

63 FLRA No. 136

UNITED STATES DEPARTMENT OF DEFENSE
DEFENSE LOGISTICS AGENCY
(Agency/Petitioner)

and

DOCUMENT AUTOMATION
AND PRODUCTION SERVICE
(Activity)

and

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO
(Exclusive Representative)

and

AFGE AFFILIATED LOCALS
48, 53, 190, 896, 916, 1156, 1411, 1592,
1689, 1759, 1770, 2017, 2065, 2302, 2326,
AFGE 2nd DISTRICT
AFL-CIO
(Exclusive Representatives)

WA-RP-09-0015

ORDER DENYING APPLICATION FOR REVIEW

June 22, 2009

Before the Authority: Carol Waller Pope, Chairman and
Thomas M. Beck, Member

I. Statement of the Case

This case is before the Authority on an application for review filed by the American Federation of Government Employees (AFGE), Local 53, AFL-CIO (Local 53) under § 2422.31 of the Authority's regulations.¹ The Defense Logistics Agency (DLA) filed an opposition to Local 53's application.

The petition filed by the DLA sought the consolidation of all the bargaining units of the Document Automation and Production Service (DAPS) that are represented by AFGE or its affiliated locals and to add these units to an existing consolidated unit of the DLA nonprofessional employees, for which AFGE is the exclusive representative. Based upon a stipulated record, the Regional Director (RD) found that the petitioned-for consolidated unit constituted an appropriate unit under § 7112(a) of the Federal Service Labor-Man-

agement Relations Statute (Statute)² and as required under § 7112(d).³

As explained below, we deny Local 53's application for review.

II. Background and RD's Decision

The petition for consolidation of units in this case was filed by DLA. RD's Decision at 1. The petition seeks the consolidation of all bargaining units of DAPS represented by AFGE or its affiliated locals.⁴ *See id.* DAPS is a field activity of DLA. *See id.* AFGE agrees to represent all DAPS employees as part of its existing consolidated unit. *See id.*

AFGE Local 53 submitted to the RD a letter, dated January 12, 2009, and attached a showing of interest, consisting of the signatures of 21 employees of DAPS, to seek an election on the proposed consolidation.⁵ *See id.* at 2.

1. Section 2422.31 of the Authority's Regulations provides, in pertinent part:

(c) Review. 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) The decision raises an issue for which there is an absence of precedent;

(2) Established law or policy warrants reconsideration; or,

(3) There is a genuine issue over whether the Regional Director has:

(i) Failed to apply established law;

(ii) Committed a prejudicial procedural error;

(iii) Committed a clear and prejudicial error concerning a substantial factual matter.

2. Section 7112(a) provides, in pertinent part, that "[t]he Authority shall . . . determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of the agency involved"

3. Section 7112(d) provides, in pertinent part, that "[t]wo or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate."

4. The affiliated locals involved in this case are as follows: Local 48, Local 53, Local 190, Local 896, Local 916, Local 1156, Local 1411, Local 1592, Local 1689, Local 1759, Local 1770, Local 2017, Local 2065, Local 2302, Local 2326, and AFGE 2nd District, AFL-CIO (collectively referred to as the affiliated locals).

5. As relevant here, a "Showing of interest" means "signed and dated petitions or cards indicating a desire that an election be held on a proposed consolidation of units[.]" 5 C.F.R. § 2421.16

Subsequently, the parties participated in drafting a stipulation of facts, which the RD transmitted to the parties, with a request that they sign and return the stipulation, accompanied by a statement of each party's position with respect to the stipulation. They were advised that failure to respond would be interpreted as agreement with all the facts contained in the stipulation. *See id.* They were also advised that a decision would be made based upon those facts, and any additional facts or arguments provided by any party. *See id.* A conference call was scheduled to discuss the stipulation and anything submitted by any party beforehand.

Both AFGE and DLA signed the stipulation, as did six AFGE locals: Local 1592, Local 1689, Local 1759, local 2065, Local 2302, and Local 2326. *See id.* As part of the stipulation, each party was asked to state whether it agreed with the purpose of DLA's petition. Five of the six locals that signed the stipulation agreed with the objective of the petition. *See id.* Local 1592 disagreed, but no party, including Local 1592, offered any additional facts or arguments for consideration. *See id.*

The conference call was held, as scheduled. In addition to DLA and AFGE, representatives from Local 916, Local 1156, and Local 1770 participated. All participants confirmed that they did not dispute the facts as set forth in the stipulation, and that those facts would provide the basis for the decision in this matter. *See id.* The other AFGE affiliated locals did not sign the stipulation or participate in this conference call. *See id.*

As an initial matter, the RD considered the showing of interest submitted by Local 53 to seek an election. *See id.* at 2. The RD determined, citing § 2422.9 of the Authority's Regulations, that the showing of interest, consisting of the signatures of 21 employee of DAPS, was inadequate because it was less than thirty percent of the 310 DAPS employees who would be consolidated.⁶ *Id.*

On the merits, the RD found that, based on Authority precedent, the petitioned-for consolidated unit constituted an appropriate unit within the meaning of § 7112(a) of the Statute and as required under § 7112(d).⁷ *Id.* at 17-19. Specifically, the RD found that employees in the petitioned-for consolidated unit shared a community of interest under § 7112(a)(1), and that the consolidated unit is consistent with the criteria of effective dealings under § 7112(a)(1) and efficiency of agency operations under § 7112(a)(1).⁸ *Id.*

Based on these findings, the RD concluded that all "DAPS bargaining units, as updated, should be consolidated with the existing consolidated unit." *Id.* at 19.

III. Positions of the Parties

Local 53 contends that the RD's determination that the showing of interest was insufficient is inconsistent with § 2422.9 of the Authority's Regulations, which refers to "one unit" and not "multi-units." Application at 1-2. In addition, Local 53 contends that the RD's investigation of the showing of interest "was incorrectly done[.]" *Id.* at 2. Local 53 asserts that the RD notified Local 53 that its initial submission on the showing of interest lacked the required alphabetical list of names, but did not state that the showing of interest was inadequate. *Id.* Local 53 also argues that the RD improperly placed the burden of "printing large volume[s] of documents" on the "small Locals" and not the Activity. *Id.* Local 53 adds that the "alphabetical listings" of names was "impossible to provide" because of the location of various bargaining units. *Id.*

DLA contends that the RD correctly determined that the showing of interest submitted by Local 53 was inadequate. Opposition at 1. In this regard, DLA argues

6. Section 2422.9 of the Authority's Regulations provides, in pertinent part:

Adequacy of showing of interest.

(a) *Adequacy.* Adequacy of a showing of interest refers to the percentage of employees in the unit involved as required by §§ 2422.3(c) and (d) and 2422.8(c)(1).

(b) *Regional Director investigation and Decision and Order.* The Regional Director will conduct such investigation as deemed appropriate. A Regional Director's determination that the showing of interest is adequate is final and binding and not subject to collateral attack at a representation hearing or on appeal to the Authority. If the Regional Director determines that a showing of interest is inadequate, the Regional Director will issue a Decision and Order dismissing the petition, or denying a request for intervention.

Section 2422.3 of the Authority's Regulations provide in pertinent part:

(c) *Showing of interest supporting a representation petition.* When filing a petition requiring a showing of interest, the petitioner must:

(1) So indicate on the petition form;

(2) Submit with the petition a showing of interest of not less than thirty percent (30%) of the employees in the unit involved in the petition; and

(3) Include an alphabetical list of the names constituting the showing of interest.

7. The RD noted that the certifications of certain DAPS units did not refer to DAPS by name. RD's Decision at 7. In this regard, the RD found that DAPS was a successor employer in those bargaining units and the RD updated the certifications. RD's Decision at 7-10 (citing *Dep't of Energy, Bonneville Power Admin., Portland, Or.*, 2 FLRA 654, 656 (1980)). As there is no dispute as to these findings, we do not address them further.

8. As no application for review has been filed contesting the finding that the consolidated unit is appropriate, we do not address it further.

that “Local 53 ... presented a showing of interest, apparently for what it believes to be an appropriate unit, which is different from the petitioned-for consolidated unit.” *Id.*

IV. Analysis and Conclusions

1. Local 53 has not demonstrated that the RD failed to apply established law and committed a prejudicial error by determining that the showing of interest submitted by Local 53 was inadequate.

Local 53 contends that the RD’s determination that the showing of interest was insufficient is inconsistent with § 2422.9 of the Authority’s Regulations, which refers to “one unit” and not “multi-units.” Application at 1-2. We construe Local 53’s contention as an allegation that RD failed to apply established law and committed a prejudicial error by determining that the showing of interest submitted by Local 53 was inadequate.

Section 7112(d) of the Statute provides that two or more units in an agency and for which a labor organization is the exclusive representative may be consolidated *with or without an election* into a single larger unit if the Authority considers the larger unit appropriate. The Statute requires that a showing of interest be submitted with a petition indicating that an election is desired to be held on the issue of a proposed consolidated unit. 5 U.S.C. § 7112(d); 5 C.F.R. § 2421.16. As relevant here, the adequacy of a showing of interest refers to the percentage of employees in “the unit involved” as required by § 2422.3(c). 5 C.F.R. § 2422.9. Specifically, the Authority’s Regulations require “a showing of interest of not less than thirty percent (30%) of the employees in the unit involved in the petition[.]” 5 C.F.R. § 2422.3(c).

The “unit involved in the petition” in this case, within the meaning of § 2422.3(c) and § 2322.9, is the proposed consolidated unit. RD’s Decision at 1. Consistent with the regulations, the RD determined that the showing of interest submitted by Local 53 consisting of the signatures of 21 employee of DAPS was inadequate because it was less than thirty percent of the 310 DAPS employees who would be consolidated. *Id.* at 2. Local 53 has not provided any evidence that the RD erred in making that determination.

For the foregoing reasons, we find that Local 53 has not demonstrated that RD failed to apply established law and committed a prejudicial error by determining that the showing of interest submitted by Local 53 was inadequate.

2. Local 53 has not demonstrated that the RD failed to apply established law and committed a prejudicial error by the manner in which the RD investigated the showing of interest submitted by Local 53.

Local 53 contends that the RD’s investigation of the showing of interest “was incorrectly done[.]” Application at 2. We construe Local 53’s contention as an allegation that RD failed to apply established law and committed a prejudicial error by the manner in which the RD investigated the showing of interest submitted by Local 53.

Section 2422.9 (b) of the Authority’s Regulations addresses an RD’s authority to conduct an investigation regarding a showing of interest. In particular, § 2422.9(b) provides that an RD “will conduct such investigation as deemed appropriate.” Thus, under § 2422.9(b), the determination as to how to investigate a showing of interest is within the RD’s discretion.

The record shows that, by letter dated January 23, 2009, the RD notified Local 53 that its initial submission of showing of interest dated January 12 was deficient because it lacked the alphabetical list of names constituting the showing of interest. On that same date, by letter, Local 53 submitted to the RD an alphabetical listing of names that it claimed constituted the showing of interest. Local 53 also was notified by the RD of the opportunity to present evidence and to join a conference call of all the parties to discuss the stipulation. RD’s Decision at 2. Local 53 failed to present any evidence or participate in the conference call. *Id.* After the RD considered Local 53’s submission on the showing of interest, he determined that the submission was inadequate. *Id.* Thus, the RD arrived at his conclusion after an investigation, the nature of which was within his discretion under § 2422.9(b) of the Authority’s Regulations.

For the foregoing reasons, we find that Local 53 has not demonstrated that RD failed to apply established law and committed a prejudicial error by the manner in which the RD investigated the showing of interest submitted by Local 53.

V. Order

The application for review is denied.