74 FLRA No. 21

ANDREW MCFARLAND (Petitioner)

and

U.S. DEPARTMENT OF THE ARMY U.S. ARMY GARRISON FORT MCCOY, WISCONSIN (Activity)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
AFL-CIO
(Labor Organization)

CH-RP-24-0004

ORDER DENYING APPLICATION FOR REVIEW

November 21, 2024

Before the Authority: Susan Tsui Grundmann, Chairman, and Colleen Duffy Kiko and Anne Wagner, Members (Member Kiko concurring)

I. Statement of the Case

In the attached decision and order (decision), Federal Labor Relations Authority Regional Director Greg Weddle (the RD) dismissed a petition seeking to sever a group of firefighters from an existing bargaining unit represented by the American Federation of Government Employees (AFGE), Local 1882, AFL-CIO (Union), and to hold an election to determine whether those firefighters no longer wanted the Union to represent them. The RD found the Petitioner did not demonstrate AFGE had failed to adequately represent the firefighters, so the RD found no unusual circumstances warranting severance.

The Petitioner filed an application for review of the RD's decision (application). For the following reasons, we deny the Petitioner's application.

II. Background and RD's Decision

In January 2017, the Union was certified as the exclusive representative of a unit which includes the civilian employees who work in the Activity's fire department as firefighters, fire officers, and fire inspectors. In December 2023, the Petitioner filed a petition seeking an election to determine whether the firefighters no longer wanted the Union to represent them.

The Petitioner asserted that the Union failed to adequately represent the fire-department employees. To support this assertion, the Petitioner claimed the Union failed to address safety concerns particular to department firefighters, failed to pursue two firefighter grievances, and agreed to contract language making firefighter performance standards "difficult to grieve." Additionally, the Petitioner alleged that the Union ignored firefighter concerns regarding three "national and global events" that affected firefighters' working conditions. The Petitioner also asserted that the current Union president "tends to align himself with management" and that AFGE national representatives do not visit the fire station frequently enough. 4

The RD explained that an election petition seeking severance of a group of employees will be dismissed "[w]here an existing unit continues to be appropriate and there are no unusual circumstances to justify severance of the petitioned-for employees." Citing Authority precedent, the RD noted that, while an incumbent union's failure to fairly represent the employees at issue may justify severing those employees from an appropriate unit, this requires a showing that the union "essentially abandoned or otherwise treated the petitioned-for employees unfairly, ineffectively, or differently."6 He further explained that, in making this determination, the Authority considers "employees' opportunities to participate in union affairs, the existence collective[-]bargaining[-]agreement addressing their specific concerns, and the union's formal and informal effort to resolve" the petitioned-for employees' concerns.7

¹ RD's Decision at 2.

 $^{^{2}}$ Id.

³ *Id.*; *see also* Application, Attach. 1 at 3-4 (discussing firefighter concerns in response to the COVID-19 pandemic, "Operation Allies Welcome," and the "Arcadia Fire").

⁴ RD's Decision at 3.

⁵ Id. (citing U.S. Dep't of the Army, Def. Language Inst., Foreign Language Ctr. & Presidio of Monterey, Presidio of Monterey, Cal., 64 FLRA 497, 498 (2010)).

⁶ Id. (citing Fraternal Ord. of Police, 66 FLRA 285, 287 (2011) (FOP); U.S. Dep't of the Navy, Naval Air Station Jacksonville, Jacksonville, Fla., 61 FLRA 139, 143 (2005) (Naval Air Station)).

⁷ *Id.* (citing *FOP*, 66 FLRA at 287).

Applying these criteria, the RD found that the Union's local president is a fire inspector at the Activity's fire department, and that, "at most relevant times," the Union retained two stewards from the fire department.⁸ The RD also found the Union holds regular meetings "on site at Fort McCoy," and these meetings "are also available virtually via Zoom."9 He further found that an AFGE national representative has offered to meet with firefighters to address their specific concerns. 10 On this point, the RD determined that in June 2023, when the AFGE representative visited the Activity, no firefighters showed up to the meeting and, upon learning that the firefighters did not believe they had sufficient notice of the meeting, the representative offered to return for a subsequent meeting. Finally, the RD found that the evidence "supports that the Union has responded to [f]irefighter concerns and bargained over [their] conditions of employment," even if the way the Union addressed issues was "not always" how the firefighters may have preferred.¹¹ In support of this finding, the RD noted that the Union "provided examples of representational activities on behalf of [firefighters], including ... bargaining over the impact and implementation of a new National Wildfire Coordinating Group."12

Based on these findings, the RD determined that the evidence did not demonstrate the Union failed to adequately represent the firefighters. As such, the RD found the Petitioner did not establish "unusual circumstances" warranting severance. Further, the RD concluded that the "unit continues to be appropriate. Accordingly, he dismissed the petition.

The Petitioner filed the application on September 30, 2024. AFGE filed an opposition on October 11, 2024.

III. Analysis and Conclusions

At the outset, we note that the Petitioner does not specify a particular ground for review set forth in § 2422.31(c) of the Authority's Regulations. ¹⁵ Rather, in his application, the Petitioner "repl[ies] directly to some of [the RD's] findings" and supplies "additional pertinent information." However, even if we construe the application as claiming that the RD committed clear and prejudicial errors concerning substantial factual matters, we deny the application for the following reasons. ¹⁷

First, the Petitioner asserts the RD erred in his description of the firefighters' supervisory chain of command and servicing personnel office.¹⁸ Specifically, the Petitioner claims that, although the RD found that the servicing personnel office is "the Fort McCoy Civilian Personnel Advisory Center" (CPAC), 19 the Agency indicated in its response to the petition that the CPAC was superseded by the "North Central Processing Center at Rock Island, [Illinois]" (Rock Island).²⁰ However, the portion of the Agency's response cited by the Petitioner states that the CPAC is the "personnel office" responsible for "all advisory services such as labor relations, management[-]employee relations, staffing, classification, recruitment, [and] worker's compensation,"21 and that Rock Island merely serves as the "processing center" for any actions arising out of the CPAC.²² Contrary to the Petitioner's assertion, the cited portion of the response does not state that Rock Island superseded the CPAC as the personnel office applicable to the employees.²³ Therefore, the Petitioner does not demonstrate that the RD clearly erred in making the contested finding.

Next, the Petitioner claims the RD erred by finding that the Union has "generally maintained two... stewards in the [f]ire [d]epartment," because one steward has "stepped down" and the remaining steward "is retiring within a year." However, these assertions do not demonstrate that the RD's actual finding on this matter—that the Union retained two stewards from the fire

⁸ *Id*.

⁹ *Id*. at 2.

¹⁰ *Id*.

¹¹ *Id.* at 3.

¹² *Id*.

¹³ *Id*. at 4.

¹⁴ Id.

¹⁵ 5 C.F.R. § 2422.31(c)(1)-(3) ("The Authority may grant an application for review only when the application demonstrates that review is warranted on one or more of the following grounds: (1) [t]he decision raises an issue for which there is an absence of precedent; (2) [e]stablished law or policy warrants reconsideration; or, (3) [t]here is a genuine issue over whether the [r]egional [d]irector has: (i) [f]ailed to apply established law; (ii) [c]ommitted a prejudicial procedural error; or (iii) [c]ommitted a clear and prejudicial error concerning a substantial factual matter.").

¹⁶ Application at 1.

¹⁷ See, e.g., Dep't of Com., Nat'l Oceanic & Atmospheric Admin., Nat'l Marine Fisheries Serv., Se. Fisheries Sci. Ctr., 73 FLRA 238, 240 (2022) (finding that even if the Authority construed a party's arguments in its application as raising recognized grounds for review, those arguments did not demonstrate that the regional director erred).

¹⁸ Application at 1.

¹⁹ RD's Decision at 2.

²⁰ Application at 1-2 (quoting Agency Resp. at 2).

²¹ *Id.* at 1; RD's Decision at 2.

²² Agency Resp. at 2.

²³ Application at 2.

²⁴ *Id.* (quoting RD's Decision at 2).

²⁵ Id.

department "at most relevant times" – was clearly erroneous.²⁶

The Petitioner also alleges the RD erred by finding that the Union "holds meetings on site at Fort McCoy" and that the meetings are "available via Zoom," claiming that the Union's meetings are held offsite and the Union does not host the meetings on Zoom. The Petitioner argues this is "especially important" because firefighters who do not attend Union meetings in person "are unable to vote [in Union elections] because . . . voting is only done in person."

The record supports the Petitioner's claim that the Union did not hold its meetings on site at Fort McCoy, but rather at an off-site location,²⁹ and that voting occurred during Union meetings.³⁰ However, the record also supports the RD's finding that the Union allowed members, including the firefighters, to attend its meetings via Zoom.³¹ Additionally, the Petitioner has not cited any record evidence establishing that the firefighters were unable to vote in Union elections as a result of this arrangement.³² Accordingly, even if the RD erred by stating that meetings were held at Fort McCoy, that error does not demonstrate that the RD's other findings were clearly erroneous, or that the RD would have reached a different conclusion.³³

Finally, the Petitioner challenges the RD's findings that AFGE's National Representative offered to meet with firefighters to address their concerns, and that the Union engaged in representational activities on behalf of the firefighters.³⁴ However, neither challenge warrants granting the application.

Regarding the first challenge, the Petitioner acknowledges that AFGE national and local representatives met with the firefighters, but argues that this occurred only after the firefighters requested severance.³⁵ The Petitioner neither explains, nor cites Authority precedent demonstrating, why this argument, even if true, would have required the RD to grant the petition.³⁶

Regarding the second challenge, the Petitioner acknowledges that the Union's president was present during the impact and implementation negotiations for the National Wildfire Coordinating Group, but claims that the work related to the negotiations was performed only by the Petitioner and the stewards.³⁷ However, as with its first challenge, the Petitioner does not explain why this claim would have required the RD to grant the petition. Accordingly, we conclude that neither of the Petitioner's challenges establishes that the RD committed a clear and prejudicial error concerning a substantial factual matter.³⁸

For the above reasons, the Petitioner does not demonstrate that the RD committed clear and prejudicial errors concerning substantial factual matters. Accordingly, we deny the application.

IV. Order

We deny the Petitioner's application for review.

²⁶ RD's Decision at 3.

²⁷ Application at 2.

²⁸ Id

²⁹ Application, Attach. 11 (Facebook screenshot) at 1.

³⁰ Application, Attach. 9 (Correspondence) at 2-4; Facebook screenshot at 1-4.

³¹ Application, Attach. 10 at 2-3.

³² We note that the Petitioner provided the RD with copies of electronic communications with the Local's president addressing whether Union members were required to vote in-person in officer elections. Correspondence at 1-4. We further note that the RD did not address this issue in his decision. However, we find that this omission did not constitute prejudicial error because the evidence provided to the RD was inconclusive with respect to the Petitioner's assertion. See id.; see also, e.g., Dep't of the Army, Fort Carson Fire& Emergency Fort Carson, Colo., 73 FLRA 1, 2 (2022) ("The Authority may grant an application for review if it demonstrates that the [regional director] committed a clear and prejudicial error concerning a substantial factual matter." (citing 5 C.F.R. § 2422.31(c)(3)(iii)); SSA, Off. of Disability Adjudication & Rev., Dall. Region, Dall., Tex., 66 FLRA 1, 2 (2011) (SSA) (denying review where regional director's alleged error was not prejudicial)).

³³ See, e.g., U.S. Dep't of the Air Force, Carswell Air Force Base, Tex., 40 FLRA 221, 232 (1991) (rejecting petitioner's challenge to regional director's finding that firefighters did not have a reasonable opportunity to participate in union affairs where evidence showed they were "notified of [union] meetings and . . . had the opportunity to attend [the meetings]").

³⁴ Application at 2-3.

³⁵ *Id*. at 3.

³⁶ SSA, 66 FLRA at 2.

³⁷ Application at 3.

³⁸ See, e.g., Nat'l Guard Bureau, Pease Air Nat'l Guard Base, Newington, N.H., 74 FLRA 64, 66 (2024) (Member Kiko dissenting) (rejecting argument that incumbent union's failure to "provide [the petitioned-for employees] guidance on how to exercise their rights under the [collective-bargaining agreement]" demonstrated the union's "inadequate representation" for purposes of addressing a severance petition); Naval Air Station, 61 FLRA at 143 (denying application for review of regional director's dismissal of severance petition where record failed to show that the petitioned-for employees had been abandoned or subjected to incompetent representation by the exclusive representative).

Member Kiko, concurring:

I agree with the majority. However, I write separately to explain why this case is distinguishable from *National Guard Bureau, Pease Air National Guard Base, Newington, New Hampshire (Pease Air).* As I noted in my dissent in *Pease Air*, "when employees are treated unfairly, ineffectively, or differently, unusual circumstances warranting severance exist." However, unlike *Pease Air*, the Petitioner fails to demonstrate that the employees here are being treated unfairly, ineffectively, or differently.

Pease Air involved a unique situation in which state-employed firefighters transitioned to federalgovernment employment.³ In that case, there was also evidence presented to the Regional Director that the incumbent union failed: (1) to meet with the firefighters; (2) to orient the firefighters with the collective-bargaining agreement (CBA); (3) to explain how to enforce rights under the CBA or the Federal Service Labor-Management Relations Statute; (4) to file grievances on behalf of the firefighters; or (5) to negotiate regarding a substantial change to the firefighters' conditions of employment.⁴ Further, the CBA at issue in Pease Air did not address the firefighters' specific concerns and distinct conditions of employment.5 This neglect of new bargaining-unit employees during a significant change, in my view, established unusual circumstances warranting severance.⁶

The facts in the instant case fail to demonstrate similar neglect. Here, the Union's local president is a fire inspector at the Activity's fire department, and the Union "has generally maintained two . . . stewards in the [f]ire [d]epartment."7 In Pease Air, the union failed to communicate with - or hold meetings including - the firefighters.⁸ Here, the Union holds regular, publicized meetings, with access via Zoom,9 and national representatives attempted to meet with the firefighters. 10 In Pease Air, I observed the lack of evidence that the incumbent union ever "invited the firefighters to participate in . . . negotiations," "solicited input from the firefighters regarding their specific concerns," or "engaged in formal or informal efforts to resolve concerns of the firefighters."11 By contrast, here, Union stewards "resolved many [firefighter] issues informally with management,"12 and the Union has bargained over firefighter conditions of employment.¹³ As such, and unlike Pease Air, the Union has not treated the firefighters unfairly, ineffectively, or differently.¹⁴ Accordingly, this case is distinguishable from Pease Air.

¹ 74 FLRA 64 (2024) (Member Kiko dissenting). Because I dissented in *Pease Air*, I also would not cite that decision in this case. *See* Majority at 6 n.38.

² 74 FLRA at 68 (Dissenting Opinion of Member Kiko) (quoting *Dep't of the Navy, Portsmouth Naval Shipyard, Portsmouth, N.H.*, 70 FLRA 955, 999 (2018) (Member DuBester dissenting) (internal quotation marks omitted)).

³ *Id*.

⁴ *Id.* at 68-69

⁵ *Id.* at 70.

⁶ *Id.* at 70-71.

⁷ RD's Decision at 2.

⁸ 74 FLRA at 69 ("[R]ather than offering the firefighters opportunities to participate in union affairs, the [i]ncumbent [union] neglected to communicate with the firefighters in any way during this period of substantial change."); *id.* at 69-70 (observing that if the incumbent union held meetings during the eleven months following the firefighters' transition into federal employment, the incumbent "did not invite the firefighters . . . effectively preventing their involvement in union affairs").

⁹ RD's Decision at 2-3 (finding the Union holds meetings on the second Tuesday of each month, posts reminders about upcoming meetings two weeks in advance on social media, and meetings are accessible over Zoom).

¹⁰ *Id.* at 3. The Petitioner's allegation that the location and timing of Union meetings prevents some firefighters from effective participation in Union elections is troubling. Application at 2. However, as noted in the majority, Majority at 5 n.32, the evidence provided to the RD was inconclusive with respect to the Petitioner's assertion, and therefore insufficient to establish inadequate representation.

¹¹ 74 FLRA at 70.

¹² RD's Decision at 3.

¹³ *Id.*; *see also* Application at 3 (petitioner describing inclusion of firefighters in negotiations). Although the Petitioner alleged to the RD that the Union ignored its concerns regarding three "national and global events" – the COVID-19 pandemic, "Operation Allies Welcome," and the "Arcadia Fire" – there was insufficient evidentiary support of these allegations to establish unusual circumstances warranting severance. Application, Attach. 1, Petitioner's Reply at 3-4; *see* RD's Decision at 3 ("The evidence supports that the Union has responded to [f]irefighter concerns and bargained over [f]irefighter conditions of employment, even though it has not always addressed issues in the manner the [f]irefighters may have preferred.").

¹⁴ See U.S. Dep't of the Air Force, Carswell Air Force Base, Tex., 40 FLRA 221, 231-32 (1991) (finding no unusual circumstances warranting severance where: incumbent union provided firefighters reasonable opportunity to participate in union affairs; firefighters were notified of, and some attended, larger union meetings; the union held two meetings particularly for the firefighters; and the firefighters participated in negotiations over a firefighter-specific provision to their collective-bargaining agreement).

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

Andrew McFarland (Petitioner)

and

U.S. Department of the Army U.S. Army Garrison Fort McCoy, Wisconsin (Activity)

and

American Federation of Government Employees, AFL-CIO (Labor Organization)

Case No. CH-RP-24-0004

DECISION AND ORDER

I. Statement of the Case

On December 13, 2023, Andrew McFarland (the Petitioner) filed a petition seeking an election among the Firefighters of the U.S. Department of the Army, U.S. Army Garrison, Fort McCoy, Wisconsin (the Activity) to determine if the employees no longer wish to be represented by the American Federation of Government Employees, AFL-CIO (the Union). The Petitioner alleges that the Union has failed to adequately represent the Firefighters.

The Region investigated this matter and the parties' submitted documents, which I have fully considered. For the reasons discussed below, I find the evidence does not establish that the Union has failed to represent the Firefighters. Therefore, I order that the petition be dismissed.

II. **Findings**

The Union is the exclusive representative of a consolidated unit of employees of the Activity, which includes members of the Fire Department. The current unit was certified on January 20, 2017 in case number CH-RP-16-0021:

Included: All appropriated fund employees of the U.S. Army Installation Management Command, Fort McCoy; the Medical Supply Office and the Occupational Health Nursing Office of the U.S. Army Medical Department Activity (MEDDAC), Fort McCoy; and all non-appropriated fund employees at Fort McCoy, Wisconsin.

Excluded: All employees of the Fort McCoy, Post Exchange. Wisconsin professional employees, and all management officials, supervisors, and employees described in 5 USC§ 7112(b)(2), (3), (4), (6) and (7).

Civilian employees of the Activity support training, personnel, and equipment readiness of military units across all branches and components of the military as they prepare for military operations. The supervisory chain of command for all employees emanates from the U.S. Army Garrison at Fort McCoy. The personnel office for all advisory services such as labor relations, employee relations, staffing, classification, recruitment, and worker's compensation is the Fort McCoy Civilian Personnel Advisory Center. The Fort McCoy United States Army Civilian Pay Branch provides payroll support.

When the Petition was filed, there were approximately forty Firefighters in the Union's consolidated unit at the Activity who work for the Fire Department. The Fire Department is aligned under the Directorate of Emergency Services and is staffed by Department of the Army civilian employees who serve as firefighters, fire officers, and fire inspectors. The Fire Department is tasked with providing fire and emergency services to the entire Fort McCoy Army Base. There are two fire stations at the Activity—one on the main post and one located at the Fort McCoy Airfield.

Curtis Ladwig is the current President of the Union. Ladwig is a fire inspector at the Activity's Fire Department. The Union has also generally maintained two Union stewards in the Fire Department. The Union posts information on its Facebook and Broadstripes pages about Union activity. The Union holds meetings on the second Tuesday of each month on site at Fort McCoy. Meetings are also available virtually via Zoom and have been since in or around 2022. Approximately two weeks before a meeting, the Union posts a notice on Facebook and Broadstripes reminding all bargaining unit employees about the meeting.

The Petitioner argues that the Union has failed to adequately represent the employees of the Activity's Fire Department. As evidence the Petitioner asserts that during the COVID-19 pandemic, the prior Union President was vocal in his support of vaccination, even though it did not impact him, and he was dismissive of bargaining unit employees' concerns about vaccination. The Petitioner also asserts that the Union did not proactively address Firefighter concerns about the COVID-19 pandemic, including concerns about personal protective equipment and medical/religious exemptions from vaccination; Firefighter safety concerns about Operation Allies Welcome, which brought 10,000 refugees from Afghanistan to Fort McCoy; and concerns about the Arcadia Wildfire.

Over two years ago, the Union did not pursue a grievance about Firefighter performance standards, and prior to that, the Union agreed to language in the collective bargaining agreement that made performance standards difficult to grieve. The Petitioner also cited the Union's failure to pursue a grievance about the Acadia Wildfire on the grounds that the allegations were untimely and based on the belief that the matter could be more adequately addressed through bargaining. Union stewards have resolved many issues informally with management.

The Petitioner also asserts that Ladwig tends to align himself with management, including in passing on policy changes without receiving sufficient input from employees. The Petitioner feels that National representatives from AFGE have not visited the fire station frequently enough. In June 2023, the National Representative went to Fort McCoy to meet with Firefighters, none of whom showed up. When one or more Firefighter said they did not have sufficient notice, he offered to return to meet with the Firefighters again. Few Firefighters are Union members and over 30% petitioned to remove the Union. The Petitioner also cites to the unique position descriptions, job responsibilities, pay, training, and hours of firefighters that differ from other occupations on the installation.

The Union provided examples of representational activities on behalf of fire fighters, including a request for information about safety issues involving the Arcadia Wildfire and bargaining over the impact and implementation of a new National Wildfire Coordinating Group. The Union has requested to reopen the collective bargaining agreement.

III. Analysis and Conclusion

The issue of severance arises when a petitioner files an election petition seeking to sever or carve out a group of employees from an existing bargaining unit. *NAGE/SEIU, Local 5000, AFL-CIO,* 52 FLRA 1068, 1077 (1997). Where an existing unit continues to be appropriate and there are no unusual circumstances to justify severance of the petitioned-for employees, the severance petition will be dismissed. *U.S. Dep't of the Army Def. Language Inst. Foreign Language Ctr. & Presidio of Monterey, Presidio of Monterey, Cal.*, 64 FLRA 497, 498 (2010).

As relevant here, the failure of an incumbent to fairly represent the employees at issue may justify severance of those employees from an existing unit that continues to be appropriate. FOP, 66 FLRA 285, 287 (2011). In order for the representation to be inadequate, the union must have essentially abandoned or otherwise petitioned-for treated the employees ineffectively, or differently. See U.S. Dep't of the Navy, Naval Air Station Jacksonville, Jacksonville, Fla., 61 FLRA 139, 143 (2005). The Authority considers such factors as employees' opportunities to participate in union affairs, the existence of collective bargaining agreement provisions addressing their specific concerns, and the union's formal and informal effort to resolve issues of concern to the employees at issue. FOP, 66 FLRA at 287.

Here, the Union has not essentially abandoned or otherwise treated the Firefighters unfairly, ineffectively, or differently. Instead, the Union's President is from the Fire Department, and at most relevant times, it has retained two Union Stewards from the Fire Department. The Union holds regular meetings, including over Zoom, and its National Representative has offered to meet with Firefighters to address their concerns. The evidence supports that the Union has responded to Firefighter concerns and bargained over Firefighter conditions of employment, even though it has not always addressed issues in the manner the Firefighters may have preferred. Based on the foregoing, the evidence does not support that the Union has failed to adequately represent the Firefighters. As Respondent has not cited to unusual circumstances justifying severance, I conclude that the existing unit continues to be appropriate. Therefore, I am dismissing the petition.

III. Order

It is ordered that the Petition is dismissed.

IV. Right to File an Application for 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 **October 7, 2024**, 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. ¹

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

Dated: August 7, 2024

¹ To file an application for review electronically, go to the Authority's website at **www.flra.gov** and click on efiling.