65 FLRA No. 59

UNITED STATES
DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING
COMMAND MID-ATLANTIC
NORFOLK, VIRGINIA
(Activity/Petitioner)

and

INTERNATIONAL FEDERATION OF
PROFESSIONAL & TECHNICAL ENGINEERS
LOCAL 4
(Exclusive Representative/Petitioner)

and

INTERNATIONAL FEDERATION OF
PROFESSIONAL & TECHNICAL ENGINEERS
LOCAL 3
(Exclusive Representative)

and

METAL TRADES DEPARTMENT
AFL-CIO
(Exclusive Representative)

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS
DISTRICT LODGE 4
(Exclusive Representative)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCALS 23, 53, 2635, 2024, 1156, 1659 & 1698
AFL-CIO
(Exclusive Representatives)

and
NATIONAL ASSOCIATION
OF GOVERNMENT EMPLOYEES
LOCALS R1-178, R2-084, R1-100 & R1-134
(Exclusive Representatives)

and

LABORERS INTERNATIONAL UNION
OF NORTH AMERICA
LOCAL 1310
(Exclusive Representative)

BN-RP-09-0005
WA-RP-09-0039
WA-RP-09-0040
WA-RP-09-0041

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ORDER DENYING
APPLICATION FOR REVIEW

November 24, 2010

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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 filed by the National Association of Government Employees/SEIU (NAGE) under § 2422.31 of the Authority's Regulations.[1] The Agency (the United States Department of the Navy (DoN), Naval Facilities Engineering Command (NAVFAC) Mid-Atlantic, Norfolk, Virginia (NAVFAC Mid-Atlantic or Activity)) filed an opposition to NAGE's application for review.

As the result of a reorganization within the DoN, employees in 17 existing bargaining units at DoN facilities in Maine, New Hampshire, Rhode Island, Connecticut, Pennsylvania, New Jersey, and Virginia were transferred to the NAVFAC Mid-Atlantic. These bargaining units were represented by locals of

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

> (c) *Review.* The Authority may grant an application for review only when the application demonstrates that review is warranted on one or more of the following grounds:
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> (1) The decision raises an issue for which there is an absence of precedent;
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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;
>
> (ii) Committed a prejudicial procedural error;
>
> (iii) Committed a clear and prejudicial error concerning a substantial factual matter.

the International Federation of Professional and Technical Engineers (IFPTE), the Metal Trades Department, AFL-CIO (MTD), the International Association of Machinists (IAM), the American Federation of Government Employees (AFGE), NAGE, and the Laborers International Union of North America (LIUNA) (collectively, the Unions).

Following the transfer, IFPTE, Local 4 filed a petition to be certified under the successorship doctrine as the exclusive representative of the Activity's professional and nonprofessional employees at a DoN facility in Maine. The Activity filed cross-petitions, contending that, as a result of the reorganization, three separate Activity-wide units were appropriate: a professional unit, a general schedule (GS) nonprofessional unit, and a wage grade (WG) unit. The Unions disagreed, arguing that each continued as the exclusive representative of the respective unit of employees transferred to the Activity.

The Regional Director (RD) agreed with the Activity. Accordingly, the RD determined that GS nonprofessional employees are included in the existing unit of Activity employees represented by AFGE, Local 53; that WG employees are included in the existing unit of Activity employees represented by the Tidewater Virginia Metal Trades Council (Tidewater MTC); and that no question of representation existed concerning the Activity's unrepresented professional employees.

For the reasons that follow, we deny NAGE's application for review.

II. Background and RD's Decision

A. Background

The NAVFAC, headquartered in Washington, D.C., manages the planning, design, construction, contingency engineering, real estate, and public works support for the DoN shore facilities worldwide. RD's Decision at 3. NAVFAC consists of ten Facilities Engineering Commands (including the Activity), each of which reports to one of two NAVFAC Commands: NAVFAC Atlantic in Norfolk, Virginia (NAVFAC Atlantic) or NAVFAC Pacific in Pearl Harbor, Hawaii. *Id.*

The Activity, headquartered in Norfolk, Virginia, reports to NAVFAC Atlantic and supports U.S. Navy shore facilities from Maine to North Carolina. *Id.* In particular, it provides facilities engineering and acquisitions services through business lines and integrated product teams (IPT) organized into four areas, including public works (PW). The majority of employees in this case are involved in the PW function. *Id.* The Activity's workforce consists of 100 officers and enlisted personnel and over 3,300 civilian personnel. *Id.*

As relevant here, in January 2006, the Activity reorganized to include the PW operations at Naval Station Newport, Rhode Island (NAVSTA Newport); Naval Submarine Base, New London, Groton, Connecticut (Sub-Base Groton); and Portsmouth Naval Shipyard, Maine; as well as some operations in North Carolina. *Id.* at 4. Additionally, the Activity also established a new common PW Department (PWD) organizational structure at each of its approximately ten work sites, including the new Northeast sites. *Id.* The work of the PWD is closely aligned with the installation that it supports. *Id.* Each PWD is headed by a Public Works Officer (PWO), assisted by a deputy, who serves as the Activity's onsite manager. *Id.* Division heads and shop level supervisors are generally subordinate to the PWO and his deputy. *Id.* The PWO reports up the chain of command to the Commanding Officer through the Activity's Operation Officer. All of the PWO's superiors are located in Norfolk. *Id.*

At the time of the hearing, the Activity relied upon DoN human resources offices (HROs) to handle personnel and labor relations matters. *Id.* at 5. However, the Activity had requested that these functions be consolidated and administered by a single provider, HRO Norfolk, effective October 1, 2009. *Id.* At such time, HRO Norfolk "[began] provid[ing] the full range of services" to the Activity using "forward-deployed" human resources personnel, who reported directly to Norfolk. *Id.*

The reorganization affected employees in 17 bargaining units represented by IFPTE, MTD, IAM, NAGE, and LIUNA.[2] NAGE represented all professional, nonprofessional and WG employees at NAVSTA Newport, and all nonprofessional and WG employees at Sub-Base Groton. *Id.* at 11-12. As set forth above, various petitions were filed after the reorganization. *Id.* at 2.

In particular, as relevant here, NAGE argued on behalf of NAGE, Locals R1-100, R1-134, FUSE/RI-178 (R1-178), and R2-84, which represented the employees transferred to the Activity

2. LIUNA did not appear at the hearing and did not file a post-hearing brief. RD's Decision at 11 n.2.

from NAVSTA Newport and Sub-Base Groton.[3] *Id.* at 11-12. NAGE argued that the "post-transfer . . . units continue to remain appropriate . . . and that . . . its units retain an identifiable community of interest that is separate and distinct from that of other Activity employees[.]" *Id.* at 12. NAGE also asserted that the employees are geographically isolated from Norfolk and have limited interchange with other Activity employees. *Id.*

B. RD's Decision

In applying the Authority's framework set forth in *Naval Facilities Engineering Service Center, Port Hueneme, California*, 50 FLRA 363, 368 (1995) (*Port Hueneme*) for resolving successorship claims arising out of a reorganization, the RD first considered whether the "stand-alone successor units proposed by the [U]nions [(proposed separate units)]" were appropriate. *Id.* at 14. To make this determination, the RD considered whether the proposed separate units 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 the efficiency of the Activity's operations. *See* 5 U.S.C. § 7112(a). Applying these criteria, the RD concluded that the proposed separate units were not appropriate under § 7112(a) of the Federal Service Labor-Management Relations Statute (the Statute). *See* RD's Decision at 15 (citations omitted).

In this regard, the RD found that the record did not establish that the employees in the proposed separate units share a clear and identifiable community of interest that is separate and distinct from the other employees of the Activity. *See id.* at 14-15. In particular, the RD found that the record did not establish that the employees in these units have an employment relationship or work situation that is "materially different from the other employees of the Activity." *Id.* The RD found that employees in each of the proposed separate units and all of the other employees of the Activity: are part of the same organizational component; support the same mission; are subject to the same chain of command and to the same general working conditions; and have similar or related duties, job titles, and work assignments. *See id.*

The RD further found that these employees are governed by the same personnel and labor relations policies that are centrally established and administered at the Activity level. *Id.* In this regard, the RD found that, since the reorganization, work and safety processes of the PWDs have been "upgraded and streamlined" through the Activity-wide implementation of standard operating procedures (SOPs). *Id.* at 4. SOPs for "every type of job performed by the PW employees are stored in a computer database that can be assessed at the shop level at every PWD within NAVFAC Mid-Atlantic." *Id.* Moreover, the RD noted other items also have been standardized since the reorganization, including protective equipment, software programs used for tracking work, financial transactions, and attendance, and position descriptions. *Id.* at 5.

The RD considered the Unions' arguments that the affected employees are geographically separated, experience limited interchange and, as tenants, are subject to their local installation's security, safety and weather policies. *Id.* at 14. However, the RD found that, "such factors, taken as [a] whole, [did] not outweigh the numerous commonality of interests" described above. *Id.*

The RD also found that the proposed stand-alone successor units would not promote effective dealings. *Id.* at 15. According to the RD, such units "would require the Activity to negotiate and administer numerous separate [collective bargaining] agreements for . . . employees that share a community of interest" with the other Activity employees. *Id.* Moreover, the RD found that the evidence established that Activity supervisors at the local levels do not have the authority to establish policies, procedures or working conditions or to negotiate over such matters; rather, all personnel and labor relations matters, including the negotiation of collective bargaining agreements, are determined and managed centrally from the Activity level. *Id.*

The RD further determined that the proposed separate units would not promote efficiency of the Activity's operations. *Id.* In this regard, the RD found that the proposed separate units – which "are

3. NAGE, Local R1-100 represented, among others, a consolidated unit consisting of all wage grade (WG) and nonprofessional employees located at the Naval Submarine Base, New London, Groton, Connecticut; NAGE, Local Rl-134 represented all nonprofessional WG and GS employees of the Naval Station Newport, Newport, Rhode Island; NAGE, R1-178 represented all "appropriate-funded professional employees" employed at Naval Station Newport, Rhode Island; and NAGE, Local R2-84 represented WG and nonprofessional employees at the Naval Air Engineering Station, Lakehurst, New Jersey. RD's Decision at 6, 7, and 10. Because employees represented by NAGE, Local R2-84 are no longer employed by the Activity, their status is no longer involved in this case. *Id.* at 10.

based on the extent to which the affected employees were organized under their prior employer" – would result in an "artificial and unwarranted fragmentation of the Activity's centralized operations and structure[.]" *Id.* (citations omitted). Accordingly, the RD concluded that the units sought by the Unions, including NAGE, are not appropriate under § 7112(a).

The RD then examined the three alternative units proposed by the Activity. *Id.* at 16. According to the RD, the record shows that the employees in each of these units share a clear and identifiable community of interest. *Id.* In this regard, the RD found that employees in each unit: are part of the same organizational component; support the same mission; are subject to the same chain of command and to the same general working conditions; have similar or related duties, job titles and work assignments; and are governed by the same personnel and labor relations policies that are centrally established and administered at the Activity level. *Id.* The RD also found that these units would promote effective dealings and efficiency of agency operations. In this regard, the RD found that the units are "co-extensive with the Activity's operational and organizational structure and exist at the level where personnel and labor relations policies are established." *Id.* Accordingly, the RD concluded that separate Activity-wide units of professional, GS nonprofessional, and WG employees are appropriate. *Id.*

Finally, the RD addressed the representational status of the three Activity-wide units. The RD found that a "clear majority" of the professional employees were unrepresented and that none of the affected Unions had sought to represent an Activity-wide unit of professional employees. *Id.* The RD found that, because none of the affected Unions represented at least 30 percent of these employees, a genuine question concerning representation did not exist. *Id.* Accordingly, the RD found that there was no basis to direct an election among the professional employees. *Id.* (citations omitted).

With respect to the nonprofessional GS and WG employees, the RD noted that, under Authority precedent, new employees are automatically included in an existing bargaining unit where their positions fall within the express terms of the unit description and their inclusion would not render the bargaining unit inappropriate. *Id.* (citing *U.S. Dep't of the Air Force, Randolph Air Force Base, San Antonio, Tex.*, 64 FLRA 656, (2010) (*Randolph, AF Base*) (Member Beck dissenting) (citing *Dep't of the Army, Headquarters, Fort Dix, Fort Dix, N.J.*, 53 FLRA 287 (1997) (*Fort Dix*)). The RD found that AFGE, Local 53's certification defines the existing unit as including "[a]ll graded civil service employees assigned to the [NAVFAC Mid-Atlantic]" and that the TidewaterVirginia MTC's certification defines its existing unit as including "all employees of the [NAVFAC] Mid-Atlantic." *Id.* The RD further found that, because there was no dispute that the nonprofessional GS and WG employees who were transferred to the Activity are now working for and assigned to the NAVFAC Mid-Atlantic, these employees fall within the express terms of the certifications and, therefore, are automatically included in the respective units described above unless such inclusion would render the unit inappropriate. *Id.* at 17. Because there was "no contention or evidence" that such inclusion would render either unit inappropriate, the RD found that: (1) the Activity-wide unit of nonprofessional GS employees is represented by AFGE Local 53; and (2) the Activity-wide unit of nonprofessional WG employees is represented by the Tidewater MTC. *Id.*

III. Position of the Parties

A. NAGE's Application for Review

NAGE contends that the RD erred when he failed to apply established law and found that: (1) the proposed separate bargaining units sought by the Unions were not appropriate under § 7112(a) of the Statute; (2) separate Activity-wide units were appropriate; (3) GS employees are included in the existing unit of employees represented by AFGE, Local 53; (4) WG employees are included in the existing unit of employees represented by the Tidewater Virginia MTC; and (5) the professional employees are unrepresented. Application for Review (Application) at 17. Citing *Port Hueneme*, NAGE alleges that the RD failed to apply properly the appropriate unit criteria set forth in 5 U.S.C. § 7112(a). *See id.* at 13 & 17.

With respect to the community of interest criterion, NAGE argues that each of its proposed separate units "continues to share a clear and identifiable community of interest separate and distinct from NAVFAC Mid-Atlantic" employees at other locations. *Id.* at 17 & 18. In this regard, NAGE asserts that the record shows that there "have been no real changes in the day-to-day working conditions" of unit employees at Sub-Base Groton and NAVSTA Newport; that these employees continue to support the same mission and are subject

to the same chain of command that they had before the reorganization; and that, "[w]hile the reorganization resulted in a change of command for the overall public works function[,]" the "direct supervision" of the employees remained the same. *Id.* at 18 & 19 (citing Tr. at 130 & 527-29). NAGE asserts that, before and after the reorganization, employees were under the direct command of the PWO — the highest level NAVFAC Mid-Atlantic manager. *Id.* at 19 & 20 (citing *U.S. Dep't of the Navy, Commander, Naval Base, Norfolk, Va.*, 56 FLRA 328 (2000) (*Naval Base, Norfolk*)). NAGE also contends that the RD "ignored evidence" that the NAVSTA local commander still has authority to impose discipline on employees. *Id.* at 21 (citing Tr. at 661-62). Further, NAGE asserts that the RD erred in finding that the affected employees and all other employees of the Activity: share the same skills; are involved in the same or similar jobs, functions, and responsibilities; and are subject to the same general conditions of employment. *Id.* at 22-24. NAGE asserts that employees in its proposed separate units would not be affected by a reduction-in-force (RIF) occurring at any other Activity location. *Id.* at 24 (citing Tr. at 190, 371-72).

NAGE further asserts that the RD erred by finding that the record did not establish that the NAGE-proposed separate units had "an employment relationship or work situation that [was] materially different from other employees of the Activity." *Id.* at 25. NAGE asserts that the record establishes that the units have specific local concerns unique from employees at other Activity locations. *Id.* at 26. NAGE contends that the local commander has "command and control" over day-to-day working conditions affecting NAVFAC employees located at his or her base, including decisions related to weather, access to the base, and security. *Id.* In this regard, NAGE asserts that its employees have different climate issues than employees in the Southern states, which, it contends, the local commander has the authority to address. *Id.* NAGE further contends that, because Sub-Base Groton is the only nuclear submarine base in the NAVFAC Mid-Atlantic region, employees assigned there are "subject to safety regulations that present unique safety and training issues." *Id.* at 27.

NAGE also contends that the RD erred when he "dismissed the fact" that NAGE employees are significantly distant from other Activity employees, especially those represented by the Unions in Norfolk, Virginia. *Id.* at 28. NAGE argues that, contrary to the RD's finding, record evidence does not establish "numerous commonality of interest[s]" among Activity employees that would warrant disturbing its bargaining units. *Id.* at 29 (citing *U.S. Dep't of the Navy, Commander, Navy Region Mid-Atlantic*, 63 FLRA 8 (2008) (*Navy Region Mid-Atlantic*)).

NAGE further contends that the RD erred by finding that the employees were administratively and organizationally integrated into the Activity. *Id.* at 32-33. According to NAGE, the record shows that employees in the three different locations do not regularly or frequently interact with each other. *Id.* NAGE contends that, if the RD's Decision "is affirmed[,] the Authority will have chosen to give weight to those factors that favor the Activity and ignore . . . factors . . . in the record that favor" employees. *Id.* at 29 & n.7 (citing *U.S. Dep't of the Navy, Fleet Readiness Ctr. Sw., San Diego, Calif.*, 63 FLRA 245 (2009) (*DoN, Fleet Readiness Center*), among five other cases, which it contends shows that Authority decisions "have been slanted towards . . . agencies").

NAGE asserts that the RD erred in finding that the proposed successor units would not promote effective dealings. *Id.* at 34. NAGE claims that the local units have enjoyed a long bargaining history at NAVSTA Newport and Sub-Base Groton, and that the record does not establish that the existence of separate bargaining units caused undue delay in addressing workplace issues. *Id.* at 34 & 37(citing Tr. at 421, 438, 440 & Activity Ex. 38, a spreadsheet tracking notices to Unions and bargaining status).

NAGE also contends that the local units would promote efficiency of agency operations. *Id.* at 38. NAGE asserts that, by "forward deploy[ing]" Human Resources (HR) and labor relations personnel, the Activity "acknowledges the cost savings and efficiency in [having] personnel and labor relations . . . located where employees are . . . ." *Id.* at 38 & 39. NAGE argues that, if such deployment promotes the efficiency of the Activity's operations, the RD should have found that allowing employees similar contact with their representative also promotes the efficiency of operations. *Id.* at 39.

For the reasons previously described, NAGE contends that Local R1-178, consisting of professional employees, continues to be an appropriate unit. *Id.* at 40. NAGE argues that the employees in this unit share a community of interest separate and distinct from Activity professional employees at other locations. *Id.* NAGE asserts that these employees have experienced no significant changes in their working conditions, job assignments,

supervision, or work location as a result of the 2006 reorganization. *Id.* at 40-41 (citing Tr. at 577, 579, & 600). Moreover, NAGE contends that, because these employees are responsible for ensuring that the local commander at NAVSTA Newport complies with federal and state environmental laws and regulations, they "have certain local concerns" that are "unique to their location." *Id.* at 41-42 (citing Tr. at 142).

NAGE asserts that, "having erred in finding the NAGE units no longer appropriate, the RD failed to properly apply the rest of the successorship analysis." *Id*. at 42. According to NAGE, the record shows that its proposed successor units satisfy the remaining *Port Hueneme* criteria. *Id.* at 42-44.

NAGE asserts that "public policy . . . warrant[s] reconsideration of existing law." *Id.* at 44. According to NAGE, recent Authority decisions "analyzing the effective dealings criteria appear to focus exclusively on how the agency is impacted while completely disregarding the negative impact of these decisions on bargaining unit employees." *Id.* at 44 (citing decisions cited in Application for Review — *id.* at 29 n.7). NAGE states that, "[h]ad sufficient consideration been given to the negative impact . . . on the freedom of choice of bargaining unit employees in this case," the RD would have found that the proposed units that "dissolve certain units and — in the case of the professional employees [leave them] unrepresented — do nothing to promote effective dealings." *Id.* at 44. In this regard, NAGE asserts that one of its witnesses testified that unit employees had "voted out the very [U]nion that the [RD] seeks to force them to join." *Id.* at 45 (citing Tr. at 669).

B. Activity's Opposition

The Activity asserts that the RD properly considered all of the § 7112(a) criteria in determining whether the units sought by NAGE are appropriate. *See* Agency Opp'n to Application at 3. The Activity contends that NAGE's arguments are not supported by the totality of facts in this case. *Id.* at 7. The Activity asserts that NAGE "[has] not shown how the case law relied upon by the RD was [applied] erroneous[ly][.]" *Id.* at 8. The Activity also asserts that NAGE has "failed to identify a specific prejudicial error[]" or show that the RD neglected a substantial factual matter. *Id.*

The Activity contends that, in applying the *Port Hueneme* test, the RD "appropriately concluded that the record [did] not demonstrate that the employees in the stand-alone successor units proposed by the [U]nions share a clear and identifiable community of interest separate and distinct from the other employees of the Activity." *Id.* at 3. The Activity contends that NAGE's assertion that the RD "erred by concluding that the Activity's operations and personnel comprise a fully centralized and integrated enterprise" with all employees sharing the same mission, budget, chain of command, working conditions, and are subject to the same personnel and labor relations policies established and managed at the Activity level, "constitutes mere disagreement" with the RD's Decision. *Id.* at 4.

The Activity asserts that NAGE "points to 'unique' conditions . . . affecting . . . employees physically located at [Sub-Base Groton] due to the presence of the nuclear submarines." *Id*. However, according to the Activity, "the same condition[s] exist[] for [NAVFAC Mid-Atlantic] employees physically stationed at the Norfolk Naval Shipyard in Portsmouth, [Virginia]." *Id.* The Activity also contends that NAGE's contention concerning differences in weather/climate at the different locations does not "create a unique and distinct difference from one [PWD] to another." *Id.*

The Activity further contends that the RD properly concluded that the proposed separate units would not promote effective dealings or efficiency of the Activity's operations. *Id.* at 5. Moreover, the Activity argues that the RD properly concluded that there was no basis to direct an election among professional employees and that the GS and WG employees are represented by AFGE, Local 53 and the Tidewater MTC, respectively. *Id.* at 6-7.

IV. Analysis and Conclusions

A. The RD did not fail to apply established law.

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 . . . after the transfer; and (b) constitute a majority of the employees in such unit;
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> (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 . . .; and
>
> (3) It has not been determined that an election is necessary to determine representation.

Port Hueneme, 50 FLRA at 368.

Thus, under *Port Hueneme*, the first requirement for finding a new employing entity to be a successor employer is that the transferred employees continue to constitute a separate appropriate bargaining unit. *Id*. As set forth above, in determining whether a petitioned-for unit is appropriate, 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 agency; and (3) promote efficiency of the operations of the agency. 5 U.S.C. § 7112(a); *see also U.S. Dep't of the Navy, Fleet & Indus. Supply Ctr., Norfolk, Va.*, 52 FLRA 950, 959 (1997) (*FISC*). A proposed unit must meet all three appropriate unit criteria in order to be found appropriate. *See id*. 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.* However, for a petitioned-for separate bargaining unit to be appropriate, the employees at issue 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).

NAGE disputes the RD's finding that its former units would not constitute appropriate units. 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) (*NFEC*). 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.

In this case, the RD found that employees in the proposed separate units are part of the same organizational component; support the same mission; and are subject to the same chain of command. *See* RD's Decision at 14. The RD further found that the employees 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 that is centrally established and administered at the Activity level. *Id.* The RD, thus, found that the affected employees do not have significant employment concerns or personnel issues that are different or unique from other Activity employees. *Id.*

NAGE has not provided any basis for finding that the RD erred in his assessment of the community of interest factors. In this regard, while NAGE asserts that the day-to-day supervision of NAGE affected employees remained the same, a NAGE witness testified that, after the reorganization, the employees' fourth-level of supervision changed from the local commander to the commanding officer of NAVFAC Mid-Atlantic. *See* Tr. at 558. NAGE further contends that the RD ignored evidence that the local commander of NAVSTA Newport still has authority to impose discipline on employees. Application at 21 (citing Tr. at 661-62). However, the record shows that the third-step of the grievance process changed; rather than going to the local commander, the third-step appeal now goes to the NAVFAC Mid-Atlantic commander in Norfolk. *See* Tr. at 664. Moreover, the record supports the RD's finding that, since the reorganization, work and safety processes of the PWDs have been "upgraded and streamlined" through the Activity-wide implementation of SOPs. Furthermore, the RD noted other items also have been standardized since the reorganization, including protective equipment, software programs used for tracking work, financial transactions, and attendance, and position descriptions. RD's Decision at 4 & 5; *see also, e.g.*, Tr. at 284-85 (witness testified concerning standard operating procedures/safety, protective equipment); 331 (standard operating procedures for safety; business management system); 93-95 (standardized procedures for business/financial system).

NAGE further argues that the RD erred by finding that the employees in the proposed separate units share the same skills, are involved in the same or similar job, functions, and responsibilities, and are subject to the same general conditions of employment as other Activity employees. *See* Application at 22. NAGE has not demonstrated that the RD's findings in this regard are not supported by the record. *See* RD's Decision at 14; *see also, e.g.*, Tr. at 331-32 (after reorganization, employees' duties of providing carpentry, electrical work, and engineering design remained the same, but the manner in which performed changed according to either SOPs for safety or from business management system). NAGE's contention that employees in its proposed separate units have unique local concerns concerning climate also provides no basis for finding that the RD failed to apply the community of interest criterion properly. In this regard, the record does not establish that the affected employees' climate concerns required the RD to reach a different conclusion. *See* Tr. at 668 (witness testimony was not definite in that witness testified that "perhaps the environmental conditions" would make the employee conditions at NAVSTA Newport different than a Southern base). Moreover, its contention that employees located at Sub-Base Groton have unique working conditions due to the presence of nuclear submarines also is not supported by the record. Additionally, while the affected employees may be subject to separate competitive areas for purposes of a RIF, the existence of separate competitive areas for such purpose, like any other factor in evaluating community of interest, is not dispositive in resolving that issue. *See e.g., U.S. Dep't of the Army, Army Materiel Command Headquarters, Joint Munitions Command, Rock Island, Ill.*, 62 FLRA 313, 318 (2007) (citing *AFGE, Local 2004*, 47 FLRA 969, 972 (1993) (factors that employees did not have in common, such as RIF competitive area, do not undermine the RD's determination that a community of interest exists)).

NAGE further claims that the affected employees' distance from Activity employees at other locations demonstrates that its units are unique. NAGE, however, has not established that the RD erred in applying this factor. Contrary to NAGE's contention, the RD did not "dismiss[] the fact" concerning the affected employees' locations. Application at 28. The RD specifically addressed the matter and found that, "[w]hile the affected employees are geographically separated, may experience limited interchange and, as tenants, are subject to their local installation's security, safety[,] and weather policies, such factors, taken as a whole, do not outweigh the numerous commonality of interests[.]" RD's Decision at 14.

NAGE's assertions concerning the professional employees, represented by Local R1-178 at NAVSTA Newport, also provide no basis for finding that the RD erred in applying the community of interest factors. The RD found, among other things, that the record did not demonstrate that the affected professional employees have duties that are different from those of other Activity employees, report to a different chain of command, or are subject to different or unique working conditions. *See* RD's Decision at 14. NAGE refers to certain testimony in the record that, it claims, shows that this unit has significant concerns that are unique to it. Specifically, NAGE contends that, because these employees are responsible for ensuring that the local commander complies with federal and state environmental laws and regulations, the employees have certain local concerns that are "unique to their location." Application at 42 (citing Tr. at 142). However, record testimony shows that, because regulations differ from state to state, employees at other Activity locations also must follow environmental regulations that are unique to their state. *See* Tr. at 142-43 & 582. Moreover, differences in environmental requirements are addressed through training via the Activity's environmental business line, which also is used by employees at NAVSTA Newport to obtain resources. *See id; see also id.* at 585-86. Accordingly, NAGE has not demonstrated that the RD erred in finding that the professional employees did not share a community of interest separate and distinct from other Activity employees.

Additionally, citing *Naval Base, Norfolk*, NAGE argues that the reorganization at issue here was merely a change in the chain of command that should not, by itself, render the existing units inappropriate. Contrary to NAGE's contention, the reorganization changed a variety of factors in addition to the chain of command. In this regard, as discussed above, since the reorganization, work and safety processes of the PWDs have been "upgraded and streamlined" through the Activity-wide implementation of SOPs, and personnel and labor relations policies are centrally established and administered at the Activity level. Additionally, other items have been standardized, including protective equipment, software programs used for tracking work, financial transactions, and attendance, and position descriptions. *See* RD's Decision at 4, 5 & 14-15. NAGE has thus failed to demonstrate that the reorganization at issue was merely a change in the

chain of command. *See, e.g., U.S. Dep't of Health & Human Servs., Nat'l Insts. of Health, Nat'I Inst. of Envtl. Health Sciences Research, Triangle Park, N.C.*, 62 FLRA 84, 87 (2007).

Also, NAGE's reliance on *Navy Region Mid-Atlantic* provides no basis for finding the RD's Decision fails to comply with established law. Unlike the employees in *Navy Region Mid-Atlantic*, the employees here are not subject to different or unique working conditions. Rather, as previously described, the affected employees are part of the same organizational component, are subject to the same general working conditions, and are governed by the same personnel and labor relations policies. *See* RD's Decision at 14-15.

Further, NAGE's claim that, if the RD's Decision is affirmed, then the Authority "will have chosen to give weight to those factors that favor the Activity" provides no basis for finding the RD erred in finding that NAGE's proposed separate units are not appropriate. Application at 29. Under § 7112(a) of the Statute, the Authority is required to determine whether a proposed unit is an appropriate unit consistent with the three criteria listed therein. Moreover, as discussed above, the Authority makes determinations regarding whether these three criteria are satisfied on a case-by-case basis. *See Dep't of the Army*, 60 FLRA at 394. As found above, the RD's factual findings and the record evidence in this case fully support the RD's findings that the proposed separate units do not share a clear and identifiable community of interest, separate and distinct from other employees of the Activity. RD's Decision at 14. Because the record supports the RD's findings in this case, there is no basis to NAGE's claim that, should the Authority affirm the RD, the Authority will have chosen to favor the Activity.

As noted above, to be found appropriate, a proposed unit must meet all three appropriate unit criteria. Because NAGE has failed to demonstrate that the RD erred in finding that employees in NAGE's proposed separate units do not share a community of interest that is separate and distinct from other Activity employees, it is not necessary to address whether the RD correctly found that the proposed separate units would not promote effective dealings or the efficiency of the Activity's operations. *See U.S. Dep't of Commerce, Nat'l Weather Serv., Silver Spring, Md.*, 62 FLRA 472, 476 n.5 (2008).

Accordingly, as NAGE has not demonstrated that the RD erred in his conclusion that the separate units sought by the NAGE and the other Unions would not be appropriate, we find that NAGE has not established that the RD failed to apply established law.[4]

B. The application fails to demonstrate that review is warranted because established law or policy warrants reconsideration.

NAGE argues that "public policy . . . warrant[s] reconsideration of existing law." Application at 44. According to NAGE, recent Authority decisions "analyzing the *effective dealings* [factor] appear to focus exclusively on how the agency is impacted while completely disregarding the negative impact of these decisions on bargaining unit employees." *Id.* (citing decisions cited in Application — *id.* at 29 n.7) (emphasis added)). An assertion that "[e]stablished law or policy warrants reconsideration" is an established ground for challenging an RD's Decision. 5 C.F.R. § 2422.31(c)(2); *U.S. Dep't of Agric., Office of the Chief Info. Officer, Info. Tech. Servs.*, 61 FLRA 879, 883 (2006).

However, because NAGE has failed to demonstrate that the RD erred in finding that the employees in NAGE's proposed separate units do not share a community of interest that is separate and distinct from other Activity employees, we find that it is unnecessary to address NAGE's contention that recent Authority decisions warrant reconsideration of Authority precedent or established policy concerning effective dealings. Application at 44.

Accordingly, we find that NAGE has not demonstrated that established law or policy warrants reconsideration.

V. Order

NAGE's application for review is denied.

4. We note that NAGE contends that the RD committed a clear and prejudicial error concerning a substantial factual matter, and committed a prejudicial procedural error. *See* Application at 4. However, other than this bare assertion, NAGE provides no further arguments on these contentions. To the extent that its argument that the RD committed a clear and prejudicial error concerning a substantial factual matter could be construed as asserting the same arguments as made with respect to its contention that the RD failed to apply established law, such arguments have been addressed above. As to its contention that the RD committed a prejudicial procedural error, such contention is a bare assertion and provides no basis for finding the RD committed a prejudicial error. *See, e.g., NASA, Goddard Space Flight Ctr., Wallops Island Facility, Wallops Island, Va.*, 64 FLRA 580, 582 (2010).