

**39**      ***Effect of changes in the character and scope of a unit due to a reorganization or realignment in agency operations***

This section discusses changes due to a reorganization or realignment in agency operations. These issues arise in petitions which seek to clarify or amend a certification or recognition in effect or a matter relating to representation. This section is divided into six parts:

- A.      Purpose and Standards for Resolving Issues Arising from Reorganizations.**
  - 1.      Analyzing the Effect of Reorganizations on Existing Bargaining Units**
  - 2.      Relevant Information Required**
- B.      Successorship.**
- C.      Accretion.**
- D.      Competing Claims of Successorship and Accretion.**
- E.      Consolidated Units.**
- F.      Case Handling Advice.**

- A.      Purpose and Standards for Resolving Issues Arising from Reorganizations.**
  - 1.      Analyzing the Effect of Reorganizations on Existing Bargaining Units**

Section 7111(b)(2) provides, in relevant part, that if a petition is filed with the Authority:

by any person seeking . . . an amendment to, a certification then in effect or a matter relating to representation; the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a

transcript shall be kept) after a reasonable notice.

This section applies whenever a petition is filed to resolve the effect of an agency reorganization on an existing unit, either with respect to employees who remain in the unit, employees who have been transferred from the unit or employees who have been added to the unit. See *CHM 27.5, Hearing Requirements*.

The substantive factors applied in cases arising from reorganizations have remained valid and consistent since Executive order 11491. **As discussed in HOG 37, Appropriate Units, and RCL 1, any case that concerns a question of representation requires an appropriate unit determination prior to proceeding to other issues.** Section 7112(a) of the Statute sets out the criteria for determining whether a unit is an appropriate unit for exclusive recognition:

The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under [the Statute], the appropriate unit should be established on an agency, plant, installation, functional or other basis and 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.***

## **2. Relevant Information Required:**

In *U.S. Department of the Navy, Commander, Naval Base, Norfolk, Virginia (USN)*, 56 FLRA 328 at 332 (2000) the Authority stated that, “in determining whether an existing unit remains appropriate after a reorganization, it will focus on the changes caused by the reorganization,” [citing *Morale, Welfare and Recreation Directorate, Marine Corps Air Station, Cherry Point, North Carolina (Morale, Welfare)*, 45 FLRA 281 (1992)] “and assess whether those changes are sufficient to render a recognized unit inappropriate” citing *Defense Logistics Agency, Defense Supply Center Columbus, Columbus, Ohio (DLA Columbus)*, 53 FLRA 1114 at 1122-23 (1998).

**Factors considered in cases raising issues related to changes in the character and scope of existing bargaining units are the same as any**

**other cases in which appropriate unit issues are raised. However, three issues affect any determination the Region or the Authority makes with respect to the impact of a reorganization on employees in existing bargaining units.**

- a. **When seeking information about the three appropriate unit criteria, it is first necessary to address the factors from two perspectives: how the unit functioned prior to the change and how it functions after the change.** Evidence is obtained with respect to the mission and organizational structure and other appropriate unit criteria **both before and after the reorganization.** Changes to employees and their conditions of employment, particularly their day-to-day working conditions, the actual impact on employees and the impact on agency operations, the blending of employees are all compared to the employees' conditions of employment prior to the reorganization.

For each factor that is considered for each of the appropriate unit criteria discussed in *RCL 1* and *HOG 37*, the inquiry also includes:

1. What was the change and what prompted the change (the scope of the reorganization - how did it affect the agency and the activity that is the subject of the petition);
2. What effect did the change have on:
  - a. Working conditions;
  - b. Day-to-day operations;
  - c. Chain of command and authority to manage;
3. What was the purpose of the change;
4. How did the unit change (before and after);
5. Who was affected by the change and how;
6. What was changed as far as mission, function, organization, employees duties, skills, day-to-day operations, personnel practices and policies, etc.
7. Describe the bargaining unit history and discuss the impact of the bargaining unit history on efficiency and effectiveness criteria;

8. What was the chain of command prior to the reorganization and discuss the effect of any change in chain of command on ability of existing unit to operate efficiently as separate organizations or collectively;
9. Consider the timing of the change and the petition. Is the change ongoing such that it becomes a fact that is relevant to a unit determination?<sup>1</sup>
  - a. If so, is the petition premature?
  - b. If so, could the parties work under a memorandum of agreement until such time as the reorganization takes shape?
10. Does the proposed unit consist of a substantial and representative complement of employees;<sup>2</sup>
11. Does the proposed unit structure prevent or reduce fragmentation (compare the concept of fragmentation before and after the reorganization).<sup>3</sup>

To summarize, when examining the effects of a reorganization on an existing appropriate unit, the evidence reflects the employees' terms and conditions of employment as well as other factors that are routinely considered when examining the appropriate unit criteria **both before and after** the reorganization. This is the best method for ensuring an adequate record and

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<sup>1</sup>Information is relevant at time of hearing unless there are unusual circumstances. See *DPRO, Thiokol*.

<sup>2</sup>*Naval Facilities Engineering Service Center (NFESC)*, 50 FLRA 363 (1995) (reorganization case in which the Authority examined and set new standard for deciding successorship) at n.9. Discussion of the appropriate time for determining whether employees of the predecessor unit constitute a majority of the successor unit, citing *Fall River Dyeing and Finishing Corp. v. NLRB*, 482 U.S. 27 (1987).

<sup>3</sup>In *U.S. Department of the Air Force, Air Force Materiel Command, Wright-Patterson Air Force Base, Ohio*, 55 FLRA 359 (1999), the Authority stated that "the purpose of consolidation is to reduce fragmentation of unit. See AAFES, 5 FLRA at 661, 662. The Authority has never imposed a requirement that a consolidation petition eliminate unit fragmentation. The consolidation of six AFGE bargaining units into the current consolidated unit reduces unit fragmentation. ..."

one that will provide sufficient information to decide the continued appropriateness of the unit and/or the extent that the reorganization affected employees in the existing unit.

**b. Additionally, timing is significant.**

When conducting hearings in such cases, the Regions ensure that the record reflects the stage of the reorganization and any further agency plans regarding future related reorganizations. Case law dictates that any unit determination is based on the facts presented at the time of the hearing. *DPRO - Thiokol*, 41 FLRA at 327.

**c. Finally, the record examines the broad impact of the reorganization on the agency as well as the effect of the reorganization on the activity.<sup>4</sup>**

Considering the record from broad and narrow perspectives allows the Regional Director to consider all criteria and significantly, the issue of fragmentation. In this manner, the Regional Director solicits, and the parties introduce, sufficient evidence to resolve all issues.

*FISC, Norfolk* is an excellent example of why it is necessary to obtain information about the affected employees from the perspectives of their inclusion in an appropriate unit prior to a reorganization and after a reorganization. In *FISC, Norfolk*, a case involving claims of successorship and accretion, the Authority had to balance the parties' competing claims: NAGE claimed that separating employees from the base-wide unit at the Yorktown detachment would be inappropriate and cause fragmentation; but FISC argued that not including the Yorktown detachment in FISC, Norfolk would cause fragmentation in FISC.

This case also demonstrates that it is important to obtain complete evidence about the facts and circumstances giving rise to the petition, i.e., often from a broader scope or perspective than reviewing the impact on the employees at a single site. For instance, if NAGE had filed the petition in FISC seeking a determination of the effect of the establishment of FISC only on its base-wide unit at Yorktown, the record may have emphasized different facts even though the results should have been the same. However, a review of relevant case law confirms that "how" and "what" evidence is presented may often lead to different results. Because the record in *FISC, Norfolk* presented

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<sup>4</sup>See *Defense Mapping Agency* and *FISC, Norfolk*.

evidence from both broad and narrow perspectives, the facts clearly demonstrated that including the Yorktown detachment in the FISC, Norfolk Activity was appropriate.

***For more detailed guidance on analyzing the effects of a reorganization, see RCL 3A.***

**B. Successorship.**

Successorship involves a determination of the status of a bargaining relationship between an agency/activity which acquires employees who were in a previously existing bargaining unit, and a labor organization that exclusively represented those employees prior to their transfer.

In *Naval Facilities Engineering Service Center, Port Hueneme, California, (NFESC)*, 50 FLRA 363 (1995), the Authority established three criteria to determine whether, following a reorganization, a new employing entity is the successor to a previous one such that a secret ballot election is not necessary to determine representation rights of employees who were transferred to the successor. The Authority will "find that a gaining entity is a successor, 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 section 7112(a)(1) of the Statute; 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."

When all three factors set forth above are met, the Authority will find that successorship exists and as a result, the agency/activity involved must recognize the exclusive representative of the employees in the unit without a new, secret ballot election.

**For more detailed information on successorship see RCL 3B.**

**4. Competing claims of successorship:**

When presented with competing successorship claims alleging different appropriate units, the Authority first considers the appropriate unit claim that will most fully preserve the *status quo* in terms of unit structure and the relationship of employees to their chosen exclusive representative. If the Authority finds that a petitioned-for, existing unit continues to be appropriate, then they will not address any petitions that attempt to establish different unit structures, because the Statute requires only that a proposed unit be an appropriate unit, not the most, or the only, appropriate unit. See *Department of the Navy, Naval Supply Center, Puget Sound, Bremerton, Washington* and *Department of the Navy, Fleet Industrial Supply Center, Bremerton, Washington (FISC, Bremerton)*, 53 FLRA 173 at 183, n.9 (1997).

**5. Relevant information for successorship includes:**

- (1) The full and correct name of the predecessor employer and the alleged successor employer. Obtain background and evidence of the nature of the transfer.
- (2) Evidence and documentation, if possible, of the basic mission, organization and operations of the predecessor employer and of the successor employer. This area corresponds to the appropriateness of the unit rather than the continuity of the mission. Explore “facts” relating to:
  - a. nature of the work;
  - b. type of service performed or work accomplished;
  - c. information about who is (was) serviced, i.e., customers;
  - d. changes in methodology of doing the work (equipment, machinery, etc.);
  - e. changes in organization, functions, facilities and geographic changes in location;
  - f. composition of the work force at the alleged successor;
  - g. obtain charts and mission statements; and

- h. cross reference to "Appropriate Unit," section 37.
- (3) Information concerning the significance of the change in the organization:
- a. Was the predecessor abolished; were its functions significantly reduced; did it continue to operate independently or did it participate in the operations of the successor?
  - b. Did the new employer assume the business of other entities as well as predecessor?
- (4) Information concerning the effect of the change on the workforce:
- a. description of bargaining unit at the predecessor (obtain copies of certifications and recognitions, contracts, etc.); and
  - b. portion of bargaining unit affected by reorganization: number acquired by alleged successor; information concerning employees who were acquired by alleged successor.
- (5) What was the effective date the alleged successor assumed control of the predecessor operations? Was there a hiatus between the official date of the reorganization and the date the employees were actually transferred to the alleged successor. In any event, the following information must be explored:
- a. whether the job classifications were filled or substantially filled and representative;
  - b. whether the successor was in substantially normal production (at the time of the hearing);
  - c. the size of the complement on the date of normal production;
  - d. the time expected to elapse before a substantially larger complement will be at work; and



- e. the relative certainty of the employer's expected expansion.
- (6) Characteristics of the successor; examine the extent the successor continued the mission and operations of its predecessor by establishing whether and to what extent:
- a. there has been continuity in the mission;
  - b. the successor operates from the same location;
  - c. the workforce is substantially the same;
  - d. the same jobs exist under the same working conditions. Get number, types and grades, including classifications of affected employees from the predecessor, both before and after change. Inquire about the work actually performed by the employees; has it changed, if so, how?
  - e. the same management and supervision have been retained. If not, how have they changed?
  - f. employees use the same equipment and have the same resources available as prior to the change; and
  - g. employees' duties are the same: they engage in the same type of work, or perform the same service or functions.
- (7) Are a majority of the alleged successor's employees in the **proposed (involved)** bargaining unit former employees of the predecessor? What is the workforce complement of the proposed unit?
- (8) How were the former employees placed with the alleged successor? Explore how the employees were notified and the placement program used (transfer of function, offered employment, etc.).
- (9) Describe any changes instituted by the alleged successor in such matters as:
- a. duties

- b. working conditions
  - c. personnel policies and practices
  - d. facilities and other terms and conditions of employment
- (10) Did the alleged successor merge or combine the operations of the predecessor with other preexisting operations? If so, were the employees in other preexisting operations previously represented by a labor organization? If so, obtain the name of labor organization, description of the unit and copies of any existing certifications, recognitions or collective bargaining agreements. Did the alleged successor hire any employees to combine with employees from the predecessor?
- a. Ascertain how many employees were in each group or unit prior to such merger or combination.
  - b. Ascertain the employee complement at the alleged successor. (total number of employees, including numbers, types from each previously represented unit, newly hired employees and/or employees who were already on the rolls.
- (11) Explore whether and to what extent the (two) combined groups have been integrated with one another. The issue is whether the predecessor's former employees retained or lost their identity, constitute a separate appropriate unit or are combined with other employees in a newly created appropriate unit. Examine the degree of integration and interchange among employees in terms of:
- a. job duties and responsibilities
  - b. supervision
  - c. interaction and contact
  - d. interchange and transfer
  - e. common working conditions
  - f. access to common facilities and opportunities

- g. similarities in personnel policies and practices

**C. Accretion.**

Accretion involves the addition, without an election, of a group of employees to an existing bargaining unit. Accretion issues most frequently arise as a result of a reorganization or realignment of agency operations.

**To find accretion, the acquired employees:**

- < are not in newly created positions that fall within the express language of the unit description. *Department of the Army, Headquarters, Fort Dix, Fort Dix, New Jersey (Fort Dix)*, 53 FRA 287 (1997). See *RCL 15*.
- < do not constitute an appropriate separate bargaining unit on their own.
- < become functionally and administratively integrated into the gaining organization's pre-existing unit(s), and that adding the transferred employees to the unit(s) would be appropriate under section 7112(a) of the Statute in that the employees in the resulting unit share a community of interest with employees in the established unit and the resulting unit promotes effective dealings with and efficiency of operations of the agency.

***For more detailed information on accretion, see RCL 3C.***

**Relevant Information:** The record covers:

- 1) information concerning whether the acquired employees constitute a separate appropriate unit; *RCL 1* and *HOG 37*.
- 2) the organizational structure and staffing patterns of the two entities prior to and after the reorganization;
- 3) the supervisory chain of command of the gaining entity;
- 4) the nature and scope of personnel and labor relations authority at the various managerial levels, both before and after the reorganization;

- 5) the specific role and authority of the various servicing personnel offices, both before and after the reorganization;
- 6) the nature and scope of differences among the various facilities with respect to personnel policies and practices, both before and after the reorganization;
- 7) the role of the gaining entity in providing administrative support to the various facilities;
- 8) the areas of consideration and competition with respect to the various facilities, both before and after the reorganization;
- 9) bargaining history throughout the facilities;
- 10) how the entities have functioned (e.g. the flow of work) after the reorganization;
- 11) the nature and degree of employee transfer and interchange among the various facilities, both before and after the reorganization;
- 12) the extent to which a separate unit would result in fragmentation of units; and
- 13) the numbers of employees in the transferred group and in the existing unit.

**Note: Questions have been raised concerning the differences between accretion and successorship in reorganization cases.** Essentially, accretion concerns the status of a group of employees while successorship concerns the status of a bargaining relationship between an agency/activity which acquires employees who were in a previously existing bargaining unit and a labor organization that exclusively represented those employees prior to their transfer. Reorganizations often raise both accretion and successorship issues because the impact of what happened is not immediately clear on the unit structure. It is important to find out what happened to the employees and determine how the reorganization affected their conditions of employment. Once information is gathered, the factors of accretion and successorship can be applied and analyzed. It is not possible to have both an accretion and a successorship involving the same employees.

## D. Competing Claims of Successorship and Accretion.

*FISC, Norfolk*, 52 FLRA 950 (1997) involved the Department of the Navy's decision to consolidate and reorganize its purchasing and supply functions, and the resultant representation petitions that were filed in this case, **presented the Authority with an opportunity to clarify how it will analyze reorganization cases in which both successorship principles and accretion principles are claimed to apply to the same employees.**

### 1. Overview:

The Authority found that the most expeditious way to resolve such cases is to begin with a determination of whether the transferred employees are included in, and constitute a majority of employees in, a separate appropriate unit in the new employing entity. The first analytic step in resolving both successorship and accretion claims is to determine whether the transferred employees are included in, and constitute a majority of employees in a separate appropriate unit.

Once this determination has been made, the Authority will proceed to apply either the remaining successorship principles, or the remaining accretion principles, as appropriate.

### 2. Analytic framework adopted by the Authority:

A. When resolving cases arising from a reorganization where employees are transferred to a pre-existing or newly established organization and both successorship and accretion principles are claimed to apply, the Authority adopted the following framework:

- 1) Initially, the Authority determines whether employees who have been transferred are included in, and constitute a majority of, a separate appropriate unit(s) in the gaining organization under section 7112(a) of the statute. The outcome of this inquiry governs whether successorship or accretion principles are next applied.
- 2) If it is determined that the transferred employees are included in a separate appropriate unit(s) in the gaining organization under section 7112(a), and if they constitute a majority of the employees in that unit(s), the Authority applies the remainder of the successorship factors set forth in *NFESC*, 50 FLRA 363, with respect to the unit(s) determined to be appropriate. The outcome of the *NFESC* analysis determines whether the gaining organization is a

successor for purposes of collective bargaining with the labor organization(s) that represented the transferred employees at their previous employer.

- 3) If it is determined that the transferred employees are not included in, and constitute a majority of employees in, a separate appropriate unit in the gaining organization, the Authority applies its long-established accretion principles. The outcome of this analysis determines whether the transferred employees have accreted to a pre-existing unit in the gaining organization.

**The quality of the record is vitally important.** *FISC, Norfolk*, and *FISC, Bremerton*, 53 FLRA 173, presented the same issues. The decisions in these two cases were different. In *FISC, Norfolk*, the Regional Director affirmed the Authority's finding of accretion. In *FISC, Bremerton*, 53 FLRA 173 (1997), the Authority affirmed the Regional Director's finding that FISC, Concord Detachment was a successor employer to the Concord Naval Weapons Station (NWS Concord) for an appropriate unit of employees transferred from NWS Concord to the newly established FISC, Concord Detachment. The Regional Director, as affirmed by the Authority, based his decision on different facts in the record.

**Relevant information includes first obtaining information outlined in RCL 1; then applying the factors discussed in RCL 3A to determine whether the affected employees constitute a separate appropriate unit. Depending on the answer to that question the successorship (RCL 3B) or accretion (RCL 3C) outlines are applied.**

#### **E. Consolidated Units:**

When applying the appropriate unit criteria to a successorship/accretion situation that involves a consolidated bargaining unit, the criteria are applied with respect to the entire nationwide consolidated unit. The Region does not apply the criteria to any organizational segment (or former unit encompassed within the consolidated unit) below the level of exclusive recognition. Thus, successorship and accretion issues are not considered below the level of exclusive recognition. *Compare Social Security Administration, District Office, Valdosta, Georgia (SSA, Valdosta)*, 52 FLRA 1084 (1997).