66 FLRA No. 141

UNITED STATES
DEPARTMENT OF THE AIR FORCE
JOINT BASE LANGLEY – EUSTIS, VIRGINIA
(Activity)

and

NATIONAL ASSOCIATION
OF INDEPENDENT LABOR
(Petitioner/Exclusive Representative)

and

NATIONAL ASSOCIATION
OF GOVERNMENT EMPLOYEES
SERVICE EMPLOYEES
INTERNATIONAL UNION
(Exclusive Representative)

WA-RP-11-0003
WA-RP-11-0004
WA-RP-11-0005

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ORDER DENYING
APPLICATION FOR REVIEW

July 9, 2012

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Before the Authority: Carol Waller Pope, Chairman, and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This case is before the Authority on an application for review (application) filed by the National Association of Independent Labor (NAIL) under § 2422.31(c) of the Authority's Regulations.[1] The Activity – the U.S. Department of the Air Force, 633d Air Base Wing (633d ABW), Joint Base Langley-Eustis (Joint Base) – and the National Association of Government Employees, Service Employees International Union (NAGE/SEIU) filed oppositions to NAIL's application.[2]

As relevant here, prior to the Joint Base's establishment, NAIL represented one professional and one nonprofessional unit of employees at the U.S. Department of the Army, Installation Management Command (IMC), Fort Eustis, Virginia (Army Fort Eustis); and NAGE/SEIU represented one professional and one nonprofessional unit of employees at the U.S. Department of the Air Force, Langley Air Force Base (Langley AFB). As the result of a reorganization, both Army Fort Eustis and Langley AFB became component installations of the Joint Base. Employees at the Eustis installation (Eustis employees) and employees at the Langley installation (Langley employees) were administratively transferred to the Joint Base as well.

Acting on petitions filed by NAIL, the Regional Director (RD) determined that the Joint Base was the successor employer of a single Langley-Eustis unit of professional employees and a single Langley-Eustis unit of nonprofessional employees, and that NAGE/SEIU would represent both units. NAIL's application contends that the RD erred in finding that its existing Eustis-only units were no longer appropriate. For the reasons that follow, we deny NAIL's application.

II. Background and RD's Decision

At one time, NAGE represented bargaining units at Army Fort Eustis and bargaining units at Langley AFB. RD's Decision at 4-5. But in 2007, as the result of a vote by Eustis employees, NAIL replaced NAGE as the exclusive representative of the Army Fort Eustis units; NAGE remained the exclusive representative of the Langley AFB units. *Id.* After the establishment of the Joint Base in 2010, *id.* at 1 n.1, Eustis employees and Langley employees were administratively transferred to the Joint Base, *id.* at 2-3, 10.

[1] Title 5, § 2422.31 of the Code of Federal Regulations states, 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:
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> . . . .
>
> (2) Established law or policy warrants reconsideration; or,
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> (3) There is a genuine issue over whether the Regional Director has:
>
> (i) Failed to apply established law;
>
> . . . .
>
> (iii) Committed a clear and prejudicial error concerning a substantial factual matter.

[2] The Joint Base and NAGE/SEIU also filed applications for review concerning the accuracy of the Regional Director's (RD's) description of a NAGE/SEIU unit of non-appropriated-fund (NAF) employees. But the RD's Corrected Decision and Order of May 29, 2012, modified the description of the NAGE/SEIU NAF unit in a manner that removes the alleged deficiency that the Joint Base and NAGE/SEIU raise in their applications. Thus, those applications are now moot, and we do not consider them further.

Later, NAIL filed petitions seeking determinations that it remained the exclusive representative of the existing Eustis-employee units by operation of the Authority's successorship doctrine. *Id.* at 1-2. As relevant here, NAIL contended that, under the successorship principles articulated in *Naval Facilities Engineering Service Center, Port Hueneme, California*, 50 FLRA 363 (1995) (*Port Hueneme*), the RD should amend the certifications of its professional and nonprofessional units to reflect that the Joint Base was the successor employer of those Eustis-only units.[3] RD's Decision at 15-16.

NAGE/SEIU intervened and argued that the RD should also amend its unit certifications to reflect the Joint Base as the successor employer of its existing Langley-only units. *Id.* NAGE/SEIU contended that, in the event that the RD found that a single Langley-Eustis professional unit and a single Langley-Eustis nonprofessional unit were appropriate, *Department of the Army, U.S. Army Aviation Missile Command (AMCOM), Redstone Arsenal, Alabama*, 56 FLRA 126 (2000) (*Redstone Arsenal*), required the RD to recognize NAGE/SEIU as the exclusive representative of both of those units.[4] RD's Decision at 16.

The Joint Base contended that the RD should find that one Langley-Eustis professional unit and one Langley-Eustis nonprofessional unit were appropriate, and that NAGE/SEIU should represent them both. *Id.* at 15.

The RD found that, after their transfer to the Joint Base, Eustis and Langley employees could continue bargaining in their existing units with their existing exclusive representatives if: (1) the Joint Base was a successor to Army Fort Eustis and Langley AFB; and (2) the existing bargaining units continued to be appropriate following the reorganization and transfer. *Id.* at 17 (citing *Port Hueneme*, 50 FLRA at 368).

With regard to whether the Joint Base was a successor, the RD found that the first prong of the *Port Hueneme* successorship test required her to apply the three appropriate-unit criteria in § 7112(a) of the Federal Service Labor-Management Relations Statute (the Statute) (§ 7112(a)).[5] *See id.* at 18 (citing *U.S. Dep't of the Navy, Fleet & Indus. Supply Ctr., Norfolk, Va.*, 52 FLRA 950, 959 (1997) (*FISC*)). She stated that, under § 7112(a), an appropriate unit must: (1) ensure a clear and identifiable community of interest among the employees in the unit;[6] (2) promote effective dealings with the Joint Base;[7] and (3) promote the efficiency of the Joint Base's operations.[8] *Id.*

With regard to the community-of-interest criterion, the RD found that, since the reorganization: (1) the 633d ABW Commanding Officer sets conditions of employment and policies for both Eustis and Langley employees; (2) the ABW does not maintain separate personnel and employment policies for those employees; (3) the professional Eustis and Langley employees encumber the same or similar positions; and (4) the non-professional Eustis and Langley employees have the same or similar job titles and perform the same or similar work. *See id.* at 19. The RD also found that the 633d Mission Support Group (MSG) provides

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[3] *Port Hueneme* provides that a gaining entity is a successor employer, and a union retains its status as the exclusive representative of employees who are transferred to the successor, when:

> (1) An entire recognized unit, or a portion thereof, is transferred, and the transferred employees:
>
> > (a) are in an appropriate bargaining unit, under [§] 7112(a)(1) of the [Federal Service Labor-Management Relations] Statute, after the transfer; and
> >
> > (b) constitute a majority of the employees in such unit;
>
> (2) The gaining entity has substantially the same organizational mission as the losing entity, with the transferred employees performing substantially the same duties and functions under substantially similar working conditions in the gaining entity; and
>
> (3) It has not been demonstrated that an election is necessary to determine representation.

50 FLRA at 368 (footnote omitted).

[4] *Redstone Arsenal* concerns the application of the third prong of the *Port Hueneme* successorship test, *see supra* note 3, in cases where employees represented by more than one union transfer to a new unit. In such cases, the Authority found that, "absent special circumstances . . . a union that represents more than [seventy] percent of the employees in a newly combined unit . . . is sufficiently predominant to render an election [for representation of the new unit] unnecessary because such an election would be a useless exercise." 56 FLRA at 131 (footnote omitted). "Special circumstances" would exist if there were clear evidence that the number of employees in a new unit who had been represented by a particular union did not dispositively indicate that union's strength. *Id.* n.8.

[5] Section 7112(a) states, in pertinent part: "The 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."

[6] The community-of-interest factors are set forth *infra* Part IV.A.

[7] In assessing the effective-dealings requirement, the Authority examines such factors as: the past collective bargaining experience of the parties; the locus and scope of authority of the responsible personnel office administering personnel policies covering employees in the proposed unit; the limitations, if any, on the negotiation of matters of critical concern to employees in the proposed unit; and the level at which labor-relations policy is set in the agency. *FISC*, 52 FLRA at 961.

[8] Factors to be examined in assessing the efficiency of agency operations pertain to the effect of the proposed unit on agency operations in terms of cost, productivity, and use of resources. *FISC*, 52 FLRA at 961-62.

installation-management functions at the Langley installation and certain installation-management functions at the Eustis installation, and also is responsible for all information technology at both the Langley and Eustis installations. *See id.* In addition, she determined that installation-management functions that had been performed at Army Fort Eustis had been transferred from IMC to the 633d ABW of the Joint Base, and that, although at the time of the representation hearing, a different MSG – the 733d MSG – continued to perform some installation-management functions at the Eustis installation, its mission was to perform those functions to facilitate transition of Eustis installation-management work to the Joint Base. *See id.* at 19-20. Further, the RD found that the ABW's mission is the same as the missions of the disestablished IMC at former Army Fort Eustis and the former Langley AFB operation that employed the NAGE employees. *See id.* at 20. Moreover, the RD found that, since the creation of the Joint Base, both the Eustis and Langley employees are serviced by the same personnel office, and that areas of consideration for vacancies are at least Joint Base-wide. *See id.* She concluded that "[t]hese facts, taken together," establish that employees in single Langley-Eustis units would share a community of interest. *Id.*

With regard to effective dealings, the RD found that, since the reorganization, the same personnel policies apply to the Langley and Eustis employees because the 633d ABW Commanding Officer sets conditions of employment and establishes policy for those employees. *See id.* She also found that the locus and scope of the responsible personnel office administering personnel policies is the same Civilian Personnel Office (CPO). *See id.* Thus, she determined that single Langley-Eustis units "would enable the personnel authorities to deal with one unit each of professional and nonprofessional employees, instead of four units," and would thereby promote effective dealings. *Id.*

With regard to efficiency of operations, the RD found that combined units "reflect[], and bear[] a rational relationship to, the operational and organizational structure of the . . . Joint Base." *Id.* at 21. In this regard, she reiterated that the same entities administer personnel matters for both the Langley and Eustis employees, and that the 633d ABW Commander sets policy for all of them. *See id.* As a result, she stated that employees at both sites are "integrated [because] personnel policy within the ABW is the same regardless of site within the Joint Base," and she concluded that single Langley-Eustis units would promote efficiency of operations. *Id.*

Based on the foregoing, the RD found that the former Eustis professionals and non-professionals have been integrated into the 633d ABW workforce and the ABW's personnel administration. *See id.* at 23. She stated that, although the 633d ABW's establishment of the 733d MSG ostensibly contemplates some distinct operations by former Army Fort Eustis personnel, the 733d MSG's mission is to transition Fort Eustis personnel and facilities to the Joint Base. *See id.* She further stated that with the creation of the Joint Base, the 633d MSG addresses the needs of these personnel with respect to computers, phones, internet, and other information technology, as it does for the former Langley AFB employees incorporated in the Joint Base, and that it provides contracting and acquisition services for the entire 633d ABW, including the Eustis installation. *See id.* She then stated that, "[b]ased on the record as a whole, . . . the result of maintaining separate NAIL units would be fragmentation that is inconsistent with the integrated operations of" the Joint Base. *Id.*

The RD also found that the second prong of the *Port Hueneme* test – whether the gaining entity has substantially the same organizational mission as the losing entity, with the transferred employees performing substantially the same duties and functions under substantially similar working conditions in the gaining entity – was met. *See id.* at 18.

As for the third prong of the *Port Hueneme* test – whether an election was necessary to determine the transferred employees' exclusive representative – the RD found that Langley employees represented by NAGE/SEIU accounted for more than eighty percent of the membership of the Langley-Eustis professional and nonprofessional units that she found appropriate. *See id.* at 24. Applying *Redstone Arsenal*, 56 FLRA 126, she found that NAGE/SEIU-represented employees were "sufficiently predominant" over NAIL-represented employees to warrant recognition of NAGE/SEIU, without an election, as the exclusive representative of both newly-formed Joint Base units. RD's Decision at 24. Thus, she revoked NAIL's certification as the exclusive representative of the Eustis-only professional and nonprofessional units, and she amended NAGE/SEIU's unit certifications to specify the Joint Base as the employer and to expand the certifications' coverage to both Langley and Eustis appropriated-fund employees. *See id.* at 25-26.

III. Positions of the Parties

A. NAIL's Application

NAIL asserts that the RD failed to apply established law, and erred "as a matter of [f]act," in finding that NAIL's proposed standalone, Eustis-only professional and nonprofessional units would not be appropriate after the reorganization. NAIL's Application at 3. According to NAIL, the RD erred in her community-of-interest findings because she incorrectly determined that Langley and Eustis employees are serviced by the same personnel office and that the

733d MSG and the 633d MSG perform the same mission. *See id.* at 8-9. With regard to the latter assertion, NAIL contends that the 733d MSG provides support to Eustis and its soldiers, while the 633d MSG has a much "broader" mission to provide support to Langley, Headquarters, and several other locations and their airmen. *Id.* In addition, NAIL argues that: (1) the Eustis and Langley employees are geographically separated and do not interact; (2) "similar facts" that the RD used to find separate units of non-appropriated-fund (NAF) employees to be appropriate also apply to the appropriated-fund employees; (3) Eustis employees perform some different functions and have some different positions from Langley employees, which, in the event of a reduction in force, would result in the Eustis employees being assigned to "unique competitive levels" that exist only at Eustis and not Langley; and (4) Eustis employees continue to have local access to certain services. *Id.* at 10-12. NAIL also asserts that the RD erred in her findings regarding effective dealings and efficiency of operations.[9] *See id.* at 12-17.

In addition, NAIL argues that established case law warrants reconsideration. *See id.* at 17. In this regard, NAIL asserts that §§ 7101, 7102, and 7112 of the Statute are "being ignored to create agency[-]desired units, or the largest unit, rather than . . . appropriate unit[s]." *Id.* In particular, NAIL contends that even though § 7101 protects the "right of employees to organize, bargain collectively[,] and participate through labor organizations *of their own choosing*," and § 7102 protects "collective bargaining . . . through *representatives chosen by employees*," the Joint Base and the Authority are "choosing the [l]abor [o]rganization for the employees" in this case. *Id.* at 18. Moreover, NAIL contends that the Authority is applying § 7112 in a manner that favors larger units despite that section's acknowledgment that an "appropriate unit [may] be established on an agency, *plant*, *installation*, functional, or other basis." *Id.* at 17-18.

B. Oppositions of the Joint Base and NAGE/SEIU

The Joint Base argues that "[n]one of the [§ 2422.31(c)] criteria" for review of the RD's decision "have been met . . . to warrant NAIL's [a]pplication . . . be[ing] granted." Joint Base's Opp'n at 2. NAGE/SEIU agrees with that argument. *See* NAGE/SEIU Opp'n at 2. NAGE/SEIU further asserts that the RD's decision is consistent with §§ 7101, 7102, and 7112, and that the RD properly applied the law clearly established in *Port Hueneme*, *see id.* at 4; *Redstone Arsenal*, *see id.* at 5; and *FISC*, *see id.* at 5, 6.

[9] As discussed further below, we find it unnecessary to resolve NAIL's arguments regarding effective dealings and efficiency of operations. Accordingly, we do not set them out in detail here.

IV. Analysis and Conclusions

A. The RD did not fail to apply established law or commit clear and prejudicial errors concerning substantial factual matters.

NAIL argues that, in finding that the Eustis employees do not share a community of interest separate and apart from the Langley employees, the RD failed to apply established law and erred "as a matter of [f]act." NAIL's Application at 3. We construe the latter argument as a claim that the RD committed clear and prejudicial errors concerning substantial factual matters. *See, e.g.*, *U.S. Dep't of the Air Force, Tyndall Air Force Base, Tyndall AFB, Fla.*, 65 FLRA 610, 614 (2011) (construing a party's arguments in its application as raising a recognized ground for review). We note that, where an application for review neither "provides . . . precedent" to support its arguments, nor "demonstrate[s] . . . a departure from . . . [or] inconsisten[cy] with . . . relevant precedent," the Authority has rejected arguments that an RD failed to apply established law. *See U.S. Dep't of Homeland Sec., Bureau of Customs & Border Prot.*, 61 FLRA 485, 493 (2006) (*CBP*).

In determining whether a unit is appropriate under § 7112(a), the Authority considers whether the unit would: (1) ensure a clear and identifiable community of interest among the employees in the unit; (2) promote effective dealings with the activity; and (3) promote efficiency of the operations of the activity. 5 U.S.C. § 7112(a); *see also FISC*, 52 FLRA at 959. A unit must satisfy all three criteria in order to be found appropriate. *See FISC*, 52 FLRA at 961 n.6. Determinations as to each of these criteria are made on a case-by-case basis. *U.S. Dep't of the Army, Military Traffic Mgmt. Command, Alexandria, Va.*, 60 FLRA 390, 394 (2004) (Chairman Cabaniss concurring in relevant part, dissenting as to other matters). The Authority has set out factors for assessing each criterion, but has not specified the weight of individual factors or a particular number of factors necessary to establish an appropriate unit. *See id.* In order for a separate bargaining unit to be appropriate, the employees who would be members of that separate unit must have significant employment concerns or personnel issues that are different or unique from those of other employees. *See FISC*, 52 FLRA at 960; *see also U.S. Dep't of the Interior, Nat'l Park Serv., Wash., D.C.*, 55 FLRA 311, 315 (1999). Moreover, the employees at issue cannot be so integrated, either physically or functionally, with other organizational components that the establishment of a separate unit would cause undue unit fragmentation resulting in operational inefficiency or confusion in dealings between labor and management. *See FISC*, 52 FLRA at 960.

With regard to the first appropriate unit criterion – whether employees share a clear and identifiable community of interest – the Authority examines such factors as geographic proximity, unique conditions of employment, distinct local concerns, degree of interchange between other organizational components, and functional or operational separation. *See U.S. Dep't of the Navy, Naval Facilities Eng'r Command, Se. Jacksonville, Fla.*, 62 FLRA 480, 487 (2008). In addition, the Authority considers factors such as whether the employees in the proposed unit are part of the same organizational component of the agency; support the same mission; are subject to the same chain of command; have similar or related duties, job titles and work assignments; are subject to the same general working conditions; and are governed by the same personnel office. *See id.* at 487-88.

As stated previously, the RD relied on numerous factors in finding that employees in single Eustis-Langley units share a community of interest, and that Eustis employees do not share a community of interest separate and apart from Langley employees. Specifically, she found that: (1) the 633d ABW Commanding Officer sets conditions of employment and policies for both Eustis and Langley employees; (2) the ABW does not maintain separate personnel and employment policies for those employees; (3) the professional Eustis and Langley employees encumber the same or similar positions; (4) the non-professional Eustis and Langley employees have the same or similar job titles and perform the same or similar work; (5) the 633d MSG provides certain installation-management functions for both Langley and Eustis; (6) the ABW's mission is the same as the missions of the disestablished IMC at Eustis and the former Langley AFB operation that employed the NAGE employees; (7) the employees are serviced by the same personnel office; and (8) areas of consideration for vacancies are at least Joint Base-wide. *See* RD's Decision at 19-20. She determined that, as a result, the Eustis employees have been integrated into the 633d ABW workforce and the ABW's personnel administration, and "maintaining separate NAIL units would [result in] fragmentation that is inconsistent with the integrated operations of" the Joint Base. *Id.* at 23.

NAIL argues that the RD erred in finding that the groups of employees are serviced by the same personnel office. But there is record evidence that supports the RD's finding that the same personnel office – in particular, the CPO of the 633d Force Support Squadron (FSS), *see id.* at 12-13 – services appropriated-fund employees at both Langley and Eustis. *See, e.g.*, Tr. at 123 (personnel officer servicing Eustis testified that she was part of 633d FSS and that her satellite office was an "extension of the personnel office at Langley"). Thus, NAIL has provided no basis for finding that the RD made a clear and prejudicial error regarding a substantial factual matter in this regard. Further, NAIL does not cite any Authority precedent with which the RD's decision allegedly conflicts. *See CBP*, 61 FLRA at 493. Therefore, this argument does not provide a basis for finding that the RD failed to apply established law or made a clear and prejudicial error regarding a substantial factual matter.

NAIL also argues that the RD erred in finding that the 733d MSG and the 633d MSG perform the same mission, because the 733d provides support to Eustis and its soldiers, while the 633d has a much "broader" mission to Langley, Headquarters, and several other locations and their airmen. NAIL's Application at 8-9. But the RD did not find that the 733d MSG and the 633d MSG perform precisely the same mission, and, in fact, she acknowledged that the 633d MSG provides some services that the 733d does not provide. *See* RD's Decision at 11-12. Thus, NAIL does not demonstrate that the RD made a factual error in this regard. And, as before, NAIL does not cite any Authority precedent with which the RD's decision allegedly conflicts. *See CBP*, 61 FLRA at 493. For these reasons, NAIL's argument does not demonstrate that the RD failed to apply established law or made a clear and prejudicial error concerning a substantial factual matter.

NAIL's remaining arguments – that Eustis and Langley employees are geographically separated and have no interaction, that "similar facts" apply to the appropriated-fund employees as apply to the NAF employees, that Eustis employees perform some different functions and have some different positions from Langley employees, and that Eustis employees continue to have local access to certain services, NAIL's Application at 6-12 – do not identify any factual findings of the RD and, thus, do not demonstrate that the RD made clear and prejudicial errors concerning substantial factual matters. To the extent that these arguments challenge the RD's weighing of the numerous community-of-interest factors, they do not provide a basis for finding that the RD struck the wrong balance. Further, once again, NAIL's arguments do not cite any Authority precedent with which the RD's balancing allegedly conflicts. *See CBP*, 61 FLRA at 493. Accordingly, these arguments do not demonstrate that the RD failed to apply established law or made clear and prejudicial errors concerning substantial factual matters.

For the foregoing reasons, we find that NAIL has not demonstrated that the RD failed to apply established law or committed clear and prejudicial errors concerning substantial factual matters in connection with her community-of-interest determinations.

As stated previously, a proposed unit must meet all three appropriate-unit criteria in order to be found appropriate. *See FISC*, 52 FLRA at 961 n.6. As we have

found that NAIL has not shown that the RD erred in finding that the employees in NAIL's proposed Eustis-only units would not share a community of interest separate from Langley employees, NAIL's proposed units are inappropriate, even if the RD erred in her findings regarding the other two appropriate-unit criteria. Thus, we find it unnecessary to resolve NAIL's arguments regarding the RD's findings with respect to effective dealings and efficiency.

For the foregoing reasons, we find that NAIL has not demonstrated that the RD failed to apply established law or committed clear and prejudicial errors concerning substantial factual matters.

B. Established law does not warrant reconsideration.

NAIL argues that Authority precedent contravenes employees' rights under §§ 7101 and 7102 of the Statute to choose their representatives, NAIL's Application at 18, and "ignore[s]" § 7112 "to create agency[-]desired units, or the largest unit, rather than . . . appropriate unit[s]," *id.* at 17. For these reasons, NAIL asserts that established law warrants reconsideration.

As for the claim that Authority precedent contravenes employees' rights to choose their representatives, the Authority rejected similar claims in *U.S. Department of the Navy, Commander, Navy Region Mid-Atlantic Program Director, Fleet & Family Readiness, Norfolk, Virginia*, 64 FLRA 782, 784 (2010), which concerned competing successorship and accretion claims regarding a group of transferred employees. As stated there, the Authority has rejected the argument that "employees must always be given an opportunity to vote on which exclusive representative will represent them." *U.S. Dep't of the Navy, Human Resources Serv. Ctr. Nw., Silverdale, Wash.*, 61 FLRA 408, 412 (2005). For example, under basic accretion principles, employees who are accreted into an existing unit are included in the unit without having the opportunity to vote. *See, e.g.*, *FISC*, 52 FLRA at 963. NAIL's first claim provides no basis for reconsidering this well-established precedent.

As for the claim that Authority precedent favors larger units or units desired by agencies, the Authority has explained, in response to a similar contention, that the Statute requires a determination of unit appropriateness, and regardless of parties' preferences, a unit cannot be found appropriate unless it satisfies the § 7112(a) criteria. *See U.S. Dep't of the Navy, Naval Facilities Eng'g Command, Mid-Atlantic, Norfolk, Va.*, 65 FLRA 272, 276, 280 (2010). We have found that NAIL has not demonstrated that the RD failed to apply established law or made clear and prejudicial errors concerning substantial factual matters in applying the § 7112(a) criteria. Thus, NAIL's existing Eustis-only units are no longer appropriate, regardless of their size or their desirability to the agency. As such, NAIL's second claim provides no basis for reconsidering Authority precedent.

For the foregoing reasons, we find that NAIL has not demonstrated that established law warrants reconsideration.

V. Order

NAIL's application is denied.