

**67 FLRA No. 55**

UNITED STATES  
DEPARTMENT OF THE ARMY  
ARMY CORPS OF ENGINEERS  
DIRECTORATE OF CONTRACTING  
SOUTHWESTERN DIVISION  
FORT WORTH DISTRICT  
FORT WORTH, TEXAS  
(Agency)

and

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
AFL-CIO  
(Union)

DA-RP-13-0008

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DECISION AND ORDER ON REVIEW

January 31, 2014  
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Before the Authority: Carol Waller Pope, Chairman, and Ernest DuBester and Patrick Pizzella, Members

**I. Statement of the Case**

Regional Director (RD) James E. Petrucci of the Federal Labor Relations Authority held that, following a reorganization, employees of the Agency's Directorate of Contracting (DOC) who were based in Galveston, Texas, no longer shared a community of interest with other, non-DOC employees in Galveston, but instead constituted a separate bargaining unit. In its application for review, the Agency contends that, in reaching this conclusion, the RD failed to apply established law and made clear and prejudicial errors concerning substantial factual matters.<sup>1</sup> In an order, the Authority granted the application and deferred action on the merits.

On review of the merits, for the reasons discussed below, we find the Agency's arguments unpersuasive and, accordingly, affirm the RD's decision and order.

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

The U.S. Army Corps of Engineers (USACE) is a major command center under the Department of the Army, responsible for managing and performing various engineering and construction contracts. It has nine engineer divisions, which are divided into districts. The Galveston and Fort Worth Districts both fall under USACE's Southwestern Division.

The DOC provides centralized contracting support for the USACE. The DOC consists of nine regions, which are then divided into districts, with a district contracting chief (DCC) heading each district. The DOC's Southwestern Region includes the Fort Worth District.

The DOC Galveston District (DOC-Galveston) was also part of the DOC's Southwestern Division until the Agency deactivated it as part of a realignment. This realignment placed DOC-Galveston's employees under DOC-Fort Worth; however, it did not involve a physical transfer. The Galveston-based DOC employees continue to focus their contracting work on USACE-Galveston projects.

Before the realignment, the Union was the certified representative of a unit of employees assigned to the USACE Galveston District, which included both DOC-Galveston employees and other USACE-Galveston employees. The unit is described as follows:

Included: All non-supervisory, non-professional and professional GS and WG employees assigned to the U.S. Army Engineer District, Galveston, Texas.

Excluded: All managerial, supervisory and guard employees. All employees engaged in Federal personnel work in other than a purely clerical capacity. All nonsupervisory unlicensed personnel aboard the U.S. Hopper Dredges A. Mackenzie and McFarland. All nonsupervisory core drill unit employees. All licensed marine engineers. All

<sup>1</sup> Application for Review (Application) at 2; *see also* 5 C.F.R. § 2422.31(c) (setting forth grounds for review of an RD's decision).

Masters and licensed desk officers.<sup>2</sup>

After the realignment, the Agency informed the Union that the Galveston-based DOC employees were no longer within the bargaining unit's scope of recognition. In response, the Union filed a petition under § 7111(b)(2) of the Federal Service Labor-Management Relations Statute (the Statute) to clarify that the unit remained appropriate or, alternatively, that a unit of Galveston-based DOC employees was an appropriate successor unit. The Agency opposed the Union's petition, contending "that the petitioned-for employees c[ould] no longer be included in the existing unit as it is defined in the certification" and that "the Galveston-located DOC employees are not an appropriate stand-alone unit and therefore successorship does not apply."<sup>3</sup>

#### B. RD's Decision

After rejecting the Agency's argument that the fact that the Galveston-based DOC employees no longer fell within the unit description meant that they were automatically excluded from the unit,<sup>4</sup> the RD considered whether a unit of all Galveston-based USACE employees continues to be appropriate. But because he found that Galveston-based DOC employees no longer share a community of interest with other Galveston-located USACE employees, he determined that the existing unit was no longer appropriate.

The RD then analyzed whether DOC-Fort Worth is the successor to DOC-Galveston for the Galveston-based DOC employees. Applying the successorship principles described in *Naval Facilities Engineering Service Center, Port Hueneme, California (Port Hueneme)*,<sup>5</sup> the RD concluded that DOC-Fort Worth is a successor employer. He found that, under *Port Hueneme*, an employer is a 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 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.<sup>6</sup>

The RD first determined that the transferred employees constitute a majority (indeed, 100%) of the proposed unit. Accordingly, he then addressed whether a unit of Galveston-based DOC employees would be appropriate. The RD noted that the Authority considers three criteria in determining whether a unit is appropriate: (1) whether the employees in the unit share a community of interest; (2) whether the unit promotes effective dealings with the agency; and (3) whether the unit promotes the efficiency of agency operations.<sup>7</sup>

After examining the first criterion, the RD found that the Galveston-based DOC employees share a community of interest. In reaching this conclusion, the RD found that most of the Galveston-based DOC employees share a local first-line supervisor. And although there are three employees who work in the Business Oversight Branch (BOB) that report directly to Fort Worth, the RD found that "[f]or all of the employees in the proposed unit, the chain of command flows through the DCC in Fort Worth."<sup>8</sup> The RD also found that Galveston-based DOC employees have similar duties – providing direct or indirect contract support for USACE projects – and share similar working conditions. Finally, he found that the Civilian Personnel Advisory Center (CPAC) for USACE's Southwestern Division is responsible for handling personnel and labor-relations matters for all DOC employees in the Southwestern Division, including those in Galveston.

Although the RD agreed with the Agency that a unit of all DOC-Fort Worth employees (i.e., including Galveston-based DOC employees) might also be appropriate, he found that the Galveston-based DOC employees share a separate community of interest based on his finding that communications and other interactions "between [Galveston-based DOC employees] and DOC Fort Worth employees are limited."<sup>9</sup>

<sup>2</sup> RD's Decision at 2.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.* (citing *U.S. Dep't of the Air Force, Air Force Materiel Command, Eglin Air Force Base, Hurlburt Field, Fla.*, 66 FLRA 375 (2011)).

<sup>5</sup> 50 FLRA 363 (1995).

<sup>6</sup> RD's Decision at 5 (quoting *Port Hueneme*, 50 FLRA at 368 (footnote omitted)).

<sup>7</sup> *Id.* (citing 5 U.S.C. § 7112(a); *U.S. Dep't of the Navy, Fleet & Indus. Supply Ctr., Norfolk, Va.*, 52 FLRA 950, 959 (1997) (*FISC*)).

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.* at 7.

Likewise, the RD concluded that a unit of Galveston-based DOC employees would promote effective dealings. In this regard, he found that both before and after the realignment, the CPAC Southwestern Division in Fort Worth has handled personnel and labor relations for both Fort Worth and Galveston. Thus, he concluded that abolishing DOC-Galveston “has had little practical effect on the way labor relations [for the Galveston-based DOC employees] is handled by [the] DOC,” aside from the change in the management official with whom CPAC coordinates.<sup>10</sup> The RD also concluded that there was a history of collective bargaining between the DOC and the Union on issues that concerned only DOC-Galveston employees. For example, he found that, when the DOC created BOB as a separate branch within DOC-Galveston, the parties engaged in impact and implementation bargaining, which included negotiating over the location of cubicles, the distribution of work, the modification of position descriptions, and other issues unique to DOC-Galveston employees. Finally, he found that the parties addressed grievances and other labor-relations issues at DOC-Galveston locally, through the employees’ first-line supervisor, with the involvement of higher-level management and CPAC if needed. Accordingly, he concluded that it was “clear that [the] DOC was able to successfully set, monitor[,] and handle labor[-]relations policies pertaining to employees in a bargaining unit located at the USACE Galveston facility.”<sup>11</sup>

Turning to the third criterion, the RD concluded that a separate unit would also promote the efficiency of Agency operations. In making this determination, the RD first found that, because Galveston-based DOC employees primarily support USACE-Galveston projects, the DOC’s Galveston operations are largely independent from DOC-Fort Worth with respect to the administration of employees’ day-to-day working conditions. Second, he found that the local first-line supervisor holds staff meetings with the Galveston-based DOC employees, conducts performance reviews, approves leave requests, and manages the day-to-day operations of most Galveston-based DOC employees. Third, although CPAC’s Southwestern Division handles labor relations for the entire USACE Southwestern Division, the RD found that the parties’ bargaining history demonstrated that the DOC has been able to respond to the specific concerns of maintaining a bargaining unit in Galveston. Fourth, he found that the Galveston-based DOC employees’ first-line supervisor has some limited authority to handle local labor-relations issues, provided he does not deviate from DOC policy. And, when there was a conflict with DOC policy, the RD found that the supervisor was able to handle the issues with the

involvement of higher-level management and CPAC. Fifth, the RD found that there was no evidence that dealing with separate bargaining units at two other Southwestern Region Districts – DOC-Tulsa and DOC-Little Rock – has negatively affected DOC’s operations, and that, although DOC’s Galveston office is administratively part of DOC-Fort Worth, it continues to function like a separate district in that its employees primarily support USACE-Galveston projects.

Accordingly, the RD found that the Galveston-based DOC employees constitute an appropriate bargaining unit. Likewise, the RD determined that there were no substantial changes to the employees’ duties and working conditions, or to the mission they supported, and that an election was not necessary. As such, he found that the proposed unit satisfies the second and third prongs of *Port Hueneme* and concluded that DOC-Fort Worth should be certified as the successor to DOC-Galveston for the Galveston-based DOC employees. The RD described the proposed unit as follows:

Included: All professional and nonprofessional GS and WG employees of the U.S. Army Corps of Engineers, Directorate of Contracting, located in Galveston, Texas.

Excluded: All supervisors, management officials, and employees described in 5 U.S.C. [§] 7112(b)(2)(3)(4)(6) and (7).<sup>12</sup>

The Agency then filed this application for review, contending that the RD committed clear and prejudicial errors concerning substantial factual matters and failed to apply established law when he concluded that the proposed unit is appropriate. The Union filed an opposition to the Agency’s application for review. We granted review, but deferred action on the merits.

### III. Preliminary Issue: We will not consider the Union’s opposition.

A party wishing to file an opposition to an application for review must do so “within ten . . . days after the party is served with an application.”<sup>13</sup> A party receives an additional five days to file its opposition if the application is served by first-class mail.<sup>14</sup> The Authority may excuse the failure to file a timely opposition only

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

<sup>11</sup> *Id.* at 8.

<sup>12</sup> *Id.* at 11.

<sup>13</sup> 5 C.F.R. § 2422.31(d).

<sup>14</sup> *Id.* § 2429.22(a).

upon a showing of “extraordinary circumstances.”<sup>15</sup> Here, the Union provided evidence that the Agency served its application on the Union on November 25, 2013, by first-class mail.<sup>16</sup> Accordingly, under the Authority’s Regulations, the Union was required to file its opposition with the Authority by December 10, 2013.<sup>17</sup> The Union, however, did not file its opposition until December 13, 2013.<sup>18</sup>

After receiving the Union’s opposition, the Authority’s Office of Case Intake and Publication issued an order directing the Union to show cause why the Authority should consider the opposition, given that it appeared to be untimely.<sup>19</sup> In response, the Union contends that, due to the Thanksgiving holiday and inclement weather, it did not receive the Agency’s application for review until December 3, 2013. However, this would have still left the Union with a week to file its opposition or two days to timely request an extension under 5 C.F.R. § 2429.23(a). Moreover, the Authority rejected a nearly identical argument for finding extraordinary circumstances in *SSA*,<sup>20</sup> even though, in that case, the representative did not learn of the opposing party’s filing until after the deadline had passed. As a result, we find that the Union’s opposition is untimely and do not consider it.<sup>21</sup>

**IV. Analysis and Conclusions: The RD did not commit a clear and prejudicial error concerning a substantial factual matter nor did he fail to apply established law.**

To determine whether a unit is appropriate under § 7112(a) of the Statute, the Authority considers whether the unit would: (1) ensure a clear and identifiable community of interest among employees in the unit; (2) promote effective dealings with the agency involved; and (3) promote the efficiency of the operations of the agency involved.<sup>22</sup> A proposed unit must meet all three criteria in order to be appropriate.<sup>23</sup> Determinations as to each of these criteria are made on a case-by-case basis.<sup>24</sup>

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.<sup>25</sup> “Further, what is required under the Statute is an appropriate bargaining unit, not necessarily the only or most appropriate unit.”<sup>26</sup>

In considering whether employees share a clear and identifiable community of interest, the Authority examines such factors as whether the employees in the proposed unit: are a 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 and labor relations policies that are administered by the same personnel office.<sup>27</sup> In addition, the Authority considers factors such as geographic proximity; unique conditions of employment; distinct local concerns; degree of interchange between other organizational components; and functional or operational separation.<sup>28</sup>

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.<sup>29</sup>

“The third appropriate-unit criterion – the efficiency of agency operations – pertains to the benefits to be derived from a unit structure that bears some rational relationship to the operational and organizational structure of the agency.”<sup>30</sup> In assessing the efficiency of agency operations, the Authority examines the effect of the proposed unit on agency operations in terms of cost, productivity, or use of resources.<sup>31</sup>

<sup>15</sup> *SSA*, 66 FLRA 6, 7 (2011) (citing 5 C.F.R. § 2429.23(b)).

<sup>16</sup> Order to Show Cause at 1.

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

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.* at 1-2.

<sup>20</sup> 66 FLRA at 7.

<sup>21</sup> See, e.g., *U.S. Dep’t of VA, VA Med. Ctr., Hampton, Va.*, 63 FLRA 593, 595 (2009).

<sup>22</sup> *U.S. Dep’t of the Interior, Bureau of Ocean Energy Mgmt. & U.S. Dep’t of the Interior, Bureau of Safety & Envtl. Enforcement, New Orleans, La.*, 67 FLRA 98, 99 (2012) (*Interior*) (citing 5 U.S.C. § 7112(a)); see also *FISC*, 52 FLRA at 959-60.

<sup>23</sup> *Interior*, 67 FLRA at 99 (citing *U.S. Dep’t of the Army, Military Traffic Mgmt. Command, Alexandria, Va.*, 60 FLRA 390, 394 (2004)).

<sup>24</sup> *FISC*, 52 FLRA at 960.

<sup>25</sup> *Interior*, 67 FLRA at 99.

<sup>26</sup> *Def. Logistics Agency, Def. Supply Ctr. Columbus, Columbus, Ohio*, 53 FLRA 1114, 1127 (1998) (*DLA*) (citing *Dep’t of the Navy, Naval Supply Ctr., Puget Sound, Bremerton, Wash.*, 53 FLRA 173, 183 n.9 (1997)).

<sup>27</sup> *FISC*, 52 FLRA at 960.

<sup>28</sup> *Id.* at 961.

<sup>29</sup> *Id.*

<sup>30</sup> *Interior*, 67 FLRA at 100 (citing *FISC*, 52 FLRA at 961).

<sup>31</sup> *Id.* (citing *FISC*, 52 FLRA at 961-62).

### A. Community of Interest

The Agency contends that the “RD committed clear and prejudicial errors concerning substantial factual matters because the BOB and Execution Branch employees in Galveston do not have the same mission . . . or similar work assignments,”<sup>32</sup> and that the “nature of the work performed by BOB and Execution Branch employees is completely different.”<sup>33</sup> However, in its post-hearing brief to the RD, the Agency claimed that all DOC-Fort Worth employees (i.e., including the BOB and Execution Branch employees in Galveston) “share the same unified mission, are subject to the same DOC command structure, [and] *have similar duties, job titles, and work assignments.*”<sup>34</sup>

Under § 2422.31(b) of the Authority’s Regulations,<sup>35</sup> “[a]n application may not raise any issue or rely on any facts not timely presented to the Hearing Officer or [RD],”<sup>36</sup> and § 2429.5 likewise precludes consideration of “evidence, factual assertions, [or] arguments . . . that could have been, but were not, presented in the proceedings before the [RD] [or] Hearing Officer.”<sup>37</sup> “The Authority has held that § 2429.5 prevents a party from advancing a position in its application for review that contradicts that party’s earlier position before the RD or hearing officer.”<sup>38</sup> As such, §§ 2422.31(b) and 2429.5 preclude the Agency from making this contention.

The Agency also claims that the RD erred because the two groups of employees “do not have the same . . . chain of command.”<sup>39</sup> However, the RD acknowledged that “employees in the [BOB] in Galveston report directly to the [BOB] located in Fort Worth and are not supervised by [the local supervisor].”<sup>40</sup> Accordingly, the Agency has not established that the RD premised his community-of-interest determination on a clear and prejudicial error concerning a substantial factual matter.

Likewise, although the Agency states that the RD failed to apply established law and recites the appropriate community-of-interest standard, it does not identify which precedents the RD allegedly misapplied or

explain how he misapplied them.<sup>41</sup> The Agency does assert that it is “clear that the transferred employees . . . share a community of interest with the DOC employees in Fort Worth.”<sup>42</sup> But to the extent the Agency is claiming that an all-DOC-Fort Worth unit would be more appropriate, such a claim would not amount to a failure to apply established law because “what is required under the Statute is an appropriate bargaining unit, not necessarily the only or most appropriate unit.”<sup>43</sup> As such, the Agency has not shown that the RD failed to apply established law when he concluded that the employees shared a community of interest.

### B. Effective Dealings

The Agency also argues that the RD made a prejudicial factual error when he concluded that the reorganization “has had little practical effect on the way labor relations is handled by the DOC.”<sup>44</sup> More specifically, it claims that, because “Fort Worth DOC employees are not represented by a bargaining unit[,] . . . [the] effect upon the Agency will be substantial,” and that it will be difficult for the Agency to maintain uniform procedures throughout DOC-Fort Worth.<sup>45</sup> However, these assertions do not dispute any of the specific factual findings that the RD relied upon in reaching his conclusion that the reorganization’s effect on DOC labor relations was not significant, and thus, do not demonstrate that the RD made clear and prejudicial errors concerning substantial factual matters.<sup>46</sup> Likewise, although the Agency asserts that the “first-line supervisor has no authority to negotiate or change working conditions or policies . . . at his location,”<sup>47</sup> the record supports the RD’s finding that labor-relations issues are generally handled locally, with the involvement of the supervisor,<sup>48</sup> and that the supervisor, therefore, “has some limited authority to handle labor[-]relations issues locally

<sup>32</sup> Application at 3.

<sup>33</sup> *Id.*

<sup>34</sup> Agency’s Post-Hr’g Br. at 13 (emphasis added).

<sup>35</sup> 5 C.F.R. § 2422.31(b).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* § 2429.5.

<sup>38</sup> *U.S. Dep’t of the Air Force, Air Force Materiel Command*, 67 FLRA 117, 119 (2013) (citing *U.S. Dep’t of the Army, N. Cent. Civilian Pers. Operation Ctr., Rock Island, Ill.*, 59 FLRA 296, 302 n.8 (2003)).

<sup>39</sup> Application at 3.

<sup>40</sup> RD’s Decision at 6; *accord id.* at 9.

<sup>41</sup> Application at 3.

<sup>42</sup> *Id.* at 3-4.

<sup>43</sup> *DLA*, 53 FLRA at 1127.

<sup>44</sup> RD’s Decision at 7.

<sup>45</sup> Application at 4.

<sup>46</sup> See *NLRB*, 62 FLRA 25, 36 (rejecting claim that RD made clear and prejudicial error concerning substantial factual matter when he found that division between two components “was ‘[i]n many respects . . . on paper only’” where agency failed to dispute facts relied on by RD in reaching conclusion) (alteration in original) (citation omitted) *overruled on other grounds by NLRB v. FLRA*, 613 F.3d 275 (D.C. Cir. 2010); 5 C.F.R. § 2422.31(b) (“An application for review must be sufficient for the Authority to rule on the application without looking at the record . . . [and] must specify the matters and rulings to which exception(s) is taken, include a summary of evidence relating to any issue raised in the application, and make specific references to page citations in the transcript if a hearing was held.”)

<sup>47</sup> Application at 4.

<sup>48</sup> Tr. at 106-107; 331-32.

with [the Union].”<sup>49</sup> As such, the Agency has not established that the RD based his determination that the unit would promote effective dealings on a clear and prejudicial error concerning a substantial factual matter.

Moreover, the Agency argues that “[r]equiring the DOC to treat Fort Worth employees located in Galveston as if they were still on the Galveston payroll would create additional responsibilities to try and maintain uniform policies and procedures.”<sup>50</sup> It is unclear what the relevance of this argument is, as nothing in the Statute requires that the Agency keep the policies that apply to the Galveston-based DOC employees consistent with those of USACE-Galveston. Further, even if this factor does weigh against a conclusion that the unit would promote effective dealings, it would not mean that the RD failed to apply established law, as the test is whether all of the factors, taken together, weigh in favor of finding that the petitioned-for unit would promote effective dealings.<sup>51</sup> In this regard, the record supports the RD’s conclusions that the DOC has experience dealing with the Union, that the administering personnel office continues to be the CPAC Southwestern Division, and that bargaining authority remains at the district level. Therefore, the Agency has not shown that the RD failed to apply established law.

### C. Efficiency of Operations

The Agency alleges that the RD erred when “he concluded that DOC employees are *administratively* assigned to Fort Worth” because this “implies the reorganization was a ‘paper transfer’ only.”<sup>52</sup> The Agency claims that, in fact, the reorganization involved eliminating positions and changing the chain of command, and that it plans to fill future vacancies in Fort Worth.<sup>53</sup> But because there is no dispute that, at present, the Galveston-based DOC employees are administratively (as opposed to physically) assigned to Fort Worth, the Agency has not demonstrated that the RD made a factual error in this regard. Further, because “unit determinations must reflect the conditions of employment at the time of the hearing, ‘unless there are definite and

imminent changes planned by the agency,”<sup>54</sup> even if the RD had made a clear and prejudicial error regarding the Agency’s *long-term* plans to move positions from Galveston to Fort Worth, the error would not be substantial.

The Agency also argues that the RD erred when he concluded that the DOC’s Galveston office operates largely independently from DOC-Fort Worth because the three BOB employees report to a supervisor in Fort Worth.<sup>55</sup> But the RD acknowledged that this was the case, concluding “that this fact alone [wa]s not dispositive of whether the proposed unit rationally relates to [the] DOC’s overall organizational structure.”<sup>56</sup> Therefore, the Agency fails to establish that he erred in this respect. Likewise, the Agency alleges that the RD committed a clear and prejudicial factual error “when he concluded that the existence of bargaining units in two other USACE Districts proves that the Agency would not be negatively impacted by dealing with a stand-alone unit in Galveston.”<sup>57</sup> But because the Agency does not argue that dealing with the other units has interfered with the DOC’s operations, it is not claiming that the RD made a factual error. Rather, the Agency is merely challenging the weight the RD accorded the evidence, and “[i]t is well settled that disagreement over the weight that an RD has accorded certain evidence is not sufficient to find that an RD committed a clear and prejudicial error concerning a substantial factual matter.”<sup>58</sup>

Further, the Agency asserts that it “will not be able to perform its operations efficiently if it has to concern itself with Fort Worth policies for DOC employees there and different bargaining[-]unit policies for BOB and Execution Branch employees in Galveston” and that “a stand-alone bargaining unit will result in additional costs, loss of productivity, and use of additional resources.”<sup>59</sup> However, because these assertions do not identify any factual errors, they do not establish that the RD made a clear and prejudicial error. Therefore, the Agency has not established that the RD relied on a clear and prejudicial error concerning a substantial factual matter when he concluded that the unit would promote the efficiency of Agency operations.

<sup>49</sup> RD’s Decision at 9.

<sup>50</sup> Application at 4.

<sup>51</sup> See, e.g., *U.S. Dep’t of the Navy, Commander, Naval Base Norfolk, Va.*, 56 FLRA 328, 332-33 (2000) (“The Authority makes appropriate unit determinations on the basis of a variety of factors, without specifying the weight of any individual factors. It would be inconsistent with this practice to hold that changes in one factor . . . render[] inappropriate an existing unit, without assessing whether and how those changes have affected the variety of other factors that are considered in assessing each of the unit appropriateness criteria.” (citation omitted)).

<sup>52</sup> Application at 5 (emphasis added).

<sup>53</sup> *Id.*

<sup>54</sup> *USDA, Food Safety & Inspection Serv.*, 61 FLRA 397, 400 (2005) (quoting *Def. Logistics Agency, Def. Contract Mgmt. Command, Def. Contract Mgmt. Dist., N. Cent. Def. Plant Representative Office-Thiokol, Brigham City, Utah*, 41 FLRA 316, 327 (1991)).

<sup>55</sup> Application at 5.

<sup>56</sup> RD’s Decision at 9.

<sup>57</sup> Application at 5.

<sup>58</sup> *U.S. Dep’t of VA, Med. Ctr., Hampton, Va.*, 65 FLRA 364, 366 (2010) (citing *SSA, Office of Disability Adjudication & Review, Balt., Md.*, 64 FLRA 896, 902 (2010)).

<sup>59</sup> Application at 5.

Based on the forgoing, we conclude that a unit of all Galveston-based DOC employees is appropriate and, therefore, affirm the RD's decision and his order to certify the stand-alone unit of Galveston-based DOC employees.<sup>60</sup> The existing USACE-Galveston certification shall remain in effect for non-DOC employees.

**V. Order**

We affirm the RD's decision and order.

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<sup>60</sup> See *supra* text accompanying note 12 (quoting RD's Decision at 11).