

**69 FLRA No. 63**

UNITED STATES  
DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
LOGISTICS ACTIVITY CENTER  
MILLINGTON, TENNESSEE  
(Agency)

and

INTERNATIONAL FEDERATION  
OF PROFESSIONAL  
AND TECHNICAL ENGINEERS  
LOCAL 259  
(Union/Petitioner)

CH-RP-15-0027

ORDER DENYING  
APPLICATION FOR REVIEW

June 22, 2016

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

**I. Statement of the Case**

The Union petitioned Federal Labor Relations Authority Regional Director Sandra J. LeBold (RD) to clarify the bargaining-unit status of the positions of budget analyst and building management specialist. The RD found that, because the employee who encumbered the budget-analyst position does not perform personnel work in other than a purely clerical capacity and the building management specialists are not management officials, they should not be excluded from the bargaining unit.<sup>1</sup>

In its application for review, the Agency only challenges the RD's decision regarding the budget-analyst position encumbered by John Cowart. First, the Agency contends that the RD made clear and prejudicial errors concerning substantial factual matters as to the budget analyst's duties and responsibilities. Because the Agency does not directly challenge any of the RD's factual findings as unsupported by the record but instead challenges the weight accorded to the

evidence by the RD, and because record evidence supports the RD's factual findings, the Agency fails to demonstrate that the RD made clear and prejudicial errors concerning substantial factual matters.

Second, the Agency alleges that the RD failed to apply established law when she found that the budget-analyst position should be included in the bargaining unit. The Agency argues that Authority precedent and the evidence demonstrate that the budget analyst performs personnel work in other than a purely clerical capacity. Because the Agency fails to demonstrate that the RD failed to apply Authority precedent correctly, and because this argument challenges the weight accorded to the evidence by the RD, we find that this argument fails to provide a basis for granting the Agency's application.

Third, the Agency argues that the RD failed to apply established law when she did not address the Agency's argument that the budget analyst's duties create a conflict of interest that should lead to that position's exclusion from the bargaining unit. However, the Agency does not demonstrate that once the RD determined that the position's personnel duties were purely clerical, Authority case law required the RD to perform a conflict-of-interest analysis. Therefore, this argument does not demonstrate that the RD failed to apply established law.

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

The Agency provides logistics services to the U.S. Army Corps of Engineers. The Union filed a petition seeking to clarify the bargaining-unit status of two positions encumbered by four different employees: one budget analyst and three building management specialists. As to the building management specialist position, the RD clarified the bargaining unit to include this position. Because the Agency does not challenge the RD's determination regarding this position, we will not discuss it further.

As to the budget-analyst position, the RD determined that it should be included in the bargaining unit. In reaching this determination, the RD considered the Agency's argument that the budget-analyst position should be excluded from the bargaining unit under § 7112(b)(3) of the Federal Service Labor-Management Relations Statute<sup>2</sup> because Cowart is "engaged in personnel work in other than a purely clerical capacity."<sup>3</sup>

<sup>1</sup> 5 U.S.C. § 7112(b)(3) (A unit shall not include "an employee engaged in personnel work in other than a purely clerical capacity.").

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

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

The RD found that the budget analyst performs the following duties: (1) he creates a budget template for the Agency; (2) he “makes recommendations on how the Agency can move money during the year to balance the budgets” of Agency components;<sup>4</sup> (3) he advises the Agency “on the budgetary implications of various personnel decisions and structures” and “how it can use . . . different sources of funding for labor” under relevant appropriation requirements, laws, and guidance;<sup>5</sup> (4) he “advises management on how it can fund new positions it wants to create”;<sup>6</sup> (5) he “ensures that management uses the appropriate form and codes to justify personnel actions”;<sup>7</sup> (6) he “performs administrative duties for certain systems used for personnel functions, such as approving travel authorizations and reviewing leave balances”;<sup>8</sup> and (7) “[h]e processes personnel actions by verifying the technical sufficiency [of the actions], i.e. whether a position is coded correctly.”<sup>9</sup> Additionally, the RD found that the budget analyst “might calculate the costs of hiring a certain grade[-]level” employee or “the number of positions the Agency needs to cut to reduce its labor expenditures by a certain percentage” but “he does not perform the cost-benefit analysis of hiring an employee versus a contractor” or “recommend the kind of positions or which particular positions the Agency should cut.”<sup>10</sup>

The RD found that Cowart “is a subject-matter expert on budgets, including manpower funding allocations” and “[h]e uses independent judgment and discretion in performing certain non-personnel, budget[-]related duties.”<sup>11</sup> The RD also found that, although the budget analyst performs some personnel duties, he “does not recommend whether the Agency should increase or decrease staffing or what type of staffing the Agency needs to meet its mission.”<sup>12</sup> Rather, the RD found, the budget analyst “performs his personnel[-]work responsibilities in a routine or purely clerical nature.”<sup>13</sup> Considering the record, the RD determined that the budget analyst does not perform personnel work in other than a purely clerical capacity.

As a result, the RD concluded that the budget-analyst position should be included in the bargaining unit. The Agency filed this application for review.

### III. Analysis and Conclusions

- A. The RD did not make any clear and prejudicial errors concerning a substantial factual matter.

The Agency argues that the RD made several clear and prejudicial errors concerning substantial factual matters.<sup>14</sup> The Authority may grant an application for review if it is demonstrated that an RD committed a clear and prejudicial error concerning a substantial factual matter.<sup>15</sup>

Specifically, the Agency alleges that the RD made clear and prejudicial errors concerning substantial factual matters when she stated that: (1) “[i]n relation to manpower, [the budget analyst]’s responsibilities involve advising Agency leadership on the budgetary implications of various personnel decisions and structures”;<sup>16</sup> (2) the budget analyst “does not recommend whether the Agency should increase or decrease staffing” and “does not perform cost-benefit or mission requirement analyses on the number or type of positions the Agency should have”;<sup>17</sup> (3) the budget analyst “does not recommend the kind of positions or which particular positions the Agency should cut”;<sup>18</sup> and (4) the budget analyst “assists in processing personnel actions.”<sup>19</sup>

The Agency points to evidence that the budget analyst recommended “the best positions that [the Agency could] afford to get rid of,” including recommending the elimination of drivers in the Fort Belvoir area,<sup>20</sup> and was “‘heavily involved’ in decisions made at the ‘highest level.’”<sup>21</sup> The Agency also points to evidence that Cowart “is charged with looking at the manpower structure and the organization’s bills and analyzing them before exercising the discretion given to him to move money around the organization”<sup>22</sup> and

<sup>4</sup> RD’s Decision at 2.

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

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

<sup>7</sup> *Id.* at 3.

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

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* at 3

<sup>12</sup> *Id.* (citing *Dep’t of the Army, Headquarters, 101st Airborne Div., Fort Campbell, Ky.*, 36 FLRA 598, 602-03 (1990) (*Ft. Campbell*)).

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

<sup>14</sup> Application for Review (Application) at 9-13.

<sup>15</sup> *U.S. Dep’t of State, Bureau of Consular Affairs, Passport Servs.*, 68 FLRA 657, 659 (2015) (citing 5 C.F.R. § 2422.31(c)(3)(iii)).

<sup>16</sup> Application at 9 (quoting RD’s Decision at 2).

<sup>17</sup> *Id.* at 10.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 11.

<sup>20</sup> *Id.* at 10 (quoting Tr. at 45).

<sup>21</sup> *Id.* at 11 (quoting Tr. at 48).

<sup>22</sup> *Id.* at 10 (citing Tr. at 51-54).

“really has the control of all the systems of manpower movement.”<sup>23</sup>

Noting this evidence in support of its position, the Agency ultimately argues that “[b]ased on the testimony and documents in the record,”<sup>24</sup> the budget-analyst position is performing personnel work in other than a purely clerical capacity and that the RD committed clear and prejudicial factual errors in finding to the contrary.

However, the Agency does not directly challenge any of the RD’s factual findings as unsupported by the record; instead, the Agency attempts to relitigate its case before the Authority. Although the Agency points to evidence allegedly contradicting the findings of the RD, merely pointing to contradictory evidence does not demonstrate that the RD made a clear and prejudicial error concerning a substantial factual matter.<sup>25</sup> Such arguments challenge the weight the RD accorded to that evidence.<sup>26</sup> Additionally, record evidence supports the RD’s factual findings.<sup>27</sup> Consequently, these arguments do not demonstrate that the RD committed a clear and prejudicial error concerning a substantial factual matter.

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

1. The RD did not fail to apply established law in finding that the budget-analyst position is included in the bargaining unit.

The Agency argues that the RD failed to apply established law in finding that the budget-analyst position should be included in the bargaining unit.<sup>28</sup> Under § 2422.31(c)(3)(i) of the Authority’s Regulations, the Authority may grant an application for review when an application demonstrates that the RD has failed to apply established law.<sup>29</sup>

Citing Authority case law, the Agency argues that bargaining units should not include employees “engaged in personnel work in other than a purely clerical capacity, such as making recommendations to management concerning personnel actions which affect the bargaining unit.”<sup>30</sup> The Agency continues that, for a position to be excluded, “the character and extent of the employee’s involvement in personnel work must be more than clerical in nature, and the position’s duties must not be performed in a routine manner; the employee must exercise independent judgment and discretion.”<sup>31</sup> The Agency also argues that “the Authority has found that § 7112(b)(3) extends to exclude those employees whose work ‘directly impact[s] staffing and the overall work environment.’”<sup>32</sup>

The Agency, citing evidence from the record,<sup>33</sup> contends that Cowart “exercises independent judgment and discretion, his work directly impacts staffing and [the] overall environment, his duties are performed in a non-routine manner, and his duties are of such a nature as to create a conflict of interest,”<sup>34</sup> which should, in turn, exclude him from the bargaining unit.<sup>35</sup> The Agency specifically notes that in *U.S. Department of the Army, Headquarters, 101st Airborne Division, Fort Campbell*,

<sup>23</sup> *Id.* at 11 (quoting Tr. at 55).

<sup>24</sup> *Id.* at 12.

<sup>25</sup> *U.S. Dep’t of the A.F., Dover A.F. Base, Del.*, 66 FLRA 916, 921 (2012) (Assertion that testimony contradicts RD’s findings challenges the weight accorded the evidence by the RD and does not demonstrate that RD committed a clear and prejudicial error concerning a substantial factual matter.).

<sup>26</sup> *U.S. Dep’t of the Navy, Navy Undersea Warfare Ctr., Keyport, Wash.*, 68 FLRA 416, 420 (2015) (*Keyport*); *U.S. DOD, Pentagon Force Prot. Agency, Wash., D.C.*, 62 FLRA 164, 170-71 (2007).

<sup>27</sup> Tr. at 105-106, 130 (testimony supporting finding that budget analyst advises Agency on budgetary implications of various personnel decisions and structures); *id.* at 58, 211 (testimony supporting the finding that the budget analyst does not recommend whether to increase or decrease staffing or perform cost-benefit or mission requirement analyses on the number or type of positions); *id.* at 211 (testimony supporting finding that budget analyst does not recommend the kind of positions or which positions to cut); *id.* at 198, 200 (testimony supporting the finding that the budget analyst assists in processing personnel actions).

<sup>28</sup> Application at 13 (“[R]ecord evidence shows that [the budget analyst] . . . is engaged in personnel work in other than a purely clerical capacity.”).

<sup>29</sup> 5 C.F.R. § 2422.31(c)(3)(i).

<sup>30</sup> Application at 13 (citing 5 U.S.C. § 7112(b)(3); *Ft. Campbell*, 36 FLRA at 602-03).

<sup>31</sup> *Id.* (quoting *U.S. Dep’t of VA, N. Cal. Health Care Sys., Martinez, Cal.*, 66 FLRA 522, 524 (2012) (Member Beck dissenting)).

<sup>32</sup> *Id.* (quoting *U.S. Dep’t of Transp., FAA*, 63 FLRA 356, 360 (2009) (*FAA*)).

<sup>33</sup> *Id.* at 14 (Cowart’s duties were “far more than the clerical functions that [he] believe[d he] w[as] being paid for”) (quoting Tr. at 131); *id.* (citing Cowart’s proposed position description).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 13 (citing *Ft. Campbell*, 36 FLRA at 602).

*Kentucky (Ft. Campbell)*,<sup>36</sup> the Authority excluded analysts that performed “precisely the role that . . . Cowart plays within the Agency in this case.”<sup>37</sup> In conclusion, the Agency argues that “the RD failed to apply established law when [she] determined [that the budget analyst] is not excluded from the bargaining unit.”<sup>38</sup>

Although the Agency correctly surveys the Authority’s case law concerning § 7112(b)(3), its arguments are to no avail. The RD found that the budget analyst “uses independent judgment and discretion in performing certain non-personnel, budget[-]related duties” but only “performs . . . personnel[-]work responsibilities in a routine or purely clerical nature.”<sup>39</sup> The RD also found that, distinct from the analysts excluded in *Ft. Campbell*,<sup>40</sup> the budget-analyst position in the current case “does not recommend whether the Agency should increase or decrease staffing or what type of staffing the Agency needs to meet its mission.”<sup>41</sup>

While restating Authority precedent in arguing that the RD failed to apply established law, the Agency largely challenges the factual findings of the RD, more so than her application of established law, by selectively presenting testimony and exhibits from the record favorable to its position. Challenging the weight, importance, or significance ascribed by the RD to various factual matters in the record does not demonstrate that the RD failed to apply established law in this regard.<sup>42</sup> Therefore, the Agency does not demonstrate that, based on the facts the RD found, the RD made any errors in her application of established law.<sup>43</sup>

2. The RD did not fail to apply established law by not addressing the Agency’s conflict-of-interest argument.

The Agency also argues that the RD failed to apply established law because she “failed to address the conflict[-]of[-]interest testimony and evidence in her [d]ecision.”<sup>44</sup> As noted above, for a position to be excluded under § 7112(b)(3), it must be determined both that the character and extent of the personnel duties of the incumbent are more than clerical in nature; and that the personnel 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>45</sup>

In the instant case, the RD determined that Cowart performed “personnel[-]work responsibilities in a routine or purely clerical nature.”<sup>46</sup> The Agency does not demonstrate that, once the RD determined that the position’s personnel duties were purely clerical, Authority case law required the RD to also perform a conflict-of-interest analysis. As such, the RD did not fail to apply established law by not addressing the Agency’s argument that the budget analyst’s duties create a conflict of interest.

#### IV. Order

We deny the Agency’s application for review.

<sup>36</sup> *Ft. Campbell*, 36 FLRA at 603-04.

<sup>37</sup> Application at 14.

<sup>38</sup> *Id.* at 17.

<sup>39</sup> RD’s Decision at 3.

<sup>40</sup> *Ft. Campbell*, 36 FLRA at 603-04.

<sup>41</sup> RD’s Decision at 3 (citing *Ft. Campbell*, 36 FLRA at 603-04).

<sup>42</sup> *U.S. Dep’t of the Interior, Nat’l Park Serv., Ne. Region*, 69 FLRA 89, 97 (2015) (citing *U.S. Dep’t of the Interior, Nat’l Park Serv., Wash. D.C.*, 55 FLRA 311, 315 (1999)).

<sup>43</sup> *Id.*

<sup>44</sup> Application at 16 (citing *Keyport*, 68 FLRA at 436; *FAA*, 63 FLRA at 360-61; *Ft. Campbell*, 36 FLRA at 604).

<sup>45</sup> *AFGE, Local 3529*, 57 FLRA 633, 637 (2001) (*AFGE*); *Ft. Campbell*, 36 FLRA at 602-03.

<sup>46</sup> RD’s Decision at 3.

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FEDERAL LABOR RELATIONS AUTHORITY  
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-Agency-

and

INTERNATIONAL FEDERATION OF  
PROFESSIONAL AND TECHNICAL ENGINEERS,  
LOCAL 259, AFL-CIO  
-Union/Petitioner-

CH-RP-15-0027

DECISION AND ORDER  
CLARIFYING UNIT

**I. Statement of the Case**

The petition seeks to clarify the bargaining unit status of the Budget Analyst, GS-0560-12, encumbered by John Cowart and the Building Management Specialist, GS-1176-12, positions encumbered by Eric Kersey, Randy Wilson, and Freddie Leonard.

The Agency contends that Cowart is excluded from the Union's bargaining unit because he is engaged in personnel work within the meaning of section 7112(b)(3) of the Statute. The Agency contends that Kersey, Wilson, and Leonard are excluded from the Union's bargaining unit because they are management officials within the meaning of section 7103(a)(11) of the Statute. The Union disagrees and contends that Cowart, Kersey, Wilson, and Leonard's duties do not exclude them from the Union's bargaining unit.

The Region held a hearing on this matter and the Agency and Union filed briefs, all of which I have fully considered. For the reasons discussed below, I find that Cowart is not engaged in personnel work within the meaning of section 7112(b)(3) of the Statute, and I order that the Union's bargaining unit include his position. I also find that Kersey, Wilson, and Leonard are not management officials within the meaning of section 7103(a)(11) of the Statute, and I order that the Union's bargaining unit includes their positions.

**II. Findings and Conclusions**

The Agency is responsible for providing logistics services to the U.S. Army Corps of Engineers (USACE). The Agency's Headquarters is in Millington, Tennessee and consists of the Director's office and several subdivisions that report to the Director's office. The Agency administers its logistics services through 10 Regional Managers and 42 District Offices that report to the Regional Managers. The Union is the certified exclusive representative of a bargaining unit of the Agency's non-professional employees. (Case No. CH-RP-15-0014, June 8, 2015). The employees at issue all work at the Agency's Headquarters.

**1. John Cowart (personnel work exclusion)**

Cowart is a GS-12 Budget Analyst in the Resource Integration Division, Business Operations. He serves as the Agency's senior budget analyst and the manpower officer. He establishes the budget template and compiles the Agency's individual components' budget requests and justifications for supply and travel. The Director reviews and decides whether to approve each line item request. Cowart then monitors the budget and makes recommendations on how the Agency can move money during the year to balance the budgets of the components that are over or under spending.

In relation to manpower, Cowart's responsibilities involve advising Agency leadership on the budgetary implications of various personnel decisions and structures. He advises management on how it can use the different sources of funding for labor based on appropriation requirements, fiscal laws, and guidance from OMB, USACE and the Army. For example, Cowart learned that the Agency could no longer use certain funds for active duty military positions. He recommended which kind of funds the Agency could use instead, and for which positions the Agency could then use the prior funds. Similarly, he also advises management on how it can fund new positions it wants to create. He analyzes the Agency's components' labor spending and recommends how to move labor funds to balance over or under spending on labor.

Cowart does not recommend whether the Agency should increase or decrease staffing. He does not perform cost-benefit or mission requirement analyses on the number or type of positions the Agency should have. For example, he might calculate the costs of hiring a certain grade level full time equivalent, but he does not perform the cost-benefit analysis of hiring an employee versus a contractor. He might calculate the number of positions the Agency needs to cut to reduce its labor

expenditures by a certain percentage, but he does not recommend the kind of positions or which particular positions the Agency should cut.

In addition, Cowart assists in processing personnel actions. He ensures that management uses the appropriate form and codes to justify personnel actions. He maintains the Integrated Manning Document, a spreadsheet that shows all Agency positions and funding codes. Cowart updates it when management takes a personnel action. He also performs administrative duties for certain systems used for personnel functions, such as approving travel authorizations and reviewing leave balances. For example, he changes organization codes and supervisor permissions when management decides to reorganize departments. He advises management on the impact this may have in the systems, i.e. possible permission lapses or who will have access to certain data before and after a reorganization.

Under section 7112(b)(3) of the Statute, a bargaining unit may not include an employee who is “engaged in personnel work in other than a purely clerical capacity.” Staffing levels, types of employees, and the organizational structure of an agency’s individual components all relate to an agency’s personnel work. *See Dep’t of the Army, Headquarters, 101<sup>st</sup> Airborne Div., Ft. Campbell, Ky.*, 36 FLRA 598, 602 (1990) (*101<sup>st</sup> Airborne Div.*); *OPM*, 5 FLRA 238, 246 (1981). For an employee to be excluded under the Section, the record must show that the character and extent of the employee’s involvement in personnel work is more than clerical in nature and that he does not perform the duties in a routine manner. *DOJ, INS, Wash., D.C.*, 59 FLRA 304, 306 (2003) (*INS*). Further, the employee must exercise independent judgment and discretion in carrying out the personnel duties. *Id.* Individuals whose personnel duties only require processing completed personnel actions or screening personnel actions for technical sufficiency are not excluded. *Dep’t of the Navy, U.S. Naval Station, Pan.*, 7 FLRA 489, 493 (1981) (*Naval Station Pan.*).

The record demonstrates that Cowart is not performing personnel work in other than a purely clerical capacity. He is a subject-matter expert on budgets, including manpower funding allocations. He uses independent judgment and discretion in performing certain non-personnel, budget related duties, such as how to fund positions and how to balance the budget. Unlike the management analysts in *101<sup>st</sup> Airborne Div.*, Cowart does not recommend whether the Agency should increase or decrease staffing or what type of staffing the Agency needs to meet its mission. 35 FLRA at 603-04. He processes personnel actions by verifying the technical sufficiency, i.e. whether a position is coded correctly. He performs his personnel work responsibilities in a routine

or purely clerical nature. Accordingly, I find that Cowart is not excluded from the Union’s bargaining unit under section 7112(b)(3) of the Statute. *See DOD, Def. Contract Audit Agency Cent. Region, Irving, Tex.*, 57 FLRA 633, 638-639 (2001); *FDIC, S.F., Cal.*, 49 FLRA 1598 (1994); *Naval Station Pan.*, 7 FLRA at 493.

## 2. Eric Kersey (management official exclusion)

Kersey is a GS-12 Building Management Specialist in the Facilities Division and serves as the General Services Administration (GSA) program manager. He advises facilities managers on the technical aspects of GSA program issues. He answers the facilities managers’ questions by researching fire and safety codes, regulations, GSA design guides, and lease provisions. For example, he helped a facility understand the level of janitorial services it should receive by examining its lease. He helped another facility determine where it needed to have fire extinguishers by looking at the GSA Design Guide and coordinating with the GSA Regional Fire Protection Engineer. He also performs technical reviews of facility checklists to verify that field reports are accurate and comply with various regulations and operations orders. At times, he provides technical input to help develop policies, such as a potential transition plan involving the Europe district. However, he does not have signatory authority on any policies and his work in general is subject to supervisory approval.

Section 7103(a)(11) of the Statute defines a management official 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 policies of the agency[.]” Management officials are individuals who: (1) create, establish or prescribe general principles, plans or courses of action for an agency; (2) decide upon or settle upon 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 courses of action for an agency. *Dep’t of the Navy, Automatic Data Processing Selection Office*, 7 FLRA 172, 177 (1981) (*Navy ADP*).

The record does not establish that Kersey’s duties and responsibilities require or authorize him to formulate, determine, or influence the policies of the Agency. Rather, the record shows that Kersey has expertise in GSA program matters and his duties assist in implementing, as opposed to shaping and influencing, the Agency’s policies. In this regard, he works within established guidelines and his recommendations are subject to higher-level review. Accordingly, I find that Kersey is not excluded from the Union’s bargaining unit

as a management official. *See Dep't of the VA*, 60 FLRA 749 (2005); *Nat'l Credit Union Admin.*, 59 FLRA 858 (2004); *DOJ, Exec. Office of Immigr. Rev., Office of the Chief Immigr. Judge*, 56 FLRA 616 (2000) (*EOIR*); *Def. Logistics Agency*, 48 FLRA 285 (1993); *DOL, Mine Safety & Health Admin., Wash., D.C.*, 37 FLRA 1151 (1990) (*MSHA*).

**3. Randy Wilson (management official exclusion)**

Wilson is a GS-12 Building Management Specialist in the Facilities Division and serves as the Facilities and Equipment Maintenance (FEM) program manager. Wilson runs a help desk for division, district, and facilities managers. He provides guidance and helps find solutions for problems involving the FEM database. For example, a facilities specialist might ask him how to submit a work order or whether they need to put certain types of data into FEM. He also reviews and makes recommendations concerning draft documents, such as operations orders. He bases his recommendations on USACE and ULA operations orders, policies, guidance, applicable regulations, and his own subject matter expertise. He drafted a key control checklist form to confirm employees were following applicable Army regulations. While he has assisted in drafting operations orders and workflow documents, his supervisor and higher-level managers must review and approve his recommendations.

The record did not establish that Wilson is a management official within the meaning of section 7103(a)(11) of the Statute. In this regard, the record did not demonstrate that he performs duties and responsibilities that require or authorize him to formulate, determine, or influence the policies of the Agency. Rather, the record reflects that Wilson is a building management specialist whose actions assist in the implementation of the Agency's policies. In addition, his recommendations are subject to higher-level review and he does not have approval or signatory authority. Accordingly, I find that Wilson is not excluded from the Union's bargaining unit pursuant to the management official exclusion. *See Dep't of the VA*, 60 FLRA 749; *NCUA*, 59 FLRA 858; *EOIR*, 56 FLRA 616; *Def. Logistics Agency*, 48 FLRA 285; *MSHA*, 37 FLRA 1151.

**4. Freddie Leonard (management official exclusion)**

Leonard is a GS-12 Building Management Specialist in the Facilities Division and serves as the space and energy manager. He advises facilities managers on the technical aspects of space and energy issues. He monitors facilities' energy consumption and gives feedback on how they can meet energy goals. He solves problems for the field on a case-by-case basis. He evaluates situations based on requirements from executive orders, building codes, and other guidances as well as his own knowledge of construction and engineering. Leonard verbally recommends options for the facilities to meet space and energy requirements. For example, he might recommend how a facility could meet Architectural Barriers Act standards or advise a commander that his space plan does not meet the space reduction requirements. He does not need approval from his supervisor before he gives advice to district and facilities managers or to USACE commanders. The USACE commanders usually implement his recommendations, but can choose not to do so.

The record did not establish that Leonard's duties and responsibilities require or authorize him to formulate, determine, or influence the policies of the Agency. Rather, the record shows that Leonard has expertise in space and energy matters and his duties assist in implementing, as opposed to shaping and influencing, the Agency's policies. In this regard, he works within established guidelines, and the USACE commanders are the final decision makers on whether and how to implement his recommendations. Accordingly, I find that Leonard is not excluded from the Union's bargaining unit as a management official. *See Dep't of the VA*, 60 FLRA 749; *NCUA*, 59 FLRA 858; *EOIR*, 56 FLRA 616; *Def. Logistics Agency*, 48 FLRA 285; *MSHA*, 37 FLRA 1151.

**III. Order**

I order the Union's bargaining unit clarified as to include the positions encumbered by John Cowart, Eric Kersey, Randy Wilson, and Freddie Leonard.

**IV. Right to File an Application for Review**

A party may seek review of this Decision by filing an application for review with Federal Labor Relations Authority. Section 2422.31 (b) and (c) of the Authority's Regulations set forth the required contents of and grounds for an application for review.

The Authority must receive your application for review by May 2, 2016. You must file the application for review either electronically at [www.flra.gov](http://www.flra.gov) or by mail or hand-delivery with the Chief, Office of Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 201, 1400 K Street, NW, Washington, DC 20424-0001. The Docket Room considers documents hand-delivered after 5:00pm as filed on the following business day.

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Sandra J. LeBold, Regional Director  
Federal Labor Relations Authority  
Chicago Regional Office  
224 S. Michigan Ave, Suite 445  
Chicago, Illinois 60604-2505

Dated: February 29, 2016