

UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
SAN FRANCISCO REGION

FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.
Activity/Petitioner

-and-

NATIONAL ASSOCIATION OF AIR
TRAFFIC SPECIALISTS, NAGE/SEIU
Exclusive Representative/Labor Organization

CASE NO. SF-RP-06-0004

DECISION AND ORDER ON PETITION SEEKING CLARIFICATION OF UNIT

A petition was filed with the Federal Labor Relations Authority (Authority) under section 7111(b) of the Federal Service Labor-Management Relations Statute (Statute). Section 7105(e)(1) of the Statute provides that the Authority may delegate to any Regional Director certain authorities and in section 2422.30(c) the Authority delegated me the authority to conduct investigations and hearings in representation matters and issue Decisions and Orders. Based upon the parties' Stipulation of Facts and the exhibits attached thereto, and pursuant to section 2422.30 of the Authority's Rules and Regulations, I hereby find and conclude as follows:

STATEMENT OF THE CASE

The original petition was filed by the Federal Aviation Administration (FAA or Petitioner) with the San Francisco Region on October 27, 2005, and amended on February 14, 2006. The Petitioner seeks to clarify the existing unit to reflect the present location of unit employees. The petition also seeks to clarify the certification to reflect a change in pay category of unit employees; exclude students at the FAA Academy, and remove reference to International Flight Stations. The only change that National Association of Air Traffic Specialists, NAGE/SEIU (NAATS or Union) does not oppose is a technical change to correct the pay category of unit employees. NAATS takes the position that the other requested changes are not necessary. Both FAA and NAATS agree that the existing unit remains appropriate.

FACTS

Since February 1972, NAATS has been certified as the exclusive representative of all Air Traffic Control Specialists of FAA employed at Flight Service Stations and

International Flight Service Stations. The certified unit was most recently clarified on July 31, 2000, in Case No. WA-RP-90114 and described as follows:

INCLUDED: All Air Traffic Control Specialists, FG-2152 series, employed by the U.S. Department of Transportation, Federal Aviation Administration, including students at the FAA Academy and Automation Specialists, assigned to the flight service option at Flight Service Stations, International Flight Stations, Flight Services Data Processing Systems sites and at the "Weather Unit" of the Air Traffic Control System Command Center, Herndon, Virginia.

EXCLUDED: All professional employees, FG-2152 series personnel employed at Air Route Traffic Control Centers, Terminals and Combined Station Towers, Teletype Operators, Communication Relay Equipment Operators, Clerical, Electronic Technicians, Evaluation and Proficiency Development Specialists, supervisors, management officials and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7).

On October 3, 2005, FAA contracted out much of the work of its Flight Services Operation. Prior to the contracting out, there were approximately 1850 employees in NAATS bargaining unit. These employees were assigned to flight service facilities located in the Eastern Area (28 facilities), the Western Area (30 facilities), or the Alaskan Area (17 facilities) or in one of the international flight service facilities, or in the Weather Unit of the Air Traffic Control System Command Center (ATCSCC) in Herndon, Virginia. As a result of the contracting out action, all flight service work except that performed by employees assigned to the Alaskan Area facilities and the Weather Unit in Herndon, Virginia was contracted out to the Lockheed Martin Corporation, and the unit employees in other locations were subject to reduction-in-force. There are presently 159 bargaining unit employees remaining, of these, 155 are assigned to Flight Service facilities in Alaska and four are assigned to the Weather Unit in Herndon, Virginia.

The record reveals that the employees in Alaska and in the Weather Unit continue to be subject to the same chains of command as prior to October 3, 2005. They perform the same work, in the same locations, for the same first and second level supervisors. Their working conditions remain the same. They are subject to the same negotiated agreement and locus of labor relations authority. They remain subject to the same pay, payroll, retirement and benefit systems as prior to October 3, 2005. The employees receive personnel services from the same servicing offices now as they had prior to October 3, 2005.

The Alaska Area facilities (i.e., Automated Flight Service Stations, Flight Service Stations and Flight Service Data Processing Systems sites) continue to be divided into three hubs with the same reporting structure as prior to October 3, 2005. The hubs are located in Juneau, Kenai and Fairbanks, Alaska. Each hub is headed by an Air Traffic

Manager who reports to the Judy Heckl, Director of Flight Services. Unit employees assigned to facilities in the Alaska Area Operations continued to report to the same first and second level supervisors after October 3, 2005. The reporting structure for the Weather Unit in Herndon, Virginia remains the same.

FAA and NAATS agree that the NAATS bargaining unit continues to be an appropriate unit within the meaning of §7112(a) of the Statute, inasmuch as the 159 unit employees continue to share in a community of interest and the unit continues to promote effective dealings and the efficiency of operations of FAA. There is no dispute in this case that NAATS continues to represent this bargaining unit. However, the FAA and NAATS do not agree on how that unit should presently be described.

POSITIONS OF THE PARTIES

FAA contends that the existing certification needs to be clarified to reflect the unit that is appropriate after the reduction-in-force. FAA asserts that the certified unit description no longer accurately reflects the composition of the bargaining unit. Specifically, the existing certification lists the employees as FG-2152, which is incorrect. The employees are currently under the FV pay system. FAA asserts that the existing certification should accurately describe the location of unit employees at the Automated Flight Service Stations, Flight Service Stations and Flight Service Data Processing Systems sites in Alaska, to show that this is not a nationwide unit. Due to the reduction-in-force, FAA asserts that the reference to students should be removed, because there are no longer students choosing the flight service option and no one will be allowed to select the flight service option at the academy. Finally, FAA maintains that the reference to International Flight Stations should be deleted from the existing certification because these stations are now Lockheed Martin facilities. In support of its position, FAA argues that it is not effective or efficient for FAA to apply the needs of a nationwide unit to the remaining group of 155 employees in Alaska and four unit employees in Herndon, Virginia. FAA believes that the certification should be clarified to read as follows:

Included: All Air Traffic Control Specialists, FV-2152 series, employed by the U.S. Department of Transportation, Federal Aviation Administration, assigned to the flight service option at Automated Flight Service Stations, Flight Service Stations and Flight Service Data Processing Systems sites located in Alaska and at the "Weather Unit" of the Air Traffic Control System Command Center in Herndon, Virginia.

Excluded: All professional employees, FV-2152 series personnel employed at Air Route Traffic Centers, Terminals and Combined Station Towers, Teletype Operators, Communication Relay Equipment Operators, Clerical, Electronic Technicians, Evaluation and Proficiency Development Specialists, supervisors, management

officials and employees described in 5 U.S.C. 7112 (b) (2), (3), (4), (6), and (7).

NAATS takes the position that the unit description should not be altered and should remain the same as certified in Case No. WA-RP-90114, July 31, 2000. NAATS argues that the certified unit description should not be redefined to confine or restrict its coverage in order to exclude employees that have historically been included in the unit. NAATS maintains that while the number of unit employees has shrunk tenfold, the FAA agrees that the unit remains appropriate and the shrinkage in the flight service bargaining unit has not impaired efficiency of FAA operations. NAATS asserts that Lockheed Martin may falter and that FAA may decide to reopen and staff at least some of its flight service stations or that FAA may cancel its contract with Lockheed Martin altogether and return flight service to FAA. NAATS does not oppose a correction to the pay system from the FG-2152 designation to the FV-2152. However, NAATS maintains that the existing unit description continues to be appropriate.

ANALYSIS

Both the FAA and NAATS agree that the existing unit remains an appropriate unit, within the meaning of section 7112(a) of the Statute. I agree with their conclusion, that this unit which is over 30 years old, remains appropriate in that the employees continue to share in a community of interest and that the unit promotes effective dealings and efficiency of operations. The sole issue before me is how that bargaining unit should be described today.

The crafting of a bargaining unit description is a serious undertaking; the unit description must be able to survive the test of time in a changing environment. As the Authority has stated, "Bargaining unit certifications do not become stale over time, if they continue to accurately describe the organizations and employees within their scope." *Department of the Army, Headquarters, Fort Dix, Fort Dix, New Jersey*, 53 FLRA 287, 295 (1997) (*Fort Dix*). It is well-established that new employees are automatically included in an existing unit where their positions fall within the express terms of a certification and where their inclusion does not render the established bargaining unit inappropriate. *Id.*, 294.

It is with these principles in mind that I consider the clarifications sought by Petitioner. The FAA seeks to change the unit description from:

INCLUDED: All Air Traffic Control Specialists, FG-2152 series, employed by the U.S. Department of Transportation, Federal Aviation Administration, including students at the FAA Academy and Automation Specialists, assigned to the flight service option at Flight Service Stations, International Flight Stations, Flight Services Data Processing Systems sites and at the "Weather Unit" of the Air Traffic Control System Command Center, Herndon, Virginia.

EXCLUDED: All professional employees, FG-2152 series personnel employed at Air Route Traffic Control Centers, Terminals and Combined Station Towers, Teletype Operators, Communication Relay Equipment Operators, Clerical, Electronic Technicians, Evaluation and Proficiency Development Specialists, supervisors, management officials and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7).

to

Included: All Air Traffic Control Specialists, FV-2152 series, employed by the U.S. Department of Transportation, Federal Aviation Administration, assigned to the flight service option at Automated Flight Service Stations, Flight Service Stations and Flight Service Data Processing Systems sites located in Alaska and at the "Weather Unit" of the Air Traffic Control System Command Center in Herndon, Virginia.

Excluded: All professional employees, FV-2152 series personnel employed at Air Route Traffic Centers, Terminals and Combined Station Towers, Teletype Operators, Communication Relay Equipment Operators, Clerical, Electronic Technicians, Evaluation and Proficiency Development Specialists, supervisors, management officials and employees described in 5 U.S.C. 7112 (b) (2), (3), (4), (6), and (7).

First, FAA has requested that the unit description reflect the "FV" rather than the "FG" pay system designation for Air Traffic Control Specialists in the 2152 series. Neither party disputes that the unit employees have been changed to the "FV" pay designation, although NAATS does not believe that it is necessary to alter the unit description. Given the fact that these unit employees have been changed to the "FV" pay designation, it is appropriate to clarify the unit to reflect current circumstances. Therefore, I will change the pay system designation in the certification from FG-2152 to FV-2152.

FAA requests that the reference to the International Flight Service Stations be removed from the unit description, inasmuch as these FAA facilities no longer exist. NAATS opposes this change and argues that such facilities may be reestablished. However, I disagree. Where a portion of an activity, which is specifically referenced in a unit description, no longer exists, the Authority has found it appropriate to clarify the unit, eliminating reference to the location. *National Aeronautics and Space Administration, Headquarters, Administrative Division*, 12 FLRA 152, 153 (1983) (NASA) (reference to "Germantown" location deleted from unit description, inasmuch as that facility had been closed). Accordingly, I will clarify the bargaining unit description and delete reference to the International Flight Service Stations.

FAA requests that the reference to students at the FAA Academy be removed from the unit description. FAA asserted that there are no students currently and there will be none in the future; however, FAA presented no objective evidence in support of its position. Here, for many years the existing bargaining unit has included certain students. *Fort Dix* holds that new employees are automatically included in an existing unit where their positions fall within the express terms of a certification. Therefore, even though there may be no students at this point in time, I am not willing to delete all reference to these students in the existing bargaining unit description. Accordingly, I will not make this change in the bargaining unit description, as requested by Petitioner. In reaching this decision I note that should these types of students be hired and FAA believe that inclusion of these students in the existing unit would render the unit inappropriate, FAA can file a petition, seeking a determination of their unit status.

Lastly, FAA requests that the unit description be changed, to include reference to the State of Alaska, inasmuch as all unit employees work in Alaska, except those in the Weather Unit. This bargaining unit has consisted of certain Air Traffic Control Specialists and Automation Specialists assigned to the flight service option at Flight Service Stations and other entities. That has been and remains the nature and character of this bargaining unit. It just so happens that today, these Flight Service Stations and other entities are located solely in Alaska, as a result of the contracting out action. I find that it is not necessary to change the unit description, as requested. Here, where there is no confusion regarding which employees are included in or covered by the unit description, I conclude that the addition of unit employees' geographical location is unwarranted. Moreover, inclusion of "Alaska" in the description sets an unnecessary limitation on the unit and may create confusion or conflicts, should all or part of the function which has been contracted-out return to FAA. *Cf. NASA.*

Accordingly, I conclude that the description of the bargaining unit previously certified on July 31, 2000, should be clarified to reflect the change in the pay system and to delete reference to International Flight Stations. It will, therefore, read:

INCLUDED: All Air Traffic Control Specialists, FV-2152 series, employed by the U.S. Department of Transportation, Federal Aviation Administration, including students at the FAA Academy and Automation Specialists, assigned to the flight service option at Flight Service Stations, Flight Services Data Processing Systems sites and at the "Weather Unit" of the Air Traffic Control System Command Center, Herndon, Virginia.

EXCLUDED: All professional employees, FV-2152 series personnel employed at Air Route Traffic Control Centers, Terminals and Combined Station Towers, Teletype Operators, Communication Relay Equipment Operators, Clerical, Electronic Technicians, Evaluation and Proficiency Development Specialists, supervisors, management officials and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7).

Having reached these conclusions, the parties are advised that pursuant to section 2422.4(g) of the Regulations, absent the timely filing of an application for review of the Decision and Order with the Authority, or if one is filed and denied, or if the Authority does not undertake to grant review of this action within sixty (60) days after the filing of an application for review, a Clarification of Unit will be issued. Pursuant to section 2422.31 of the Authority's Rules and Regulations, a party may file an application for review of this Decision and Order within sixty (60) days of the date of this Decision and Order. This sixty (60) day time limit may not be extended or waived. Copies of the application for review must be served on the undersigned and on all other parties. A statement of such service must be filed with the application for review.

The application for review must be a self-contained document enabling the Authority to rule on the basis of its contents without the necessity of recourse to the record. The Authority will grant review only upon one or more of the grounds set forth in section 2422.31(c) of the Rules and Regulations. Any application filed must contain a summary of all evidence or rulings relating to the issues raised together with page citations from the transcript, if applicable, and supporting arguments. An application may not raise any issue or allege any facts not timely presented to the Regional Director. The application for review must be filed with the Federal Labor Relations Authority, 1400 K Street NW, Docket Room, Second Floor, Washington, D.C. 20424-0001, by close of business **May 30, 2006**. Pursuant to section 2422.31(3)(f) of the Regulations, neither filing nor granting an application for review shall stay any action ordered by the Regional Director unless specifically ordered by the Authority.

Pursuant to section 2429.21(b) of the Rules and Regulations, the date of filing shall be deemed by the date of mailing indicated by the postmark date. If no postmark date is evident on the mailing, it shall be presumed to have been mailed five days prior to receipt. If the filing of the application for review is by personal or commercial delivery, it shall be considered filed on the date it is received by the Federal Labor Relations Authority.

Dated: March 31, 2006



Gerald M. Cole, Regional Director
Federal Labor Relations Authority
San Francisco Region

Attachment: Certificate of Service

CERTIFICATE OF SERVICE

In the matter of:

CASE NO. SF-RP-06-0004

FEDERAL AVIATION ADMINISTRATION

WASHINGTON, D.C.

-Activity/Petitioner

-and-

NATIONAL ASSOCIATION OF AIR

TRAFFIC SPECIALISTS, NAGE/SEIU

-Exclusive Representative/Labor Organization

This certifies that on March 31, 2006 the foregoing **DECISION AND ORDER ON PETITION SEEKING CLARIFICATION OF UNIT** was served upon the interested parties in this action as follows:

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