

67 FLRA No. 68

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
AFL-CIO
(Union/Petitioner)

AND

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DEPARTMENT OF VETERANS AFFAIRS
(Agency)

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AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
AFL-CIO
(Union/Petitioner)

and

NATIONAL ASSOCIATION
OF GOVERNMENT EMPLOYEES
SEIU
(Union)

WA-RP-13-0005
WA-RP-13-0014

ORDER CONSOLIDATING
CASES AND DENYING
APPLICATIONS FOR REVIEW

February 19, 2014

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

I. Statement of the Case

Federal Labor Relations Authority (FLRA) Regional Director (RD), Barbara Kraft, dismissed two petitions for bargaining-unit clarification filed by AFGE, AFL-CIO (the Union). We consolidate these cases (Case Nos. WA-RP-13-0005 and WA-RP-13-0014) for purposes of this order because: (1) both cases involve

Agency employees and the Union; (2) both cases involve the same bargaining unit and existing bargaining-unit certification; (3) both cases involve the Union’s petitions requesting inclusion, in the existing bargaining unit, of different groups of employees on the basis of *Department of the Army Headquarters, Fort Dix, Fort Dix, N.J. (Fort Dix)*¹; and (4) the RD dismissed the petitions in both cases on the same grounds in a single decision and order (RD’s Decision).

The question before us is whether the RD failed to apply established law because she allegedly failed to fully investigate and resolve certain issues. As the RD fully resolved the issues raised in the petitions, the answer is no.

II. Background and RD’s Decision

The Union filed two petitions seeking to clarify the status of certain Agency employees. The petition in Case No. WA-RP-13-0005 “seeks to clarify and include” certain employees in the Union’s bargaining unit on the ground that those employees “fall under the plain language of” the certification for that unit.² The petition in Case No. WA-RP-13-0014 seeks to clarify that unit to “include [certain] employees . . . through the doctrine . . . set forth in”³ *Fort Dix*.⁴

Under the *Fort Dix* doctrine, new employees may be automatically included in an existing bargaining unit where their positions fall within the express terms of an existing bargaining certificate and where their inclusion does not render the bargaining unit inappropriate.⁵ The RD applied this doctrine to both petitions and found that the employees could not be automatically included in the existing unit. Specifically, she found that the express terms of the certification describe the unit as certain employees of “the Veterans Administration Central Office, *Washington, D.C.*,” and the employees that the Union seeks to include do not work in Washington, D.C.⁶ Accordingly, the RD dismissed both petitions.

The Union filed applications for review in both cases. NAGE, SEIU, a party only in Case No. WA-RP-13-0014, filed an opposition to the application in that case. On May 13, 2013, the Authority’s Office of Case Intake and Publication issued an interim order deferring resolution of the Union’s applications.

¹ 53 FLRA 287, 294 (1997).

² Petition in WA-RP-13-0005 (Petition 1) at 1.

³ Petition in WA-RP-13-0014 (Petition 2) at 1.

⁴ 53 FLRA at 294.

⁵ *Id.* (citations omitted).

⁶ RD’s Decision at 2 (emphasis added).

III. Analysis and Conclusions

Citing Authority precedent,⁷ the Union claims that the RD failed to apply established law because she failed to fully investigate the issues raised in the petitions⁸ and failed to make factual findings as to the issues raised in its petitions.⁹ The Union makes three arguments.

First, the Union argues that the RD ignored the Union's request that she amend or correct the existing unit certification before applying the *Fort Dix* doctrine.¹⁰ According to the Union, it "raised [a] claim . . . that it believed that the FLRA had made a clerical error in compiling the [current unit certification] because the [current] description of the [pertinent] component of the consolidated unit does not match the 1974 certification."¹¹ The 1974 certification does not contain the limiting "Washington, D.C." wording in the unit description.¹² The Union acknowledges that "the inaccurate language currently describing the [unit] would not allow application of *Fort Dix*," but it claims that its intention was to have the RD apply the *Fort Dix* doctrine "after [the] certification was amended and corrected."¹³

Second, the Union argues that the petition in Case No. WA-RP-13-0005 raises an issue regarding the effect of an Agency reorganization that resulted in the transfer of certain employees.¹⁴

Third, the Union argues that, based on a previously filed unfair-labor-practice (ULP) case, the RD "knew that . . . the [A]gency had repudiated agreements it had with [the Union] and removed the . . . employees [at issue in Case No. WA-RP-13-0014] from [the Union's] bargaining unit."¹⁵ According to the Union, the FLRA's Office of the General Counsel had ordered the RD "to solicit a representation petition to resolve the bargaining[-]unit status" of those employees,

but when the Union filed the petition in Case No. WA-RP-13-0014, the RD "dismissed it without conducting an investigation."¹⁶

Under § 2422.30 of the Authority's Regulations, RDs have broad discretion to investigate a representation petition "as the [RD] deems necessary."¹⁷ An RD "may determine, on the basis of the investigation . . . that there are sufficient facts not in dispute to form the basis for a decision or that, even where some facts are in dispute, the record contains sufficient evidence on which to base a decision."¹⁸

Here, the RD found that the issue before her was whether the employees at issue could be automatically included in the existing unit under the *Fort Dix* doctrine.¹⁹ The plain wording of the petitions supports this finding. Specifically, as stated previously, the petition in Case No. WA-RP-13-0005 "seeks to clarify and include" certain employees in the Union's bargaining unit on the ground that those employees "fall under the plain language of" that unit,²⁰ and the petition in Case No. WA-RP-13-0014 seeks to clarify that unit to "include [certain] employees . . . through the doctrine . . . set forth in" *Fort Dix*.²¹ The petitions do not raise issues regarding the correctness of the unit certification, the alleged reorganization, or the ULP. Thus, the Union provides no basis for finding that the RD was required to conduct a more extensive investigation than she conducted, or that she failed to address issues raised by the petitions. And as the RD fully resolved the sole issue raised by the petitions, the Authority decisions that the Union cites – all of which involved situations where RDs did not make sufficient findings, or sufficiently develop the records, to enable the Authority to resolve issues raised by the petitions – are inapposite.²²

⁷ See Application for Review in WA-RP-13-0005 (Application 1) at 4 (citing *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 (2012) (*Interior*); *U.S. DOD, U.S. Army Aeronautical Servs. Agency, Fort Belvoir, Va.*, 64 FLRA 217 (2009) (*DOD*); *U.S. Dep't of the Army, U.S. Army Reserve Command, Fort McPherson, Ga.*, 57 FLRA 95 (2001) (*Army*)); see also Application in WA-RP-13-0014 (Application 2) at 2-3 (citing *DOD*; *Army*; *U.S. Dep't of Energy, Fed. Energy Regulatory Comm'n*, 22 FLRA 3 (1986) (*FERC*)).

⁸ Application 1 at 1; Application 2 at 1.

⁹ Application 1 at 1; Application 2 at 1.

¹⁰ Application 1 at 2, 4-5; Application 2 at 3-4.

¹¹ Application 1 at 2; see also Application 2 at 4.

¹² Application 1 at 2, Attach. 3; Application 2 at 4, Attach. D.

¹³ Application 1 at 5.

¹⁴ *Id.* at 4.

¹⁵ Application 2 at 3.

¹⁶ *Id.*

¹⁷ *U.S. Dep't of the Air Force, Travis Air Force Base, Cal.*, 64 FLRA 1, 6 (2009) (quoting 5 C.F.R. § 2422.30(a)).

¹⁸ See *U.S. Dep't of VA, VA Conn. Healthcare Sys. W. Haven, Conn.*, 61 FLRA 864, 870 (2006) (citations omitted).

¹⁹ RD's Decision at 1-2.

²⁰ Petition 1 at 1.

²¹ Petition 2 at 1.

²² *Interior*, 67 FLRA at 100 (in case involving petition to clarify unit status following a reorganization, Authority remanded for RD to address how reorganization affected unit's appropriateness); *DOD*, 64 FLRA at 219-21 (in case involving petition for election, Authority remanded for further findings needed to resolve agency claim that certain employees should be excluded from unit); *Army*, 57 FLRA at 96-97 (in case involving petition alleging accretion, Authority remanded for RD to address findings necessary to determine whether accretion was appropriate); *FERC*, 22 FLRA at 5-6 (in case involving petition to clarify unit, Authority remanded for RD to obtain additional evidence necessary to determine whether employees should be excluded from unit).

Accordingly, we find that the Union has not demonstrated that the RD failed to apply established law, and we deny the applications for review. We note that nothing in our order precludes the Union from filing amended or additional petitions, if otherwise appropriate.

IV. Order

We deny the Union's applications for review.