

71 FLRA No. 119

UNITED STATES
DEPARTMENT OF THE NAVY
MARINE CORPS AIR STATION
CHERRY POINT, NORTH CAROLINA
(Agency)

and

INTERNATIONAL ASSOCIATION
OF MACHINISTS
AND AEROSPACE WORKERS
LOCAL LODGE 2296, AFL-CIO
(Union)

and

MELANIE COPELAND, AN INDIVIDUAL
(Petitioner)

AT-RP-18-0019

DECISION AND ORDER
ON REVIEW

March 13, 2020

Before the Authority: Colleen Duffy Kiko, Chairman,
and Ernest DuBester and James T. Abbott, Members
(Member Abbott dissenting)

I. Statement of the Case

The issue in this case is whether Federal Labor Relations Authority (FLRA) Regional Director Richard S. Jones (the RD) erred by denying a petition to sever certain employees from a consolidated unit. Melanie Copeland (Petitioner) filed an application for review (application) of the RD's decision, asserting that the RD erred concerning substantial factual matters and that he failed to apply established law when he determined that the employees fell within a 1989 certification of representation. The Authority granted the application but deferred action on the merits.

As to the merits, we find that the record supports the RD's factual findings and he did not fail to apply established law when he concluded that the employees come within the express terms of the relevant unit certification and their inclusion in the unit remains appropriate.

II. Background and RD's Decision

The Agency provides aviation support and other services for the Marine Corps. Since at least 1965, the International Association of Machinists and Aerospace Workers (IAMAW) has been the certified and exclusive representative of a bargaining unit of Agency wage-grade employees.

Initially, IAMAW, Local Lodge 1859 was the exclusive representative of certain wage-grade employees "located at the Facilities Maintenance Department and/or any other shops within the [Agency]." ¹ Then, in 1967, IAMAW, Local Lodge 2296 (the Union) became the exclusive representative of a second unit which included "[a]ll ungraded employees of [the Agency] with the exception of . . . those employees in categories covered by other exclusive units" (the 1967 certification). ² Later, the Union petitioned to consolidate the two units and the FLRA issued a certificate of consolidation in 1989 (the 1989 certification), which describes the unit as represented by the Union and including "[a]ll [w]age[-g]rade employees of the [Agency]." ³

Wage-grade employees work in almost every Agency directorate in a variety of positions, including machinists, pipefitters, and aircraft attendants. The employees at issue are all wage-grade aircraft attendants who work on the Visiting Aircraft Line (the VAL), a part of the airfield operations department in the operations directorate.

Before 1971, Marines encumbered the VAL aircraft attendant positions. The Agency began to staff VAL positions with civilians in 1971 and, in the early 2000's, staffed most VAL positions with civilians. Since 1971, the Union and the Agency considered the Union to be the exclusive representative of VAL employees. Over the years, VAL employees have paid union dues and served as Union officials. The Union has negotiated with the Agency over VAL employee work schedules, appropriate clothing, and protective equipment. The Union and the Agency negotiated revisions to the parties' collective-bargaining agreement in 2012 and updated it in 2017 to reference the 1989 certification and change the term "ungraded" in the unit description to "Wage Grade" to accurately reflect that certification. ⁴

On March 8, 2018, the Petitioner filed a petition with the FLRA's Atlanta Regional Office requesting an election to determine whether VAL employees wanted to continue to be represented by the Union.

¹ RD's Decision (Decision) at 2.

² *Id.*

³ *Id.*

⁴ *Id.* at 4-5.

The RD found that the 1989 certification is the applicable certification, and that the VAL employees fall within its express terms because they are wage-grade employees. In making this finding, the RD rejected the Petitioner's various arguments that the 1989 certification did not include VAL employees because the consolidated certifications applied only to employees in the facilities directorate.

In particular, the RD explained that the 1989 decision consolidating the units found that employees covered by the 1967 certification work "in various [Agency d]irectorates – not just the [f]acilities [d]irectorate."⁵ The RD also found it irrelevant that the VAL employees' personnel forms did not include the correct bargaining-unit status (BUS) code until 2009 because assignment of the BUS code was "merely an administrative function" of the Agency and did not control which employees were included in the unit.⁶ He noted that only the Authority "has the exclusive right to determine who is represented by a union,"⁷ and therefore the 1989 certification controls which employees were included in the unit.

Additionally, the RD determined that there was no evidence that any change due to base realignment and closures had any material impact on the appropriateness of the unit. He found that, although VAL employees had moved buildings, they continue to be physically located at the same facility. He also found that other wage-grade employees work on the airfield even if they do not work in the same building as the VAL employees. Therefore, the RD concluded that the unit remained appropriate.

Lastly, the RD found that the Union had fairly and adequately represented VAL employees. In making this finding, the RD cited the Union positions VAL employees held and the Union's direct involvement in negotiations and grievances on their behalf. The RD concluded that the Petitioner's allegations that the Union's communication and representation efforts fell short of VAL employees' expectations did not establish "unusual circumstances justifying severance."⁸ And the RD found that no other unusual circumstances existed that warranted severing the VAL employees from the existing unit.

Based on these findings, the RD concluded an election to sever VAL employees from the Union's existing bargaining unit was unwarranted. Accordingly, he dismissed the petition.

⁵ *Id.* at 7 (internal quotation marks omitted).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 10.

The Petitioner filed the application on December 1, 2018. Neither the Agency or the Union filed an opposition.

III. Analysis and Conclusions: The RD did not commit a clear error concerning a substantial factual matter or fail to apply established law.

Under § 2422.31 of the Authority's Regulations, the Authority may grant an application for review when the application demonstrates that the RD committed a clear and prejudicial error concerning a substantial factual matter or failed to apply established law.⁹

The Authority will dismiss a severance petition where an existing unit continues to be appropriate and there are no unusual circumstances to justify severance of the petitioned-for employees.¹⁰ The Petitioner does not challenge the RD's conclusion that the unit remains appropriate. Rather, she claims that the 1989 certification, on which the RD relied, does not include VAL employees because the 1967 certification only included wage-grade employees in the facilities directorate.¹¹ She also asserts that because the VAL had no wage-grade positions when the 1967 certification was issued, the RD committed legal error by applying *Department of the Army, Headquarters, Fort Dix, Fort Dix, New Jersey (Fort Dix)*¹² to find that employees hired into VAL positions were included automatically in the unit.¹³

We reject both arguments. First, the 1989 certification of the consolidated unit to include all wage-grade employees of the Agency necessarily included a finding that the unit was appropriate.¹⁴ Although the Petitioner disagrees with the RD's interpretation of the 1989 certification to include VAL employees, no facts in the record contradict

⁹ 5 C.F.R. § 2422.31(c)(3)(i), (iii).

¹⁰ *U.S. Dep't of the Army, Def. Language Inst., Foreign Language Ctr. & Presidio of Monterey, Presidio of Monterey, Cal.*, 64 FLRA 497, 498-99 (2010) (citing *U.S. Dep't of the Navy, Naval Air Station Jacksonville, Jacksonville, Fla.*, 61 FLRA 139, 142 (2005)).

¹¹ Application at 7.

¹² 53 FLRA 287 (1997).

¹³ Application at 3.

¹⁴ See 5 U.S.C. § 7112(d); see also *U.S. Dep't of the Air Force, Air Force Materiel Command, Eglin Air Force Base, Hurlburt Field, Fla.*, 66 FLRA 375, 377 (2011) (*Eglin*); *U.S. Dep't of Transp., FAA*, 63 FLRA 356, 359 (2009) (Section 7112(d) of the Statute "requires the application of the appropriate unit criteria of § 7112(a)" of the Statute.).

his interpretation.¹⁵ And as the VAL employees clearly fall within the 1989 certification's unit description, we find that the RD properly concluded that VAL employees are included in the consolidated unit.¹⁶

To the extent that the Petitioner now contends that the 1989 certification is incorrect or invalid,¹⁷ the Authority has stated that a party may not collaterally attack a past certification.¹⁸ Thus, to show that a previously certified unit is no longer appropriate, a party must demonstrate that substantial changes have altered the scope or character of the unit since the last certification.¹⁹ But the Petitioner has not made such a showing.

Of equal importance, under § 7105(f) of the Statute, challenges to an RD's decision must be filed within sixty days after the decision.²⁰ The Petitioner's challenge to the 1989 certification was filed nearly thirty years too late.²¹ Without the bar on attacking past

certifications once the sixty-day deadline expires, every party that misses the filing deadline would be permitted to evade it by filing a new representation petition, claiming that a previous certification decision contained an error.²² Therefore, the Petitioner's arguments regarding the 1989 certification provide no basis for finding that the RD erred.

Also unavailing is the Petitioner's argument that the RD failed to apply established law by finding that the BUS code on VAL employees' personnel forms is irrelevant.²³ The Petitioner cites no authority for the proposition that the RD was required, as a matter of law, to find the BUS code relevant or controlling when reviewing whether a position falls within a unit certification. As the RD correctly stated, the Authority has exclusive jurisdiction to make unit determinations.²⁴ Therefore, the express terms of the 1989 certification – not the BUS code – control whether the employees are in the bargaining unit.

In sum, the Petitioner's arguments do not demonstrate that the RD committed a clear error concerning a substantial factual matter or failed to apply established law.

IV. Order

We deny the application for review.

¹⁵ See *U.S. Dep't of the Air Force, Air Force Life Cycle Mgmt. Ctr., Hanscom Air Force Base, Mass.*, 69 FLRA 483, 485 (2016) (citing *U.S. Dep't of the Interior, Nat'l Park Serv., Ne. Region*, 69 FLRA 89, 91 (2015)) (disagreement with an RD's evaluation of the evidence is not sufficient to find that the RD committed a clear and prejudicial error concerning a substantial factual matter).

¹⁶ Decision at 2, 4 & nn.2, 7, 8 (finding that under *Fort Dix*, VAL employees hired after 1989 were included in the unit); see *U.S. Dep't of the Navy, Naval Facilities Eng'g Command Se., Jacksonville, Fla.*, 68 FLRA 244, 245 (2015) (reaffirming that *Fort Dix* "applies not only to new employees hired into previously existing positions, but also to employees in newly created positions that fall within the express terms of the existing certification").

¹⁷ Application at 4-5.

¹⁸ See *U.S. Dep't of the Air Force, Air Force Materiel Command, Wright-Patterson Air Force Base, Ohio*, 70 FLRA 327, 328 (2017) (*Wright-Patterson*) (citing *Eglin*, 66 FLRA at 377); see also *Pension Benefit Guar. Corp.*, 65 FLRA 635, 637 (2011) (citing *Def. Logistics Agency*, 5 FLRA 126, 127 (1981)).

¹⁹ *Wright-Patterson*, 70 FLRA at 328 (citing *Dep't of the Interior, Nat'l Park Serv., W. Reg'l Office, S.F., Cal.*, 15 FLRA 338, 341 (1984); *Dep't of the Interior, Nat'l Park Serv., Mid-Atl. Reg'l Office, Phila., Pa.*, 11 FLRA 615, 616 (1983)).

²⁰ 5 U.S.C. § 7105(f).

²¹ See *SSA, Office of Disability Adjudication & Review, Nat'l Hearing Ctr., Chi., Ill.*, 67 FLRA 299, 301 (2014) (*SSA*) (holding that a "petitioner may not . . . challenge the legal sufficiency of [an earlier] . . . decision through [an] application for review of a different[, later] decision"). Contrary to the dissent's assertion that the collateral-attack bar applies only if the current petitioner was a "party" to a previous decision, Dissent at 8, the Authority applied the bar to the ALJ petitioner's challenge in *SSA* even though he was not a party to the San Francisco RD's earlier decision that excluded him from his bargaining unit. See *SSA*, 67 FLRA at 300 (finding that the earlier decision was binding on the ALJ petitioner despite his

complaint that "he never received notice regarding the San Francisco RD's investigation or decision").

²² See *FDIC*, 68 FLRA 260, 260 (2015) (finding that § 7105(f)'s deadlines prevent the Authority from acting even if it believes that an RD's decision was contrary to law), *granting recons. and vacating FDIC*, 67 FLRA 430, 430 (2014) (Member Pizzella dissenting).

²³ Application at 6-7.

²⁴ *SSA, Office of Disability Adjudication & Review, Balt., Md.*, 64 FLRA 896, 904 (2010) (citing *U.S. Dep't of VA, Med. Ctr., Coatesville, Pa.*, 56 FLRA 966, 969 (2000)); see also, e.g., *U.S. Dep't of the Army, XVIII Airborne Corps & Fort Bragg, Fort Bragg, N.C.*, 70 FLRA 172, 174 (2017) (citations omitted) (arbitrators have no authority to resolve questions concerning the unit status of employees).

Member Abbott, dissenting:

Today, my colleagues reject the reasonable request of an employee, an individual effectively serving in a “pro se” capacity, who simply asks that the Authority’s Regional Director (RD) ask her and seven of her aircraft-attendant colleagues¹ whether or not they want to be represented by an existing bargaining unit. The bargaining unit in question is one that was created twelve years before our Statute became law,² and was involuntarily subsumed in 1989 into another bargaining unit that had been created fourteen years before our Statute to represent an entirely different directorate.³

The majority claims that the Petitioner has not presented the requisite evidence to substantiate her claim,⁴ even though she clearly points out the following: that when the bargaining unit was certified for the directorate in which they currently serve, the aircraft attendants were military (not civilian) positions; that no wage-grade positions existed in the directorate; and that for at least ten years following the certification, the Agency’s personnel office, as well as their official personnel files, did not recognize the aircraft attendants as bargaining-unit employees (BUEs). Despite this compelling evidence, my colleagues are unwilling to give the aircraft attendants any say at all as to whether they must stay a part of the union. The majority rejects the Petitioner’s request for two reasons—(1) applying the standard articulated in *Department of the Army Headquarters, Fort Dix, Fort Dix, New Jersey (Fort Dix)*,⁵ (a standard which has been called into question⁶) to the 1989 certification, which subsumed all existing bargaining units, was drafted to cover all “wage[-]grade” employees past, present, and future, regardless of whether the subsumed certifications were correct, or had been intended to cover the aircraft attendants, and (2) characterizing the Petitioner’s challenge as an impermissible “collateral[] attack [on] a past certification.”⁷

Just a few weeks ago, the Authority reaffirmed that because “the interests of [BUEs] and unions are not one and the same,” their rights must be

“robustly protect[ed].”⁸ Earlier, we similarly recognized that the “interests and concerns” of BUEs “should not be ignored,”⁹ because our Statute is premised on the notion that the right of employees to “refrain from” forming, joining, or assisting a union is afforded the same protections as an employee’s “right to form, join, or assist” a union.¹⁰ In its rejection of the Petitioner’s request, the majority fails to recognize the importance of the aircraft attendants’ rights as employees under the Statute. At all stages of the certifications of the various bargaining units, the interests of the affected employees have never once been considered.

I also disagree with the majority’s characterization of the Petitioner’s request as an impermissible “collateral[] attack” on past certifications.¹¹ While it may be an attack on the past certifications, it is not an impermissible attack. As I noted in *OPM*,¹² “only agencies and the exclusive representatives may select which grievance[s] to take to arbitration . . . [and an employee acting] as a charging party [in a unfair-labor-practice charge] does not control which charges result in complaints, let alone reach a hearing.”¹³ Here, the Petitioner and her seven aircraft attendant coworkers have no “other means” available to them to challenge the certifications despite the compelling evidence that has been presented.

The majority relies on precedent that has held that “a party” may not collaterally attack a past certification to reject the arguments of the Petitioner.¹⁴ But those cases do not apply here.¹⁵ The Petitioner was

¹ RD’s Decision at 3.

² *Id.* at 2.

³ *Id.*

⁴ Majority at 5.

⁵ 53 FLRA 287 (1997).

⁶ *U.S. EPA*, 70 FLRA 533, 535 (2018) (Dissenting Opinion of Member Abbott) (describing “the offensive characteristics of forced accretion [and] involuntary absorption” of *Fort Dix* (citing *NFFE FD-1*, *IAMAW, AFL-CIO*, 67 FLRA 643, 646 (2014) (Dissenting Opinion of Member Pizzella))).

⁷ Majority at 5.

⁸ *OPM*, 71 FLRA 571, 573 (2020) (Member Abbott concurring; Member DuBester dissenting).

⁹ *Exp.-Imp. Bank of the U.S.*, 71 FLRA 248, 255 (2019) (*Export-Import Bank*) (Member DuBester dissenting).

¹⁰ *Dep’t of the Navy, Portsmouth Naval Shipyard, Portsmouth, N.H.*, 70 FLRA 995, 999 (2018) (*Naval Shipyard*) (Member DuBester dissenting) (emphasis added). It should be noted that in both *Export-Import Bank* and *Naval Shipyard* that the dissent would not acknowledge that our Statute affords employees the same rights and protections that are enjoyed by unions. In similar fashion, the majority here also fails to recognize the importance of the aircraft attendants’ rights as employees under the Statute.

¹¹ Majority at 5.

¹² 71 FLRA at 574-75 (Concurring Opinion of Member Abbott).

¹³ *Id.* at 575 n.15 (noting that BUEs often have no “other means” available to challenge decisions with which they disagree).

¹⁴ See Majority at 5. In *U.S. Dep’t of the Air Force, Air Force Materiel Command, Wright-Patterson Air Force Base, Ohio*, 70 FLRA 327 (2017), an agency was precluded from challenging a certification to which it was a party. In *Pension Benefit Guaranty Corp.*, 65 FLRA 635 (2011), a successor union was found to be an “incumbent” party.

¹⁵ RD’s Decision at 2.

not a “party” to the establishment of the prior certifications.¹⁶ In fact, as noted above, the Petitioner argues that the aircraft attendants do not fall under the 1989 certification despite its wording.

Therefore, I would remand this case to the RD to consider the compelling factual evidence raised by the Petitioner although this case has already dragged on for far too long.¹⁷ The Petitioner’s arguments should be fully considered and not denied on mere technicalities.

¹⁶ Majority at 5.

¹⁷ The Authority granted the Petitioner’s application for review on January 28, 2019. *See* Order Granting Application for Review at 1. The parties have thus waited for over thirteen months for the majority to inform them that their arguments will not even be considered. *Id.*

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS
AUTHORITY
ATLANTA REGION**

**U.S. DEPARTMENT OF THE NAVY
MARINE CORPS AIR STATION
CHERRY POINT, NORTH CAROLINA
(Agency)**

and

**INTERNATIONAL ASSOCIATION OF
MACHINISTS
AND AEROSPACE WORKERS,
LOCAL LODGE 2296, AFL-CIO
(Union)**

and

**MELANIE COPELAND, AN INDIVIDUAL
(Petitioner)**

Case No. AT-RP-18-0019

DECISION AND ORDER

I. Statement of the Case

On March 8, 2018, Melanie Copeland (the Petitioner) filed this petition under Section 7111(b)(2) of the Federal Service Labor-Management Relations Statute (the Statute) requesting an election to determine whether employees of the Visiting Aircraft Line (VAL) section want to continue to be represented by the International Association of Machinists and Aerospace Workers, Local Lodge 2296, AFL-CIO (the Union). The VAL employees are employed by the Department of the Navy, Marine Corps Air Station, Cherry Point, North Carolina (the Agency), and are part of a larger unit of wage-grade employees at the Agency.

The Region conducted an investigation in this case. Based on the entire record, I find that an election to sever the VAL employees from the Union’s existing bargaining unit is not warranted.

II. Findings

a. Certifications

On February 24, 1965, the International Association of Machinists, Lodge 1859, was recognized as the exclusive representative of the following unit of employees (“Unit 1”):

Included: All employees at the U.S. Marine Corps Air Station, Cherry Point, North Carolina, assigned to the following ratings: Machinist, Equipment Mechanic, Tool and Die Maker, Toolroom Mechanic, Toolroom Attendant, Machine Operator, Machine Oiler, Machinist Helper and Machinist Apprentice, Apprentice Equipment Mechanic, Leader over any or all of these crafts and trades, and other such ratings, including future rating or changes in rating titles, performing work historically performed by employees in the unit or related to the machinist and toolmaker crafts located at the Facilities Maintenance Department and/or any other shops within the Marine Corps Air Station, excluding supervisors.

On October 9, 1967, the Agency recognized the Union as the exclusive representative of a second unit of employees (“Unit 2”):

Included: All ungraded employees of the Marine Corps Air Station with the exception of supervisory personnel and those employees in categories covered by other exclusive units.

On August 3, 1988, International Association of Machinists and Aerospace Workers, District 110, AFL-CIO, filed a petition to consolidate the two units under the Union. On January 30, 1989, the Atlanta Regional Director of the Federal Labor Relations Authority issued a decision granting the petition because the consolidated unit was an appropriate unit. On May 1, 1989, the Federal Labor Relations Authority issued a Certification of Consolidation of Units stating that the Union represented the following unit of employees:

Included: All Wage Grade employees of the Marine Corps Air Station, Cherry Point, North Carolina.

Excluded: Professional employees; management officials; supervisors, and employees described in 5 U.S.C. §7112 (b)(2), (3), (4), (6), and (7).

b. Background

The Agency's mission is to provide quality facilities, ranges, airspace, aviation support, and services to promote the readiness, sustainment, and quality of life for operating forces, supported commands, other activities, and to individuals directly associated with the activities of the Marine Corps Air Station Cherry Point.

The Commanding Officer is the head of the Agency. Seven Directorates report to the Commanding Officer: Operations; Manpower; Logistics; Facilities; Telecomm & Information Systems; Marine Corps Community Services; and Security and Emergency Services Directorate. The Operations Directorate is composed of four organizations: Mission Assurance Section; Training Support Department; Airfield Operations Department; and Range Management Department. The Airfield Operations Department includes the following organizations: Air Traffic Control (ATC) Branch; ATC Maintenance Division; Aircraft Rescue Fight Branch; Weather Branch; Flight Clearance Division; Explosive Ordnance Disposal Branch; and Transient Services Branch. The Transient Services Branch is composed of two sections: VAL and Air Freight Passenger.

The Union represents all Wage Grade employees in the Agency. Wage Grade employees work in almost every directorate of the Agency. Bargaining unit employees hold a variety of positions including, but not limited to: Child Development Center Cook; Aircraft Attendant; Marine Machine Repairer; Test Range Tracker; Engineering Equipment Operator; Material Handler; Motor Vehicle Operator; Fuel Distribution System Inspector; Industrial Equipment Mechanic; Electrician; Plumber; Pipefitters; Haste Waste Disposer; Waste Treatment Plant Operator; Boiler Plant Operator; and Telecommunications Mechanic. The Cherry Point Human Resources Office (CHRO) and the EEO Office provide services for all employees of the Agency, including the Wage Grade employees listed above. The Comptroller's Office is responsible for payroll services for all employees of the Agency.

The VAL section currently employs seven Aircraft Attendants and one Aircraft Attendant (Ordnance). All Aircraft Attendants are Wage Grade employees. Aircraft Attendants are responsible for escorting aircraft, hot and cold refueling of aircraft, arming and disarming weapons systems, checking whether passengers are on the TSA no-fly list, and

providing boarding stairs, baggage belt loaders, lavatory services, and aircraft deicing. They are the only bargaining unit employees that perform these duties. Also, they are the only bargaining unit employees in the Airfield Operations Department.¹

The VAL section and the Fuels Department are the only organizations located on the airfield that employ Wage Grade employees. There are also bargaining unit employees that perform maintenance duties on an as-needed basis on the airfield, such as Maintenance personnel, Electricians, and Hazardous Waste Disposers.

As early as 1971, the VAL operated with only two civilian employees, both Aircraft Workers, at least one of whom was a dues paying member of the Union. The rest of the section was composed of Marines. In 2000 or 2001, the Agency started to replace Marines with Wage Grade employees. Thus, these new wage-grade employees became part of the certified unit represented by the Union because they came within the clear language of the unit description.²

From 1990 to 2009, the BUS code on the VAL employees' SF-50s was 3650.³ The 3650 BUS code was not associated with any unions that represent employees of the Agency.

According to the Petitioner, the Agency has undergone several changes due to Base Realignment and Closures (BRACs) through the years. In particular, in 1994, the VAL section was moved from the VMR-1 hanger to the Air Operations Building where the other Air Operations sections were located. VMR-1 was located next door to the Air Operations Building.

c. Union Representation

Several VAL employees have served as Union officials. In October of 2008, Ryan Pepperman, a VAL employee, joined the Union. By August of 2009, Pepperman was a Chief Steward. He helped negotiate a collective-bargaining agreement that was implemented on June 12, 2012 (the 2012 CBA). Turner Bond, a VAL employee, replaced Pepperman as a Union official

¹ There are other employees in the Airfield Operations Department that are not wage-grade employees, and are represented by a different labor organization.

² See *Dep't of the Army, Fort Dix, N. J., (Fort Dix)*, 53 FLRA 287 (1997) (new employees hired to replace military personnel automatically included in existing bargaining unit where their positions fell within the express terms of the bargaining certification)

³ BUS (Bargaining Unit Status) codes identify whether employees are part of a bargaining unit and which bargaining unit they are part of.

in 2012 until he left the Agency at the beginning of January 2013. Paula Bruckman, a VAL employee, replaced Bond as the Shop Steward in 2013. Copeland, the Petitioner, assisted Bruckman in an unofficial capacity. Bruckman remained the Shop Steward until February or March of 2018.

In May of 2017, the parties negotiated and made minor revisions to the 2012 CBA. Notably, in the updated 2017 CBA, the parties changed the term “ungraded” in the unit description to “Wage Grade” and added a reference to the 1989 Certification.

Work Schedule Negotiations

The Agency and the Union first negotiated over work schedules in 2010 for VAL employees. Pepperman and William Brothers, the Union president, negotiated with the Agency and the employees were able to retain the shifts that did not work weekends. The parties also signed agreements regarding work schedules in October of 2011, March of 2012, June of 2013, June of 2014, and March of 2018. In March of 2018, Brothers agreed to a temporary change in Bruckman’s work schedule without consulting her or other bargaining unit employees. This is the only time that the Union has signed an agreement without involving the VAL employees.

Clothing/Personal Protective Equipment (PPE) Negotiations

The Union and the Agency negotiated over the dress code, cold weather clothing, and PPE for VAL employees several times since 2012. In 2012, the Agency notified employees that it was going to revise the dress code which would have required employees to purchase new work clothes. However, on June 21, 2012, after the Union got involved, the Agency notified the Union that it would not revise the dress code until it had completed negotiations with the Union.

In October of 2012, Bruckman and Bond, a Union official at the time, filed a grievance that led to the Agency purchasing coveralls for cold weather for VAL employees.⁴ Later, Brothers intervened twice to ensure that the Agency issued the coveralls to all VAL employees.

On June 4, 2013, the Agency and the Union agreed to conduct an industrial health survey. As a result of this survey, the Agency purchased rubber boots, nitrate gloves, and chemical suits for employees performing lavatory services. Second, the employees were given two lockers so that they could store their dirty work clothes separate from their personal items and food.

Third, the Agency purchased new flame-resistant coveralls for fueling aircraft. After Union intervention, the Agency agreed that employees only had to wear the flame-resistant coveralls when they were actually fueling aircraft.

On March 3, 2016, the parties negotiated a third agreement regarding clothing in which the parties entered into a Memorandum of Understanding (MOU) stating that employees would be responsible for purchasing blue uniform shirts. Thereafter, the parties agreed to reopen the March 2016 MOU. The subsequent agreement allowed the employees to wear the same clothes that they had worn in the past (instead of buying new clothes) and to wear sweatshirts. After the Agency threatened to discipline an employee for wearing a sweatshirt, Bruckman requested that the Agency take the matter to the Federal Service Impasses Panel. Rather than doing so, the Agency reverted to the 2016 MOU.

Grievances

On February 17 and 18, 2016, the parties arbitrated a grievance over Environmental Differential Pay (EDP). Before the hearing, Union representatives met several times to collect information in preparation for the hearing. On August 1, 2016, the arbitrator ruled in favor of the Agency, in part, because the Agency provided PPE that “practically eliminated the potential for personal injury”. The arbitrator noted that, without the involvement of the Union, the Agency would not have provided the PPE.

There is no evidence that the Union has ever refused to file a grievance or proceed to arbitration in any case related to VAL employees.

III. Positions of the Parties

The Petitioner

The Petitioner makes four arguments. First, the Petitioner asserts that the VAL employees are not part of the Union because: (a) the Regional Director only referred to Unit 1 and Unit 2 employees in the Facilities Directorate in her 1989 Decision; (b) the BUS code on the VAL employees’ SF-50s was not the BUS code for the Union from 1990 to 2009; (c) the parties changed the unit description in the 2017 CBA to include the employees; and (d) the 2017 CBA does not include provisions that specifically reference the VAL employees. Second, the Petitioner contends that the reorganization of the VAL employees in 1994 consolidated all the Air Operations sections into a single building which created a clear community of interest between VAL employees and the other, non-wage grade

⁴ VAL employees work at night and outside on a regular basis.

employees of the Air Operations Department represented by another labor organization. Third, the Petitioner contends that the VAL employees do not share a community of interest with other Wage Grade employees at the Agency because they do not have the same or similar working conditions or duties. In this regard, VAL employees, unlike other Wage Grade employees, service aircraft, work in the Air Operations Department, follow special regulations, and are certified to operate radios.

Fourth, the Petitioner asserts that the Union has not adequately represented employees because the Union: (1) failed to negotiate over the installation of vehicle cameras and changes to security procedures and Time and Attendance policies; (2) failed to communicate with VAL employees before it agreed to change employees' work schedules in March of 2018; (3) failed to force the Agency to purchase clothing for employees and that it allowed the Agency to unilaterally establish a sweatshirt policy; and (4) failed to arbitrate or request impasse assistance from the Federal Service Impasses Panel to address issues with clothing. Furthermore, the Petitioner contends that the grievance process is ineffective and that grievances are "abandoned".

The Union

The Union argues that the 1989 Certification includes the VAL employees and that VAL employees continue to share a community of interest with other bargaining unit employees because they support the same mission and follow the same established policies and regulations as other employees. The Union also contends that it has consistently negotiated over working conditions and taken action to enforce agreements, rules, and regulations. In particular, it noted that it arbitrated the EDP grievance and that the arbitrator found that the Union was instrumental in eliminating the potential for injury.

The Agency

The Agency did not take a position.

IV. Analysis and Conclusions

a. The Union is the Exclusive Representative of the VAL Employees

The 1989 Certification clearly states that the Union represents "All Wage Grade employees" of the Agency. Nonetheless, the Petitioner contends that the Union only represents employees in the Facilities Directorate because the 1989 Decision and Order only discusses employees in Unit 1 and 2 who

work in the Facilities Directorate. However, the Regional Director also wrote that employees in Unit 2 work in "various MCAS Directorates" -- not just the Facilities Directorate. Furthermore, the 1989 Certification clearly states that the Union represents all Wage Grade employees that work for the Agency, not just the employees in the Facilities Directorate.⁵

Nonetheless, the Petitioner offers other arguments that the 1989 Certification did not actually include VAL employees. All of the arguments are unavailing. The Petitioner contends that the BUS code included on the VAL employees' SF-50s, 3650, was not the BUS code for the Union. However, I find that the BUS codes are not relevant to this case. First, no union representing Agency employees was assigned the BUS code 3650. Further, the assignment of BUS codes is merely an administrative function. The Authority has the exclusive right to determine who is represented by a union. *Social Sec. Admin., Office of Disability Adjudication & Review, Baltimore, Maryland*, 64 FLRA 896 (2010). Therefore, only the 1989 Certification is relevant.

Next, the Petitioner argues that the unit description in the 2012 CBA is different from the unit description in the 2017 CBA. First, the difference is trivial. Second, and more important, under section 7105(a)(2)(A) of the Statute, the determination of the bargaining unit status of employees is reserved exclusively for the Authority and parties have no bargaining rights in this regard. *Nat'l Fed'n of Fed'l Employees, Local 15 and U.S. Dep't of the Army, Rock Island Arsenal, Ill.*, 43 FLRA 1165 (1992). Thus, it is irrelevant what the parties may have agreed to with respect to the unit description. Again, only the Regional Director's determination as set forth in the 1989 Certification is relevant.

⁵ Employees outside of the Facilities Directorate, including the VAL employees, would still be represented by the Union even if the Regional Director had only consolidated the employees in the Facilities Directorate.

Finally, the Petitioner contends that the CBA does not include provisions that specifically mention VAL employees. In particular, the Petitioner notes that Article 8 (Basic Workweek) and Article 28 (Safety and Health) only reference the Facilities Directorate and the Fuels Department. However, the Union has repeatedly addressed safety and scheduling issues that are specific to the VAL employees. The fact that the VAL section is not referenced in these provisions does not mean its employees are not represented by the Union.⁶

In summary, the 1989 Certification clearly states that the Union is the exclusive representative of all Wage Grade employees, including the VAL employees that work for the Agency.⁷

b. Severance is Not Warranted

A severance occurs when a petitioner wants to “carve out” a group of employees from an established bargaining unit. *Library of Congress*, 16 FLRA 429 (1984). Severance is only permitted in rare circumstances where: (1) the unit is no longer appropriate or (2) unusual circumstances exist. *Id.*

The Unit is Still Appropriate

A significant reorganization is the primary reason why a unit may no longer be appropriate. *Dep’t of Labor*, 23 FLRA 464 (1986). A unit is appropriate if it will: (1) ensure a clear and identifiable community of interest among employees in the unit; (2) promote effective dealings with the agency; and (3) promote efficiency of the operations of the agency. 5 U.S.C. § 7112(a). The Authority applies this test on a case-by-case basis. *Dep’t of the Army, Military Traffic Mgmt. Command, Alexandria, Va.*, 60 FLRA 390, 394 (2004). A unit may still be appropriate even if some factors weigh against finding that a unit is appropriate. *Dep’t of Commerce, U.S. Census Bureau*, 64 FLRA 399, 402-03 (2010) (*USCB*).

The Authority finds that once a unit is certified, then any challenge to the appropriateness of that unit must be based on actions subsequent to that certification. *See, U.S. Dep’t of the Army, Army Materiel Command Headquarters, Joint Munitions Command, Rock Island, Ill.*, 63 FLRA 394, 403 (2009) (“In determining whether an existing unit remains appropriate after a reorganization, the Authority focuses on the changes caused by the reorganization . . . and assesses whether those changes are sufficient to render a recognized unit inappropriate If the scope and character of a unit is not significantly altered by a reorganization, then the unit remains appropriate.”).

The Petitioner indicated that there have been several BRACs since the original 1989 certification. In 1993, the VAL employees were moved to the building next to their previous work location. There is no evidence that this change had any material impact on the appropriateness of the unit.⁸ VAL employees, like almost all Wage Grade employees, are still physically located at the Cherry Point facility. Also, Fuel Department employees are located on the airfield, although they do not physically work in the same building as the VAL employees. Furthermore, physical proximity is just one of many factors that the Authority considers when evaluating the appropriateness of a unit. There is no other evidence of changes that impacted the appropriateness of the unit. As such, there is no need to address the other factors to determine whether the unit remains appropriate.

In summary, I find that there is insufficient change to the VAL employees since the 1989 certification of the bargaining unit which would have destroyed any community of interest between the VAL employees and the rest of the unit. Thus, the Union’s current bargaining unit, which includes the VAL employees, remains an appropriate unit.

The Union has Fairly and Adequately Represented Employees

A group of employees may be severed from a bargaining unit if the union has not fairly and adequately represented that group. *Fraternal Order of Police*,

⁶ As discussed below, the Authority considers whether collective-bargaining agreements include specific provisions relevant to unique groups of employees when it evaluates whether “unusual circumstances” warrant severance.

⁷ The Petitioner also asserts that the Electronics Mechanics (WG-2604-11) that worked in Airfield Operations were allowed to vote for a representative. However, the Electronics Mechanics were converted to General Schedule employees. General Schedule employees are not part of the unit according to the 1989 Certification. Therefore, an election was necessary. There is no evidence that the Electronics Mechanics were allowed to elect an exclusive representative before they were converted to General Schedule employees.

⁸ Indeed, the Petitioner did not argue that the unit was no longer appropriate because of the reorganization. Instead, it argued that the reorganization created a clear community of interest between VAL employees and employees of the Air Operations Department. The Authority only considers whether the unit that results from the severance is appropriate if it finds that severance is warranted. *Id.*; *Dep’t of the Army Def. Language Inst. Foreign Language Ctr. & Presidio of Monterey Presidio of Monterey, Cal.*, 64 FLRA 497, 499 (2010). Since severance is not warranted, I have not addressed whether a separate unit of just VAL employees is appropriate.

66 FLRA 285, 287 (2011). The Authority has considered several factors including: whether employees have had an opportunity to participate in union affairs, the existence of contract provisions that address the employees' unique concerns, and the union's formal and informal efforts to resolve employees' concerns. *Id.* See also, *Library of Congress*, 16 FLRA at 432 (severance not warranted even though employees had unique conditions of employment such as 24-hour work schedules, special training, uniforms, and firearms requirements because the collective bargaining agreement addressed those concerns); *Dep't of the Navy, Naval Air Station, Moffett Field, Cal.*, 8 FLRA 10 (1982) (severance not warranted because employees were actively involved in the union); *Veterans Affairs*, 35 FLRA at 180 (no severance because incumbent had filed unfair labor practice charges and grievances on employees' behalf); *Dep't of the Navy, Naval Air Station, Point Mugu, Cal.*, 26 FLRA 620 (1987) (failure to negotiate collective bargaining agreement for two years does not constitute inadequate representation); *Dep't of the Army, Headquarters, Fort Carson, and Headquarters, 4th Infantry Division, Fort Carson, Colo.*, 34 FLRA 30 (1989) (severance not warranted because union sought input from employees and represented the employees' interests on several occasions). In this regard, Authority precedent establishes that the *success* of a union in these representational efforts is not a factor in determining if severance is warranted. Rather, in determining unusual circumstances, the Authority looks to whether the incumbent has failed to *fairly* represent the employees sought. *U.S. Dep't of the Navy, Naval Air Station Jacksonville, Jacksonville, Fla.*, 61 FLRA 139, 142 (2005), citing *National Assoc. of Gov't Employees/Service Employees Int'l Union, Local 5000, AFL-CIO-CLC*, 52 FLRA 1068, 1077-79 (1997).

In this case, several VAL employees have held positions in the Union since at least 2009. These Union officials have filed grievances and played a direct and active role in negotiations. Pepperman participated in the negotiations that led to the 2012 CBA. Although the current CBA does not have a provision that specifically references the VAL section, it is clear that the Union has not ignored the concerns of VAL employees. The Union has negotiated numerous times over clothing and PPE. Bond and Bruckman filed a grievance that caused the Agency to provide cold-weather clothing. In 2013, the Union and the Agency agreed to conduct an industrial health survey that led to the issuance of new flame-resistant coveralls for fueling aircraft, special clothing for performing lavatory services, and separate lockers. Also, Brothers and Greaser intervened to make sure VAL employees received the gear they were promised. The Petitioner argues that the Union allowed the Agency to unilaterally implement a new policy regarding sweatshirts, that it didn't force the Agency to

purchase clothes, and that it has been reluctant to request impasse assistance. However, Bruckman, a VAL employee, signed the 2016 MOU that required employees to purchase their own clothing, as they had in the past. Furthermore, she attempted to negotiate a subsequent agreement which would allow sweatshirts and sought to go to the FSIP because it appeared that the Agency would not honor any agreement that would allow sweatshirts. Although it is alleged that the Union has fallen short in communication efforts with VAL employees and may not have always been adequately prepared for negotiations or arbitrations, I find that any shortcomings in this regard are insufficient to establish unusual circumstances justifying severance in this matter.⁹

In conclusion, the Union is the exclusive representative of all Wage Grade employees of the Agency, including the VAL employees. The unit continues to be appropriate. Moreover, there is ample evidence that the Union has fairly and adequately represented VAL employees for years. Therefore, an election to sever the VAL employees from the bargaining unit is not warranted.¹⁰

V. Order

It is ordered that this petition to sever the VAL employees from the Union's bargaining unit be dismissed.

⁹ The Petitioner contends that the Union failed to take action when the Agency introduced three changes to working conditions: security procedures; Time & Attendance procedures; and the installation of cameras in vehicles. There is no evidence that any VAL employees complained to the Union about the changes to the Time and Attendance procedures. The witnesses dispute whether there was a change to the security procedures and there is no evidence that the Union was aware of this change. There is no evidence that the Union negotiated over the vehicle cameras; however, this change was implemented almost nine years ago. Since then, as discussed above, the Union has regularly negotiated over issues that concern the VAL employees.

¹⁰ In addition, although not argued by Petitioner, I find that no other unusual circumstances are present in this matter which could require severing the VAL employees from the remainder of the unit. See, e.g., *Int'l Commc'n Agency*, 5 FLRA 97 (1981) (group of employees severed from AFGE unit due to distinct conditions of employment and because AFGE had allowed employees to receive representation from NFFE, pay dues to NFFE, and elect a NFFE shop steward); *Dep't of the Treasury, Bureau of Engraving and Printing*, 49 FLRA 100 (1994) (Authority severed a group of employees when AFGE expressly disclaimed its interest in representing the employees, another union had petitioned to represent the employees, and the employees were employed at a new facility).

VI. Right to Seek Review

Under section 7105(f) of the Statute and section 2422.31(a) of the Authority's Regulations, a party may file an application for review with the Authority within sixty days of this Decision. The application for review must be filed with the Authority by **December 3, 2018**, 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.¹¹

Dated: October 3, 2018

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Atlanta Region
South Tower, Suite 1950
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¹¹ To file an application for review electronically, go to the Authority's website at www.flra.gov, select **eFile** under the **Filing a Case** tab and follow the instructions.