be reimbursed for the course. The supervisor of the employee requesting reimbursement, not the Training Technician, determines whether to approve the employee's request based on whether the training is related to the employee's job. The Training Technician also collects and maintains data on a spreadsheet regarding the number of tuition assistance she has processed on a monthly basis.

The Training Technician also completes the appropriate forms to request a conference room and laptop support for training. She also ensures that facilities, training materials, and equipment, such as laptops, flip charts, and projectors, are available for scheduled training activities. The Training Technician also processes requests for publications and orders courses and classes.

The Training Technician does not develop training programs or NFC policies. The Training Technician does not attend or participate in labor-management meetings, and is not involved in labor relations issues or contract negotiations. The Training Technician does not have access to labor relations material, such as grievances, grievance responses, or NFC negotiation proposals. She also does not assist management in preparing response to grievances, unfair labor practices, proposed disciplinary actions, or any other personnel matters not related to training. The Training Technician is also not involved in proposed or final disciplinary actions.

### D. Workforce Services Specialist, GS-301-09

The Workforce Services Specialist, GS-301-09 position is in the office of the ESSO Chief of the HRMS. Edward

<sup>5</sup> The parties stipulated and agreed that Diane Gibbs would be the representative employee for the Training Technician (GS-1702-07) position because she is the only employee that occupies the position.

Burrell Bush is the current incumbent of the Workforce Services Specialist, GS-301-09 position.<sup>6</sup> The primary duties of the Workforce Services Specialist are to coordinate and administer the Telework Program, the Transit Subsidy program, the Cultural Transformation Plan, and the Combined Federal Campaign (CFC).

As the Telework Program coordinator, the Workforce Services Specialist receives and processes telework applications; verifies that all requirements for telework have been met by the supervisor and the employee; and collects, tracks, and reports telework data to the OCFO. Bush also provides guidance on the Telework Program to all participants by answering questions regarding the program and ensuring that the applicant fully and accurately completes the telework paperwork.

As the Transit Subsidy program coordinator, the Workforce Services Specialist receives and processes applications for transit subsidies; coordinates the distribution of transit subsidies to employees; and collects, tracks, and reports transit subsidy data to the USDA and the Department of Transportation.

As the Cultural Transformation Plan coordinator, the Workforce Services Specialist takes notes at the Cultural Transformation town hall meetings, which are conducted by the Director for both supervisors and employees. Bush also transcribes the meeting notes and submits the transcription to the Director. The Workforce Services Specialist also advocates and coordinates employee benefit programs, which includes acting as the liaison for the Employee Assistance Program (EAP). In addition, he coordinates the CFC with all division heads and their representatives, and receives all CFC pledge forms.

The Workforce Services Specialist also initiates and implements employee computer security and role access, as assigned by management. The role access determines the type and level of access each employee has to NFC databases. Because the Workforce Services Specialist enables access to NFC databases, Bush has access to certain NFC databases, including the Remedy Incident Management System, OPF, eOPF, EmpowHR, EAP, and the mainframe, which contains employee Social Security numbers and pay information. The Workforce Services Specialist does not, however, review OPF or eOPF files. And although the Workforce Services Specialist can view disciplinary action codes in EmpowHR, the record reveals that he cannot view the details of the disciplinary action, and has not actually seen any employee disciplinary actions during the performance of his duties. In addition, the Workforce Services Specialist receives

information security requests from employees and submits the request to the ITSD.

The Workforce Services Specialist is not involved in labor-management relations. The Workforce Services Specialist does not participate in the formulation or development of NFC policies or make recommendations to management on improvements to NFC policies. He does not attend or participate in labor-management meetings, and is not involved in labor relations issues or contract negotiations. The Workforce Services Specialist does not give advice or assistance to employees on labor-relations matters. He also does not prepare responses to grievances or unfair labor practice charges. The Workforce Services Specialist also has no role in the discipline of employees and does not make recommendations for discipline to management. The Workforce Services Specialist reports directly to ESSO Chief James Woods. The ESSO Chief manages workforce services, human resource development, benefits, retirements, training development, workers' compensation, and Work/Life Services, which, among others, includes the Telework Program. The ESSO Chief develops personnel policies relating to training, development, and cultural transformation. The ESSO Chief has attended management meetings in which labor relations have been discussed, but is not involved in the formulation or the development of any labor relations policies. He does not participate in contract negotiations, or participate in the development of contract proposals for collective-bargaining with the Union. The ESSO Chief also does not consult with management regarding grievances, arbitrations, disciplinary actions, adverse actions, or unfair labor practice charges.

#### **E. Secretary, Office Automation, GS-318-05**

The Secretary, Office Automation, GS-318-05 (SOA-5) positions at issue are in the GESD of the NFC. The current incumbents of the positions at issue are Patricia Schmid, Rosa Edwina Ferrell, Tanisha Pappillion, Nicole Kimball Riley. Because each of these positions are unique in that each SOA-5 serves a different supervisor, each SOA-5 at issue provided testimony for her respective position only.

##### **i. Patricia Schmid**

Patricia Schmid is an SOA-5 in the NFC Contact Center. The NFC Contact Center is the single point of entry for customers to contact about questions regarding payroll processing, personnel actions, or Time and Attendance (T&A), through the Payroll/Personnel System (PPS), EmpowHR, and WebTA. The call center receives inquiries by phone, email, or through a web interface

<sup>6</sup> The parties stipulated that Edward Burrell Bush would provide the representative testimony for the Workforce Services Specialist, GS-301-09 position because he is the only employee that occupies the position.

called Requester Console, which allows agencies to ask questions and obtain an incident number.

Schmid reports directly to NFC Contact Center Chief Michael Campbell. Schmid assists Campbell with his daily activities, by reviewing his calendar for meetings and attachments; providing him with his calendar on a daily basis; and responding to emails.

Schmid also prepares all Requests for Personnel Action, SF-52 that are generated by the NFC Contact Center, which includes, promotions, details, suspensions, return-to-duty, name change, realignments, reassignments, recruit and fills, and establish and fills. To prepare the SF-52, Schmid accesses the IRIS to obtain the employee's personal information, including Social Security number and date of birth, and the relevant job information; inputs the information in the SF-52; attaches all relevant paperwork to the form; sends the form to HR for processing; and maintains a copy of the paperwork. Schmid creates and maintains folders for all the performance appraisals, works closely with supervisors to ensure that the performance appraisals are signed and copied, and prepares cash awards.

As a T&A Timekeeper, Schmid ensures that employees complete their T&A properly, and can occasionally validate employee T&A forms when an employee is out of the office on sick leave. When NFC implemented WebTA, Schmid also provided training to employees on how to input their time and attendance in the system. Schmid has read-only access to the IRIS 100, 500, and 600 screens, and the PINQ, but does not manipulate information in these systems because that is an HR function.

Schmid provides administrative support to organization personnel. Schmid prepares correspondence, inputs travel authorizations and vouchers, handles paperwork for 1106s for security access, maintains administration records, and orders office supplies with her government-issued purchase card. She also ensures employees that participate in AgLearn training provide her with a certificate of completion and is occasionally asked to set up the diversity training conducted by the Associate Director of the Payroll/Personnel Operations Directorate Dawn Hughes-Morris.

As the NFC Contact Center Chief, Campbell oversees the Operations and Support Services subdivisions of the branch, which work together to ensure that the necessary customer support is in place for the payroll systems. He reports directly to Dawn Hughes-Morris. Campbell is a first- and second-level supervisor and prepares disciplinary actions, including letters of reprimand, suspension letters, and counseling letters. Schmid is only privy to disciplinary actions because she prints the

disciplinary action paperwork, prepares it for signature, and files it. Schmid does not draft proposed or final disciplinary actions. Schmid testified that the only disciplinary action that she has prepared is a suspension for an SF-52, and that she is not involved in other disciplinary actions, which involve HR.

Campbell testified that he is asked by the Associate Director to assist in preparing responses to union proposals for collective bargaining negotiations. Campbell also responds to EEO complaints and grievances when he is named in them. Schmid's involvement in these matters is incidental. In preparation for management meetings over the collective bargaining negotiations, Schmid may be asked to print Campbell's calendar and attachments and would thereby become exposed to the information in those attachments, which Campbell testified could be strategic information or predefined answers to questions.

Schmid does not assist in responding to grievances, unfair labor practice charges, negotiation demands or proposals. Schmid also does not attend management meetings regarding collective-bargaining agreement negotiation strategies or review negotiation proposals. Schmid does not provide advice or assistance to supervisors or management regarding labor relations or personnel matters.

## ii. Rosa Edwina Ferrell

Rosa Edwina Ferrell is an SOA-5 in the Human Resources Applications Branch. Ferrell reports to Acting Branch Chief William Dantagnan. While she is assigned to the Human Resources Applications Branch, she performs secretarial duties for all three HRLOB branches: Operations Branch, Implementation Branch, and Human Resources Applications Branch. Ferrell assists Dantagnan by printing his calendar and attachments, processing personnel actions, and filling in for the division secretary as needed. She does not have access to Dantagnan's email, nor does she view his attachments or individual appointments in his calendar unless she is specifically asked to print them out and place them in his inbox.

Ferrell prepares SF-52 forms, primarily for realignments, reassignments, temporary promotions, change of grade when a temporary promotion is finished, career ladder promotions, resignations, and recruitment and hiring actions. She also has the capability of preparing the forms for terminations, though she has not been asked to do so, nor has she processed any type of disciplinary action. She does not type performance appraisals, but is sometimes asked to make copies of the appraisals for distribution to the employee, the supervisor, and HR.

Ferrell is the T&A Timekeeper for the Operations and Implementation Branches. As such, Ferrell has the same level of WebTA access as other timekeepers and can view the time and attendance for everyone in HRLOB. Because of her access to WebTA as well as IRIS, she can view employees' personal information such as names, Social Security numbers, addresses, and salaries in addition to other information, including employees' leave status, AWOL status, and other disciplinary actions such as a suspension or a performance improvement plan.

In his capacity as a Supervisory IT Specialist and Acting Branch Chief, Dantagnan is responsible for the development of the EmpowHR application. Dantagnan is not responsible for establishing or for developing labor relations policies at the NFC. He is a first- and second-level supervisor; as such, he implements HR guidance. He has not been involved in preparing possible proposals for collective bargaining agreement negotiations, nor has he taken part in any negotiations with the Union. He has never been either a first-level or a second-level responder to any grievance.

When the division secretary is not available, Ferrell attends management meetings. During these meetings, she takes meeting notes, types them up after the end of the meeting, submits them for review, and, if necessary, disseminates the notes. Ferrell does not assist in responding to grievances, unfair labor practice charges, negotiation demands or proposals. Ferrell also does not attend management meetings regarding collective-bargaining agreement negotiation strategies or review negotiation proposals. Ferrell does not provide advice or assistance to supervisors or management regarding labor relations or personnel matters.

### iii. **Tanisha Pappillion**

Tanisha Pappillion is an SOA-5 in the NFC Payroll Processing Branch. She provided testimony for her position only. The Payroll Processing Branch is responsible for processing T&A for over 650,000 employees of the NFC and its client agencies. Payroll is processed using an automatic system, but the NFC is also required to process some T&A manually. At the time of the hearing, Pappillion had only held her position for approximately 2.5 months.

Pappillion reports directly to NFC Payroll Processing Branch Chief Helen Young. As a SOA-5, her daily duties include opening the branch mail and distributing it to various sections for processing, scheduling appointments and prioritizing tasks for Young, maintaining files on Young's employees, typing award letters, scheduling travel for Young and other employees, ordering supplies, and answering the telephone for Young if she is not present. Pappillion does not have access to Young's

email, but was anticipated to have access within a month of the hearing. She is expected to use this email access to notify Young of any urgent matters that arise as well as tracking due dates on Young's tasks.

Pappillion often opens mail that contains checks. When she receives a check, she logs it and makes a copy of the check. She then delivers the check to the Administrative Billings and Collections area, has the recipient sign the copy, and then files the copy of the check in a locked drawer.

As Young's secretary, Pappillion maintains files containing employees' personal information, including names, phone numbers, emergency contact information, and home addresses. These files also contain performance appraisals and leave requests, as well as SF-52s and related letters. These files are password-protected in their electronic form, and the hard copies are stored in a locked drawer. Pappillion also maintains "red sheets," which are solicitations for feedback on policies and procedures at the NFC. She is not responsible for timekeeping, but it was anticipated that she would be in the future.

Pappillion signed a confidentiality agreement as part of her employment as an SOA-5 working under Young. Young testified, however, that all of her employees have signed this confidentiality agreement, including current bargaining unit employees.

Pappillion has not been asked to process any disciplinary actions. Young testified that she typically works with Employee Relations for disciplinary actions and does not rely on her secretary. Pappillion does type up the recommendations for various employee awards in the Payroll Processing Branch, and she will be typing Young's recommendations on career ladder promotions as well.

As a third-line supervisor, Young does not participate in any grievance procedures until later in the process, usually around the third step. Young testified that she usually prepares grievance responses herself if they are submitted by email, but if they are submitted through conventional means then she has her secretary type her responses. Young does not have any responsibility for establishing personnel or labor relations policies for the NFC, other than commenting on proposed policies which could affect the Payroll Processing Branch. She does not attend labor-management meetings for the NFC, nor does she attend any management meetings where sensitive labor-relations matters are discussed or deliberated. Although she has responded to EEO complaints, Young has not dealt with any MSPB actions.

Young attends weekly Configuration Control Board meetings of the various branch chiefs within the GESD.

During these meetings, the branch chiefs primarily discuss payroll schedule releases and projects that are going to be implemented. Pappillion does not attend these meetings, but she does notify Young as to when these meetings are and prepares her with the information she needs for the meeting.

Pappillion does not assist in responding to grievances, unfair labor practice charges, negotiation demands or proposals. Pappillion also does not attend management meetings regarding collective-bargaining agreement negotiation strategies or review negotiation proposals. Pappillion does not provide advice or assistance to supervisors or management regarding labor relations or personnel matters.

#### iv. **Nicole Kimball Riley**

Nicole Kimball Riley is a SOA-5 in the NFC Payroll Applications Systems Branch. She provided testimony for her position only. The NFC Payroll Applications Systems Branch consists of a group of software developers and is responsible for coding and developing the applications used in the government-wide payroll systems.

Riley reports directly to Payroll Applications Systems Branch Chief Philip Guarino and assists him in his daily duties by monitoring his calendar, printing his calendar attachments on request, and responding to his emails.

As an SOA-5, her daily duties include monitoring Guarino's calendar, answering his emails, scheduling interviews with potential new hires, entering time on the WebTA system if an employee is out on sick leave, processing SF-52s and software problem reports, making copies of red sheets and gathering responses, and maintaining personnel files. Depending on the level of staffing, Riley may also perform these duties for four other branches in her directorate: Personnel Applications Systems, Web Applications Systems, Administrative Applications Systems, and Systems Requirements.

Riley prepares SF-52s for Guarino, mostly for recruit and fill. She has also prepared these for retirements, promotions, vacancies, suspensions, and terminations. She testified that in the six years she has been an SOA-5, she has processed SF-52s for two suspensions, and both were before she began working for Guarino. Riley also maintains OPFs, which contain employees' personal information, their within-grade increases, performance standards, performance appraisals, and any performance award documentation. She fills out employee information on the performance appraisal forms; the Branch Chief fills out the evaluation portion. Riley then makes copies of performance appraisals and distributes them to the appropriate employees.

In his capacity as Branch Chief of the Payroll Systems Applications Branch, Guarino is not responsible for establishing personnel or labor relations policies. He has not been involved in contract negotiations and has never been asked to develop contract proposals for collective bargaining agreement negotiations with the Union. Since he has been a Branch Chief, no grievances have been filed under the collective bargaining agreement. Being a first-level supervisor for Riley and four supervisors in his branch, there is a chance he would be a second-level responder if a grievance were filed.

Riley has not been involved with typing responses to proposed disciplinary actions. Riley does not assist in responding to grievances, unfair labor practice charges, negotiation demands or proposals. Riley also does not attend management meetings regarding collective-bargaining agreement negotiation strategies or review negotiation proposals. Riley does not provide advice or assistance to supervisors or management regarding labor relations or personnel matters.

#### F. **Secretary, Office Automation, GS-318-06**

Dorcus Ellis Whigham<sup>7</sup> is the current incumbent of the Secretary, Office Automation, GS-318-06 (SOA-6) position in the ITSD. There are three directorates in this division: Technical Services, Operations, and IT Security. The IT Security directorate is primarily charged with ensuring that the NFC's IT infrastructure is secure.

Whigham reports directly to the Associate Director of IT Security, Ivan Jackson. In addition to being the Associate Director for IT Security, Jackson is also the System Security Program Manager and the Privacy Officer for the NFC. As Jackson's secretary, Whigham manages his calendar and has access to all of his scheduled activity. She schedules his appointments and responds to appointment requests on his behalf. Whigham is occasionally asked to print documents attached to Jackson's schedule.

Whigham processes SF-52s for vacancies, promotions, retirements, reassignments, and name changes. Because she processes these forms, she has access to confidential employee information, such as names, addresses, and Social Security numbers. She does not, however, maintain files containing this information. Whigham maintains and tracks the schedules of people within her directorate, particularly their telework schedules and

<sup>7</sup> The parties stipulated and agreed that Dorcus Ellis Whigham would provide the representative testimony for the Secretary, Office Automation, GS-318-06 position because she is the only employee that occupies the position.

alternative work schedules. Jackson testified that it was possible that he would possibly ask Whigham to type up award recommendations, but not promotion recommendations.

As an Associate Director, Jackson holds weekly staff meetings, during which Whigham takes notes. Whigham does not attend Jackson's meetings with upper management. Jackson is a Responsible Management Official (RMO) for EEO complaints and he has responded to grievances, but does not rely on Whigham to type his responses.

Jackson does not deal with labor-management relations policies and plans. Jackson does not attend meetings in which labor relations issues are discussed, nor has he participated in meetings where contract negotiations, strategies, or proposals are discussed. When he has been named in the chain of command in a grievance or EEO action, he has been involved in negotiations with the Union or in meetings with labor or employee relations dealing with how to move forward, but his secretary has never been privy to that information. Jackson has not responded to unfair labor practice charges, nor has he bargained with the Union.

Whigham has not processed any disciplinary actions such as AWOL or suspension actions, nor does she have access to this information. When Jackson issues this type of discipline, he types it himself and stores it in his office with the employee files. Whigham does not assist in responding to grievances, unfair labor practice charges, negotiation demands or proposals. Whigham also does not attend management meetings regarding collective-bargaining agreement negotiation strategies or review negotiation proposals. Whigham does not provide advice or assistance to supervisors or management regarding labor relations or personnel matters.

#### **G. Secretary, Office Automation, GS-318-07**

The current incumbents of the Secretary, Office Automation, GS-318-07 (SOA-7) position are Anita Bronakowski; Rhonda Wingerter Hughes; Elizabeth F. Allen; David Anthony De La Fuente; Ruth Ann Golson; Lisa Lueders Monnier; Lisa Marie Natal; Linda Laine Perez; Ernel Mullet Robin; Kathleen Burtchaell Thibodeaux; Richard Glynn Turner; and Celita Ann Wolfe.<sup>8</sup>

<sup>8</sup> Because the parties stipulated that Anita Bronakowski and Rhonda Wingerter Hughes would provide the representative testimony for the Secretary, Office Automation, GS-318-07 position, I will use the testimony of Bronakowski and Hughes to also determine the status of Elizabeth F. Allen; David Anthony De La Fuente; Ruth Ann Golson; Lisa Lueders Monnier; Lisa Marie Natal; Linda Laine Perez; Ernel Mullet

The SOA-7 reports directly to a management official, such as a Branch Chief or an Associate Director. Anita Bronakowski reports directly to GESD Payroll/Personnel Operations Program Manager Dawn Hughes-Morris, while Rhonda Hughes reports directly to Risk Management Office Chief John Hemstreet. The SOA-7 is charged with scheduling the supervisor's appointments, monitoring the supervisor's calendar, answering phones, and processing documentation. The SOA-7 is given access to his or her direct supervisor's calendar, in which the SOA-7 can view the content of scheduled meetings, print any attachments, and, if necessary, add an email as an attachment to an appointment. Depending on the supervisor, the SOA-7 may be asked to monitor the supervisor's email. The SOA-7 may also be asked to type correspondence for the supervisor's signature.

The SOA-7 processes SF-52s for all types of personnel actions, including suspensions or terminations should they occur. The SOA-7 is not involved with preparing grievance responses, EEO responses, or responses to unfair labor practice charges. The SOA-7 does not type disciplinary recommendations, though the SOA-7 may be asked to review a disciplinary document for grammar. The SOA-7 does not type negotiation documents.

The SOA-7 maintains personnel files that contain privacy-protected information and has access to employee disciplinary and grievance files. The SOA-7 may also perform timekeeping functions. Hughes testified that she is not a T&A Timekeeper, while Hughes-Morris testified that Bronakowski oversees the directorate's timekeepers and has access to directorate employees' T&A. Hughes-Morris also testified that Bronakowski may occasionally have to input employee's T&A or AWOL status.

The SOA-7 does not work under someone involved in labor-management policies and plans. The SOA-7's supervisor does not attend meetings in which labor relations issues are discussed, nor does the SOA-7's supervisor negotiate collective bargaining agreements with the Union. Hemstreet testified that in his capacity as a Supervisory Auditor in Risk Management, most of his duties revolve around security. He has regular meetings with the Director and Deputy Director as well as meetings with senior staff, but these are not meetings in which labor relations policies or procedures are discussed. He also testified that he is not involved in either responding to EEO complaints or formulating EEO policies. Whenever the red sheets come through the office, Hemstreet has Hughes collect the responses.

Robin; Kathleen Burtchaell Thibodeaux; Richard Glynn Turner; and Celita Ann Wolfe.

Hughes-Morris, on the other hand, has had some involvement with labor-management relations in her capacity as the Payroll/Personnel Operations Directorate Program Manager. She testified that as the Program Manager for the directorate, she is the approving official on suspensions and terminations, and that she is frequently involved in EEO complaints, but was only named as an RMO in one complaint. She also testified that she occasionally interprets unclear HR policies to make them uniform for her directorate.

Hughes-Morris has assisted in some labor-management negotiations, but she has not assisted in negotiating collective bargaining agreements with the Union in her current position. Bronakowski testified that she has assisted her supervisor, Dawn Hughes-Morris, with labor-management matters approximately twice. In the first instance, management was preparing for negotiations with the Union over the reassignment of Terrence Johns, a bargaining unit employee and Union President. The second time, Bronakowski attended a meeting between the Union and management, during which scheduling negotiations over the consolidation of the Help Desk were discussed. She testified that she kept email trails as a record for Hughes-Morris in preparation for the negotiations.

The SOA-7 does not assist in responding to grievances, unfair labor practice charges, negotiation demands or proposals. The SOA-7 also does not attend management meetings regarding collective-bargaining agreement negotiation strategies or review negotiation proposals. The SOA-7 does not provide advice or assistance to supervisors or management regarding labor relations or personnel matters.

#### **H. Training Systems Specialist, GS-301-11**

The Training Systems Specialist, GS-301-11 (TSS-11) position is in the ESSO of the HRMS. The TSS-11 reports directly to ESSO Chief James Woods. The current incumbent of the TSS-11 position is Donna Gilbert.<sup>9</sup> The primary duties of the TSS-11 are to manage the AgLearn Learning Management System, and support NFC's training and development program.

AgLearn is a virtual learning system specifically designed for USDA to manage training activity and records. USDA owns the AgLearn system. The OCFO, which includes NFC and headquarters in D.C., is a user

of AgLearn. As the lead administrator for AgLearn for OCFO, the TSS-11 manages AgLearn and is the agency's subject matter expert for the system. Each USDA organization also has its own AgLearn administrator. Team AgLearn is a separate entity that USDA pays to operate the system for USDA, such as handle software deficiencies.

To begin using AgLearn, an employee must obtain a USDA eAuthentication account so that the employee can create a login and password. Once an employee has registered an account with AgLearn, the employee can search for, access, request, and enroll in online training opportunities and courses. The type of courses available on AgLearn include, among others, courses on foreign language, writing, project management, leadership, communications, time management, and organization. AgLearn also tracks and records training courses taken by users. AgLearn does not contain or record sensitive employee data.

The majority of the TSS-11's duties relate to managing the AgLearn system. As the AgLearn administrator, the TSS-11 verifies that courses are properly deployed through the system, ensures that users experience minimal errors or issues with the system, and confirms that users comply with mandatory training requirements. The TSS-11 resolves technical issues that occur in AgLearn. The TSS-11 also attends meetings with Team AgLearn to discuss and resolve technical problems with the system, make decisions on how to efficiently manage the system, and discuss any changes to the system. The TSS-11 also communicates with users through the AgLearn help desk, which is a resource that users can access to obtain information about basic user errors or issues that they may face in the system. To ensure that users complete mandatory training courses, the TSS-11 communicates with other USDA components to identify users who have not completed mandatory courses. The TSS-11 then contacts employees through AgLearn, and in some cases their supervisors, to notify them that they have failed to complete a mandatory course.

The TSS-11 is the AgLearn lead for the Financial Management Modernization Information System (FMMI) project, which is owned by OCFO. FMMI is the accounting system that components of USDA use to handle their accounting functions and financial transactions. The TSS-11 is involved with the FMMI project because many FMMI courses are deployed through the AgLearn system. The TSS-11 is the point-of-contact for the deployment of FMMI courses, the decisions associated with those courses, and the guidance provided for those courses. She also coordinates and collaborates on the FMMI project with contractors who provide the FMMI service; with headquarters, which

<sup>9</sup> The parties stipulated and agreed that Donna Gilbert would be the representative employee for the Training Systems Specialist, GS-301-11 position because she is the only employee that occupies the position.

oversees the contractors; and with other individuals in various USDA components.

Although there are agency directives and policies that discuss AgLearn and what the AgLearn administrators do, ESSO Chief Woods testified that the TSS-11 makes decisions concerning general principles or plans or courses of action regarding AgLearn based on her knowledge as a subject matter expert for the AgLearn system. Gilbert also testified that, although in some instances there might be a policy that exists regarding a matter relating to AgLearn, in most instances there is not. In those instances, Gilbert uses her independent judgment to make a decision that will impact the AgLearn system. For example, Gilbert testified that she used her independent judgment when she determined that OCFO would maintain control of the FMMI project and the actions associated with it. According to Gilbert, this decision not only impacted how users could access FMMI courses, but also impacted how and if agency leads could access and make changes to FMMI courses.

The TSS-11 often makes decisions or takes action regarding AgLearn without prior approval from her immediate supervisor. ESSO Chief Woods testified that when making changes to AgLearn, the TSS-11 will reach a consensus regarding the matter with different agency leads, will implement the action in AgLearn, and then will inform him of the action afterwards. Gilbert also testified that she usually makes decisions regarding AgLearn and then informs her supervisor of her action. These decisions do not require higher agency approval and are accepted about 98% of the time because she is given deference to make these decisions based on her expertise with respect to AgLearn. Gilbert testified that she usually submits a written recommendation or approval request so that he is aware of the actions she has taken in her capacity as an AgLearn administrator.

The TSS-11 also creates standard operating procedures concerning AgLearn. Gilbert testified that she has been developing a standard operating procedure regarding the implementation of the electronic version of the SF-182 for AgLearn. Gilbert has also been developing a standard operating procedure regarding individual development plans (IDPs), which is intended to help AgLearn users organize their career development and training opportunities to improve career growth.

The TSS-11 also supports NFC's training and development program. The TSS-11 develops, writes, and coordinates training documents and materials, including course content, visual charts, videotapes, and slides. Gilbert has developed training programs for IDPs, and assists other departments with the development of IDPs and electronic IDPs. Gilbert has also developed annual

suspension training and schedule offerings that were deployed through AgLearn for the FMMI project.

The TSS-11 also conducts training. Gilbert has conducted voluntary training for supervisors and employees as part of the Agency's survival skills series, which covers various facets of the organization, the HR staffing offices, and the AgLearn system. She has also conducted training for supervisors about the talent profile and succession planning, and conducted new hire orientation regarding AgLearn. In addition to conducting training, the TSS-11 assists in the setup and the development of training by ensuring that users are equipped with the tools and resources they need to effectively participate in training programs.

Because there are usually metrics that must be reported to USDA regarding training curricula that have been assigned to users, the TSS-11 also prepares training status reports, exhibits, memoranda, and training desk procedures to demonstrate and help determine what impact AgLearn training and curricula has on users. In addition, the TSS-11 provides guidance and career counseling regarding current and future training requirements.

The TSS-11 can approve or disapprove certain training in the AgLearn system based on what the objective of the course is for users. The TSS-11 also provides guidance, counseling, and information to management officials regarding training for employees, including the type of training, the syllabus, and any prerequisites they may need before they can actually take the training.

The TSS-11 also supports Terry Peoples in her role as Training Officer GS-12. For example, the TSS-11 will assist the Training Officer by providing guidance and information about training activities to users, and will handle matters that require authorization, funding, and approval through an SF-182.

The TSS-11 attends meetings with supervisors and managers. Gilbert testified that she has attended weekly meetings with her manager, senior management, and the Deloitte team regarding the implementation of the OCFO succession plan. In these meetings, the participants discussed the types of plans or projects that could be offered to users. Gilbert attends the meetings because she is the subject matter expert for AgLearn and for training activities associated with employee development, succession planning, talent management, and career enhancement. Gilbert also liaisons between the agency and Deloitte by providing Deloitte with data, preparing sessions, conducting training for supervisors and managers on how to complete the talent profile and the succession plan, and gathering talent profiles. Although there are labor relations courses in AgLearn, the TSS-11

does not handle or conduct labor relations training. The TSS-11 also does not assist the agency with grievances or disciplinary actions.

### III. Analysis and Conclusions

The Authority is responsible for determining the appropriateness of units for labor organization under Section 7112 of the Statute.<sup>10</sup> In Section 7112(b) of the Statute, Congress precluded the Authority from finding appropriate any unit that included certain employees because their inclusion in the bargaining unit would create a conflict of interest between the employees' work duties and unit membership.<sup>11</sup> Of relevance to this case, Section 7112(b)(3) of the Statute excludes from a bargaining unit any employee engaged in personnel work in other than a purely clerical capacity; Section 7112(b)(2) of the Statute excludes from a bargaining unit any confidential employee; and Section 7112(b)(1) of the Statute excludes from a bargaining unit any management official or supervisor.

#### A. Employee Engaged in Personnel Work in Other than a Purely Clerical Capacity

Under Section 7112(b)(3) of the Statute, a unit is not appropriate if it includes an employee engaged in personnel work in other than a purely clerical capacity. For a position to be excluded under Section 7112(b)(3) of the Statute, it must be determined that: (1) the character and extent of involvement of the incumbent is more than clerical in nature; and (2) the duties of the position in question are not performed in a routine manner, or are of such a nature as to create a conflict of interest between the incumbent's union affiliation and job duties.<sup>12</sup> A conflict of interest between job duties and union affiliation may be created when an employee's duties require the employee to act in a manner adverse to bargaining unit interests, such as recommending appropriate organizational structure and staffing levels.<sup>13</sup>

In addition, to be excluded under Section 7112(b)(3) of the Statute, the incumbent must exercise independent

judgment and discretion in carrying out her duties.<sup>14</sup> For example, an employee who exercises independent judgment and discretion in initiating personnel actions or making recommendations to management on personnel actions is engaged in personnel work in other than a purely clerical capacity.<sup>15</sup> By contrast, an employee whose duties only require that she record and process completed personnel actions, maintain personnel files, or screen personnel actions for technical sufficiency, is not excluded under Section 7112(b)(3) of the Statute because her involvement in personnel work is in a clerical capacity.<sup>16</sup>

#### i. Human Resources Assistant, GS-203-06

Applying the relevant Authority criteria, I conclude that the record fails to establish that Kelisha Marie Polk, who occupies the HRA-6 position, is an employee engaged in personnel work in other than a purely clerical capacity under Section 7112(b)(3) of the Statute. The record indicates that the HRA-6 performs her duties in a routine manner, and in accordance with established policies and procedures, as described in manuals and instructions which are available for her review. The HRA-6 is not required to exercise independent judgment or discretion in carrying out her duties. For example, the record demonstrates that the HRA-6's primary function is to process previously decided personnel actions by entering them into EmpowHR. The HRA-6 does not make personnel action decisions, does not advise supervisors or managers on personnel matters, and is not involved in the creation of personnel policies or NFC policies. Accordingly, I conclude that Kelisha Marie Polk, in her position as Human Resources Assistant, GS-203-06, is not an employee engaged in personnel work in other than a purely clerical capacity, and thus should be included in the bargaining unit.

#### ii. Human Resources Assistant, Office Automation, GS-203-07

Applying the relevant Authority criteria, the facts do not establish that the employees who occupy the HRA-7 position are employees who are engaged in personnel work in other than a purely clerical capacity under Section 7112(b)(3) of the Statute. The record demonstrates that the HRA-7s' primary function is to process previously decided personnel actions by entering them into EmpowHR. The record indicates that the

<sup>10</sup> *Nat'l Assn. of Gov't Employees, Local 5000, AFL-CIO-CLC*, 52 FLRA 1068, 1074 (1997).

<sup>11</sup> 5 U.S.C. § 7112.

<sup>12</sup> See *North Central Civilian Pers. Operation Ctr.*, 59 FLRA 304, 306 (2003); *Dep't of the Treasury, Internal Revenue Serv., Wash., D.C. and Internal Revenue Serv., Cincinnati District, Cincinnati, Oh.*, 36 FLRA 138, 144 (1990); *U.S. Dep't of the Army, Headquarters, 101st Airborne Division, Fort Campbell, Ky.*, 36 FLRA 598, 602 (1990).

<sup>13</sup> *Fed. Deposit Ins. Corp., S.F., Cal.*, 49 FLRA 1598, 1602 (1994).

<sup>14</sup> See, e.g., *USDA Forest Serv., Albuquerque Serv. Center, Albuquerque, N.M.*, 64 FLRA 239, 242 (2009).

<sup>15</sup> See *U.S. Dep't of Housing and Urban Dev.*, 34 FLRA 207, 214 (1990).

<sup>16</sup> See *U.S. Naval Station, Panama*, 7 FLRA 489, 493 (1981) (*Panama*).

HRA-7s perform these duties in a routine manner, and in accordance with established policies and procedures, as described in manuals and instructions which are available for their review. Unlike the positions at issue in *Dep't of the Army*,<sup>17</sup> the HRA-7s are not required to exercise independent judgment or discretion in carrying out their duties. Indeed, the HRA-7s do not make personnel action decisions, do not make any determination as to which BUS code will be applied to an individual employee, and do not advise supervisors or managers on personnel matters. Accordingly, I conclude that Sierra Nicole Duncan, Jenny Mervich Schmiderer and Duanetta Ruth Tate, in their positions as Human Resources Assistants, Office Automation, GS-203-07, are not employees engaged in personnel work in other than a purely clerical capacity, and thus should be included in the bargaining unit.

### iii. Training Technician, GS-1702-07<sup>18</sup>

Applying the relevant Authority criteria, I conclude that the record fails to establish that Diane Gibbs, who occupies the Training Technician position, is an employee engaged in personnel work in other than a purely clerical capacity under Section 7112(b)(3) of the Statute. The record demonstrates that the Training Technician's primary function is to verify that all criteria has been met for an employee to be approved for training or receive tuition reimbursement, and to ensure that facilities, training materials, and equipment are available for scheduled training activities. The record indicates that the Training Technician performs these duties in a routine manner, and in accordance with established policies and procedures, as described in manuals and instructions that are available for her review. The Training Technician is not required to exercise independent judgment or discretion in carrying out her duties. Indeed, the Training Technician does not develop training programs, does not have access to labor-relations material, does not attend or participate in labor-management meetings, and is not involved in labor-relations issues. Accordingly, I conclude that Diane Gibbs, in her position as Training Technician, GS-1702-07, is not an employee engaged in personnel work in other than a purely clerical capacity, and thus should be included in the bargaining unit.

<sup>17</sup> *Dep't of the Army*, 36 FLRA at 602 (holding that the Management Analysts were excluded under Section 7112(b)(3) of the Statute because in performing their duties that analysts exercised independent judgment to determine the appropriateness of the agency's organizational structure, staffing, method of operations, and capital investments).

<sup>18</sup> The issues set for hearing included whether the Training Technician position is also a confidential employee. Because NFC did not address this in the post-hearing brief, I consider this issue abandoned.

### B. Confidential Employee

Under § 7112(b)(2), a unit is not appropriate if it includes confidential employees. To exclude an employee from a bargaining unit on the basis that the employee is a "confidential" employee, the employee must be one who "who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations."<sup>19</sup> Under the Authority's two-part test, an employee is a "confidential" employee if: (1) there is evidence of a confidential working relationship between the employee and the supervisor or manager; and (2) the supervisor or manager is significantly involved in labor-management relations.<sup>20</sup> Both factors must be present for an employee to be considered "confidential."<sup>21</sup> Thus, a determination of confidential status is dependent upon the work performed by the individual with whom the employee works.

The Authority will exclude as a confidential employee any individual who actually formulates or effectuates management policies in the field of labor-management relations.<sup>22</sup> An employee's mere access to labor-relations material does not justify unit exclusion.<sup>23</sup> The Authority has also found that the following types of responsibilities are aspects of formulating or effectuating management policies in labor relations:

- a. developing or advising management on negotiating positions or proposals;<sup>24</sup>
- b. preparing arbitration cases for hearing;<sup>25</sup>
- c. consulting with management or making decisions regarding the handling of grievances, arbitrations, disciplinary actions, or unfair labor practice charges; and
- d. engaging in partnership activities that include the formulation and effectuation of labor relations policies.<sup>26</sup>

<sup>19</sup> 5 U.S.C. § 7103(a)(13).

<sup>20</sup> See *U.S. Dep't. of Labor, Office of the Solicitor, Arlington Field Office*, 37 FLRA 1371, 1377 (1990).

<sup>21</sup> See *U.S. Army Plant Representative Office, Mesa, Ariz.*, 35 FLRA 181, 186 (1990).

<sup>22</sup> *U.S. Dep't. of Labor*, 37 FLRA at 1377.

<sup>23</sup> *Red River Army Depot, Texarkana, Tex.*, 2 FLRA 659, 661 (1980).

<sup>24</sup> *U.S. Dep't of Justice, Fed. Bureau of Prisons, U.S. Penitentiary, Marion, Ill.*, 55 FLRA 1243, 1247 (2000) (*USP Marion*).

<sup>25</sup> *Id.*

<sup>26</sup> See *USP Marion*, 55 FLRA at 1243 n.5; *U.S. Dep't. of Transp., Fed. Aviation Admin., Standiford Air Traffic Control Tower, Louisville, Ky.*, 53 FLRA 312, 319 (1997) (collective bargaining may occur in a variety of ways, including the use of collaborative or partnership methods).

**i. Workforce Services Specialist, GS-301-09**

Applying the Authority's two-part test, I conclude that the record fails to establish that Edward Burrell Bush, who occupies the Workforce Services Specialist, GS-301-09 position, is a confidential employee under Section 7112(b)(2) of the Statute. The Workforce Services Specialist, GS-301-09, does not act in a confidential capacity to an individual who formulates or effectuates management policies in the field of labor-management relations. The ESSO Chief is not significantly involved in labor-management relations. The ESSO Chief does not formulate or develop management policy in the field of labor-management relations and does not consult with management regarding grievances, arbitrations, disciplinary actions, or unfair labor practice charges. In addition, the ESSO Chief does not participate in contract negotiations or the development of contract proposals for collective-bargaining with the Union. The Workforce Services Specialist, GS-301-09, is also not involved in any management discussions concerning labor-relations matters and does not participate in the formulation or development of NFC labor-relations policies.

The Workforce Services Specialist has access to confidential information contained in databases such as OPF, eOPF, EmpowHR, and the NFC mainframe; however, Bush testified that he does not review employee OPF or eOPF files, and has not seen any details regarding employee disciplinary actions in EmpowHR. Thus, in the absence of evidence of an integral relationship between the duties of the Workforce Services Specialist and the duties of the ESSO Chief in the field of labor-management relations, the mere access to labor relations materials is not sufficient to establish confidential capacity within the meaning of the Statute.<sup>27</sup> Accordingly, I conclude that Edward Burrell Bush, in his position as Workforce Services Specialist, GS-301-09, is not a confidential employee and should be included in the bargaining unit.

**ii. Secretary, Office Automation, GS-318-05**

The record fails to establish that Patricia Schmid, Rose Ferrell, Tanisha Pappillion, and Nicole Riley, who occupy the Secretary, Office Automation, GS-318-05, position are confidential employees under Section 7112(b)(2) of the Statute. Because each SOA-5

testified about her individual position, I will address each in turn.

**a. Patricia Schmid**

Applying the Authority's two-part test, I conclude that the evidence fails to establish that Patricia Schmid is a confidential employee to NFC Contact Center Chief Michael Campbell under Section 7112(b)(2) of the Statute. Campbell is not significantly involved in labor-management relations. Campbell does not formulate or develop management policy in the field of labor-management relations and does not consult with management regarding grievances, arbitrations, disciplinary actions, or unfair labor practice charges. In addition, Campbell does not participate in contract negotiations or the development of contract proposals for collective bargaining with the Union.

Schmid does not draft, develop, or create NFC policies or procedures. Schmid does not participate in or attend management meetings where there may be discussions concerning labor relation issues or contract negotiations. Schmid does not give advice or assistance to employees or supervisors on labor-relations matters. Schmid does not prepare labor relations material, such as grievances, grievance responses, responses to negation demands or NFC negotiation proposals. Schmid also does not assist management in preparing response to grievances, unfair labor practice charges, and proposed or final disciplinary actions. Other than one occasion of processing an SF-52 for a suspension, Schmid has no role in the discipline of employees. She does not make recommendations for discipline to management.

Schmid has access to confidential information through her duties as a Timekeeper and she testified that she prepares SF-52s using employees' personal identification information obtained from databases such as IRIS or WebTA. Thus, in the absence of evidence of an integral relationship between Schmid's duties and Campbell's duties in the field of labor-management relations, here mere access to confidential material is not sufficient to establish a confidential capacity within the meaning of the Statute. Accordingly, I conclude that Patricia Schmid, in her position as Secretary, Office Automation, GS-318-05, is not a confidential employee within the meaning of the Statute and should be included in the bargaining unit.

**b. Rose Edwina Ferrell**

Applying the Authority's two-part test, I conclude that the evidence fails to establish that Rose Edwina Ferrell is a confidential employee to Acting Branch Chief William Dantagnan under Section 7112(b)(2) of the Statute. Dantagnan is not significantly involved in

<sup>27</sup> See *Soc. Sec. Admin.*, 56 FLRA 1015, 1018 (2000) (holding that the Legal Assistants' access to confidential documents regarding cases was not sufficient to establish confidential capacity within the meaning of the Statute).

labor-management relations. Dantagnan does not formulate or develop management policy in the field of labor-management relations and does not consult with management regarding grievances, arbitrations, disciplinary actions, or unfair labor practice charges. In addition, Dantagnan does not participate in contract negotiations or the development of contract proposals for collective bargaining with the Union.

Ferrell does not draft, develop, or create NFC policies or procedures. Ferrell does not participate in or attend management meetings where there may be discussions concerning labor relation issues or contract negotiations. Ferrell does not give advice or assistance to employees or supervisors on labor-relations matters. Ferrell does not prepare labor relations material, such as grievances, grievance responses, responses to negotiation demands or NFC negotiation proposals. Ferrell also does not assist management in preparing response to grievances, unfair labor practice charges, and proposed or final disciplinary actions. Ferrell has no role in the discipline of employees, nor does she make recommendations for discipline to management.

Ferrell has access to confidential information through her duties as a Timekeeper and she testified that she prepares SF-52s, but has not for a suspension or a termination. Thus, in the absence of evidence of an integral relationship between Ferrell's duties and Dantagnan's duties in the field of labor-management relations, Ferrell's mere access to confidential information is not sufficient to establish a confidential capacity within the meaning of the Statute. Accordingly, I conclude that Rose Edwina Ferrell, in her position as Secretary, Office Automation, GS-318-05, is not a confidential employee within the meaning of the Statute and should be included in the bargaining unit.

**c. Tanisha Pappillion**

Applying the Authority's two-part test, I conclude that the evidence fails to establish that Tanisha Pappillion is a confidential employee to Payroll Processing Branch Chief Helen Young under Section 7112(b)(2) of the Statute. Young is not significantly involved in labor-management relations. Young does not formulate or develop management policy in the field of labor-management relations and does not consult with management regarding grievances, arbitrations, disciplinary actions, or unfair labor practice charges. In addition, Young does not participate in contract negotiations or the development of contract proposals for collective bargaining with the Union.

Pappillion does not draft, develop, or create NFC policies or procedures. Pappillion does not participate in or attend management meetings where there may be discussions

concerning labor relation issues or contract negotiations. Pappillion does not give advice or assistance to employees or supervisors on labor-relations matters. Pappillion does not prepare labor relations material, such as grievances, grievance responses, responses to negotiation demands or NFC negotiation proposals. Pappillion also does not assist management in preparing response to grievances, unfair labor practice charges, and proposed or final disciplinary actions. Pappillion has no role in the discipline of employees, nor does she make recommendations for discipline to management.

Pappillion has access to confidential information contained in employee personnel files that Young has her maintain and has been asked to type award letters for employees. However, Pappillion has not been asked to process or type any disciplinary actions nor has she attended any management meetings. Thus, in the absence of evidence of an integral relationship between Pappillion's duties and Young's duties in the field of labor-management relations, Pappillion's mere access to confidential information is not sufficient to establish a confidential capacity within the meaning of the Statute. Accordingly, I conclude that Tanisha Pappillion, in her position as Secretary, Office Automation, GS-318-05, is not a confidential employee within the meaning of the Statute and should be included in the bargaining unit.

**d. Nicole Kimball Riley**

Applying the Authority's two-part test, I conclude that the evidence fails to establish that Nicole Kimball Riley is a confidential employee to Payroll Systems Applications Branch Chief Philip Guarino under Section 7112(b)(2) of the Statute. Guarino is not significantly involved in labor-management relations. Guarino does not formulate or develop management policy in the field of labor-management relations and does not consult with management regarding grievances, arbitrations, disciplinary actions, or unfair labor practice charges. In addition, Guarino does not participate in contract negotiations or the development of contract proposals for collective bargaining with the Union.

Riley does not draft, develop, or create NFC policies or procedures. Riley does not participate in or attend management meetings where there may be discussions concerning labor relation issues or contract negotiations. Riley does not give advice or assistance to employees or supervisors on labor-relations matters. Riley does not prepare labor relations material, such as grievances, grievance responses, responses to negotiation demands or NFC negotiation proposals. Riley also does not assist management in preparing response to grievances, unfair labor practice charges, and proposed or

final disciplinary actions. Riley has no role in the discipline of employees, nor does she make recommendations for discipline to management.

Riley has access to confidential information contained in OPFs that Guarino has her maintain and processes SF-52s, although the only suspensions she has processed were prior to her working for Guarino. She has not been asked to process or type any disciplinary actions nor has she attended any management meetings. Thus, in the absence of evidence of an integral relationship between Riley's duties and Guarino's duties in the field of labor-management relations, Riley's mere access to confidential information is not sufficient to establish a confidential capacity within the meaning of the Statute. Accordingly, I conclude that Nicole Kimball Riley, in her position as Secretary, Office Automation, GS-318-05, is not a confidential employee within the meaning of the Statute and should be included in the bargaining unit.

**iii. Secretary, Office Automation, GS-318-06**

Applying the Authority's two-part test, I conclude that the record fails to establish that Dorcus Whigham, who occupies the Secretary, Office Automation, GS-318-06, is a confidential employee to the Associate Director of IT Security Ivan Jackson under Section 7112(b)(2) of the Statute. The Associate Director of IT Security is not significantly involved in labor-management relations. He does not formulate or develop management policy in the field of labor-management relations and does not consult with management regarding grievances, arbitrations, disciplinary actions, or unfair labor practice charges. In addition, the Associate Director of IT Security does not participate in contract negotiations or the development of contract proposals for collective bargaining with the Union.

The SOA-6 does not draft, develop, or create NFC policies or procedures. The SOA-6 does not participate in or attend management meetings where there may be discussions concerning labor relation issues or contract negotiations. The SOA-6 does not give advice or assistance to employees or supervisors on labor-relations matters. The SOA-6 does not assist management in preparing labor relations material, such as grievances, grievance responses, responses to negation demands or NFC negotiation proposals. The SOA-6 also does not assist management in preparing response to grievances, unfair labor practices, and proposed or final disciplinary actions. The SOA-6 also has no role in the discipline of employees and does not make recommendations for discipline to management.

The SOA-6 has access to confidential employee information, such as names, addresses, and Social

Security numbers, which she uses to process SF-52 forms. However, she does not maintain this information nor does she have access to any employee disciplinary actions. Thus, in the absence of evidence of an integral relationship between the SOA-6's duties and the Associate Director of IT Security's duties in the field of labor-management relations, the SOA-6's mere access to confidential information is not sufficient to establish a confidential capacity within the meaning of the Statute. Accordingly, I conclude that Dorcus Whigham, in her position as Secretary, Office Automation, GS-318-06, is not a confidential employee and should be included in the bargaining unit.

**iv. Secretary, Office Automation, GS-318-07**

Applying the Authority's two-part test, I conclude that the record fails to establish that Anita Bronakowski, Rhonda Wingerter Hughes, Elizabeth F. Allen, David Anthony De La Fuente, Ruth Ann Golson, Lisa Lueders Monnier, Lisa Marie Natal, Linda Laine Perez, Ernel Mullet Robin, Kathleen Burtchaell Thibodeaux, Richard Glynn Tuner, and Celita Ann Wolfe, who occupy the Secretary, Office Automation, GS-318-07, position are confidential employees under Section 7112(b)(2) of the Statute. The SOA-7 does not act in a confidential capacity to an individual who formulates or effectuates management policies in the field of labor-management relations. Neither the Payroll/Personnel Operations Program Manager nor the Risk Management Office Chief formulate or develop management policy in the field of labor-management relations. They do not consult with management regarding grievances, arbitrations, disciplinary actions, or unfair labor practice charges. In addition, neither supervisor participates in contract negotiations or the development of contract proposals for collective-bargaining with the Union.

The SOA-7 does not draft, develop, or create NFC policies or procedures. The SOA-7 does not participate in or attend management meetings where there may be discussions concerning labor relation issues or contract negotiations. The SOA-7 does not give advice or assistance to employees or supervisors on labor-relations matters. The SOA-7 does not prepare labor relations material, such as grievances, grievance responses, responses to negation demands or NFC negotiation proposals. The SOA-7 does not assist management in preparing response to grievances, unfair labor practice charges, and proposed or final disciplinary actions, though the SOA-7 may be called upon to proofread these documents. The SOA-7 also has no role in the discipline of employees and does not make recommendations for discipline to management.

The SOA-7 maintains personnel files that contain privacy-protected information and have access to employees' disciplinary files. Bronakowski testified that she had access to preparations for negotiation with the Union on one occasion. However, in the absence of an integral relationship between the SOA-7's duties and their respective supervisors' duties in the field of labor-management relations, the SOA-7's mere access to labor-relations information is not sufficient to establish a confidential capacity within the meaning of the Statute. Accordingly, I conclude that Anita Bronakowski, Rhonda Wingerter Hughes, Elizabeth F. Allen, David Anthony De La Fuente, Ruth Ann Golson, Lisa Lueders Monnier, Lisa Marie Natal, Linda Laine Perez, Ernel Mullet Robin, Kathleen Burtchaell Thibodeaux, Richard Glynn Tuner, and Celita Ann Wolfe, in their positions as Secretary, Office Automation, GS-318-07, are not confidential employees and should be included in the bargaining unit.

### C. Management Official

Under Section 7112(b)(1) of the Statute, a unit is not appropriate if it includes management officials. A "management official" is defined under Section 7103(a)(11) of the Statute as: "an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policy of the agency."<sup>28</sup> The Authority has held that that the statutory definition of management official includes individuals who: (1) create, establish or prescribe general principles, plans or courses of action for an agency; (2) decide or settle on general principles, plans or courses of action for an agency; or (3) bring about or obtain a result as to the adoption of general principles, plans or course of action for an agency.<sup>29</sup> The independent judgment exercised by the individual formulating or effectuating agency policies is critical in determining whether a person is a management official.<sup>30</sup>

In those cases where an individual recommends policies or courses of action for an agency, the frequency with which the recommendations are adopted is important in determining whether that person is a management official.<sup>31</sup> To be a management official within the

meaning of the Statute, the person in the position must be formulating policy or actively participating in the ultimate determination of policy.<sup>32</sup> Having recommendations generally accepted by superiors does not, on its own, rise to the level of "influential" within the meaning of the Statute; there must be some exercise of additional authority, such as "the authority to bind the agency or . . . to commit agency funds."<sup>33</sup> A person who is responsible for effectuating the policy or who assists in the implementation of policy is not a management official.<sup>34</sup>

#### i. Training Systems Specialist, GS-301-11<sup>35</sup>

Applying Authority criteria to determine whether an employee is a management official, I conclude that the evidence establishes that Donna Gilbert, who occupies the Training Systems Specialist, GS-301-11 (TSS-11) position, is a management official under Section 7112(b)(1) of the Statute. The TSS-11 recommends individual policies or courses of action for the Agency regarding the AgLearn system. The TSS-11 also exercises independent judgment to make decisions concerning matters that impact the deployment of courses on AgLearn. The TSS-11 actively participates in the development of standard operating procedures relating to the AgLearn system that the Agency will follow. Moreover, the majority of the TSS-11's decisions concerning the AgLearn system are accepted without higher agency approval. Therefore, I conclude that the TSS-11 position should be excluded from the bargaining unit.

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authoritative), *with U.S. Coast Guard, Wash., D.C.*, 7 FLRA 743, 745 (finding an employee whose recommended changes in research plans were subject to higher-level guidance to be a "valuable expert or professional," as opposed to management official).

<sup>32</sup> *Nat'l Credit Union Admin.*, 59 FLRA 858, 861-62 (2004) (NCUA). See also *Def. Commc'ns Agency, Def. Commercial Commc'ns Office, Scott Air Force Base, Ill.*, 8 FLRA 273, 274 (1982); *U.S. Army Commc'ns Sys. Agency, Fort Monmouth, N.J.*, 4 FLRA 627, 629 (1980).

<sup>33</sup> *U.S. Dep't of Agric., Fed. Crop Ins. Corp., Wash. Reg'l Office*, 46 FLRA 1457, 1466 (1993).

<sup>34</sup> *NCUA*, 59 FLRA at 862. See also *Dep't of Def., Dep't of the Army, Headquarters, U.S. Army Armament, Materiel Readiness Command, Rock Island Arsenal, Ill.*, 8 FLRA 758, 760 (1982) (finding employees whose recommendations were subject to review by supervisory channels not to be management officials); *Panama*, 7 FLRA 489, 494 (finding employees who suggested changes to policy or procedure but who had no authority to institute a change not to be management officials).

<sup>35</sup> The issues set for hearing included whether the Training Systems Specialist position is also an employee engaged in personnel work other than purely clerical. Because NFC did not address this in the post-hearing brief, I consider this issue abandoned.

<sup>28</sup> 5 U.S.C. § 7103(a)(11).

<sup>29</sup> See *Dep't of the Navy, Automatic Data Processing Selection Office*, 7 FLRA 172, 177 (1981).

<sup>30</sup> See, e.g., *Headquarters, Space Div., Air Force Sys. Command, Dep't of the Air Force, Dep't of Def.*, 9 FLRA 885, 887 (1982).

<sup>31</sup> Compare *Dep't of the Interior, Bureau of Mines, Twin Cities Research Ctr., Twin Cities, Mn.*, 9 FLRA 109, 113 (1982) (finding employee was a management official because, in addition to having the authority to commit funds and facilities for the agency, his recommendations were considered

#### IV. Order

For the above reasons, I find that the following employees should be **included** in the proposed bargaining unit:

1. Human Resources Assistant (GS-203-06) position occupied by Kelisha Marie Polk;
2. Human Resources Assistant, Office Automation (GS-203-07) position occupied by Sierra Nicole Duncan, Jenny Mervich Schmiderer, and Duanetta Ruth Tate;
3. Workforce Services Specialist (GS-301-09) position occupied by Edward Burrell Bush;
4. Secretary, Office Automation (GS-318-06) position occupied by Dorcus Ellis Whigham;
5. Secretary, Office Automation (GS-318-07) position occupied by Anita Bronakowski; Rhonda Wingerter Hughes, Elizabeth F. Allen, David Anthony De La Fuente, Ruth Ann Golson, Lisa Lueders Monnier, Lisa Marie Natal, Linda Laine Perez, Ernel Mullet Robin, Kathleen Burtchaell Thibodeaux, Richard Glynn Turner, Celita Ann Wolfe; and
6. Training Technician (GS-1702-07) position occupied by Diane Gibbs.

I further find that the Training Systems Specialist, (GS-301-11) position occupied by Donna Gilbert is **excluded** from the proposed bargaining unit.

An appropriate Clarification of Unit will be issued reflecting the above, as well as the updating of the exclusionary language for the unit, as described below:

**Included:** All nonprofessional Wage Grade and GS employees of the National Finance Center, Office of Budget and Finance, U.S. Department of Agriculture, New Orleans, Louisiana, including full-time and intermittent employees, temporary full-time and permanent part-time employees, and employees serving under either career, career conditional, or accepted appointments.

**Excluded:** All professional employees, management officials, supervisors, employees serving under temporary appointments for less than 90 days, stay-in-school employees and summer aides, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6), and (7).<sup>36</sup>

#### 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 **November 28, 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](http://www.flra.gov).<sup>37</sup>

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James E. Petrucci  
Regional Director, Dallas Region  
Federal Labor Relations Authority

Dated: September 30, 2014

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<sup>36</sup> The parties stipulated and agreed that that the exclusionary language of the unit description should be updated to reflect the statutory exclusions. The original language of the unit description stated: "Excluded: All professional employees, management officials, employees engaged in personnel work in other than a purely clerical nature, employees serving under temporary appointments for less than 90 days, Stay-in-School employees and Summer Aids, confidential employees, and supervisors and guards as defined in E.O. 11491."

<sup>37</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 instructions.

**Appendix A**  
**DA-RP-12-0025**

**Employees no Longer in Dispute by Stipulation of the parties**

During the hearing, the parties stipulated that the following positions are no longer at issue in this hearing and are **included** in the bargaining unit:

Telecommunications Specialist, GS-391-11/12/13  
 Information Technology Specialist, GS-2210-09/11/12/13  
 Information Technology Specialist (APPSW),  
 GS-2210-09/11/12/13  
 Information Technology Specialist (CUSTSPT),  
 GS-2210-09/11/12/13  
 Information Technology Specialist  
 (DATAMGT/ SYSANALYSIS), GS-2210-09/11/12/13  
 Information Technology Specialist (INFOSEC),  
 GS-2210-09/11/12/13  
 Information Technology Specialist (OS),  
 GS-2210-09/11/12/13  
 Information Technology Specialist  
 (PLCYPLN/SYSADMIN), GS-2210-09/11/12/13  
 Information Technology Specialist (SYSADMIN),  
 GS-2210-09/11/12/13  
 Information Technology Specialist (SYSANALYSIS),  
 GS-2210-09/11/12/13  
 Cynthia Willis Dalton, Secretary, Office Automation,  
 GS-318-05  
 Rapheild Howard, Jr., Secretary, Office Automation,  
 GS-318-05  
 Donna L. Smith-Brown, Secretary, Office Automation,  
 GS-318-05  
 Catherine Megan Weymann, Secretary,  
 Office Automation, GS-318-05  
 Desha Nakisha Wise, Secretary, Office Automation,  
 GS-318-05

During the hearing, the parties stipulated that the following position is no longer at issue in this hearing and is **excluded** from the bargaining unit as a confidential employee:

Marjorie M. Irby, Equal Opportunity Specialist,  
 GS-361-07

During the hearing, the parties stipulated that the following positions are no longer at issue in this hearing because the positions are currently **vacant**:

Secretary, Office Administration, GS-318-07,  
 formerly occupied by Denise Marie Williams  
 Human Resources Assistant, GS-2013-05

Because the petition no longer encompasses these positions, it is unnecessary to consider them further in this proceeding.