

DEPARTMENT OF DEFENSE



Defense Civilian Personnel Advisory Service

DEPARTMENT OF DEFENSE BARGAINING UNIT STATUS CODES

REFERENCE GUIDE

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DEFENSE CIVILIAN PERSONNEL ADVISORY SERVICE
LABOR AND EMPLOYEE RELATIONS DIVISION

REFERENCE GUIDE

DOD BUS Codes: Reference Guide – Version 1.1

BARGAINING UNIT STATUS (BUS) CODES
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INTRODUCTION

The objective of this document is to provide a reference to use when making Bargaining Unit Status (BUS) code determinations. Ensuring accurate BUS code determinations is an important responsibility of management and avoids costly future labor relations (LR) disputes. Incorporation of the concepts in this document ensures that Department of Defense (DoD) Components properly record BUS codes and improve the speed and accuracy of reports through their Component headquarters and DoD to the Office of Personnel Management (OPM).

Keep in mind that BUS codes are more than just numbers; they represent collective bargaining rights, entitlements to national consultation rights, and entitlements to official time for representation under federal law. Ensuring prudent decisions and timely action concerning BUS codes is an important responsibility of human resources offices on behalf of employees as well as agency management. BUS code determinations are serious decisions; they should be given adequate research and should always involve the appropriate experts in classification, staffing, and labor relations, as necessary.

We thank our colleagues at the Department of Navy for sharing the Department of Navy BUS code guide. This DoD guide is based largely on their work. We believe it provides useful information worth sharing across DoD, along with some additional guidance from DoD.

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BACKGROUND

When a new bargaining unit (BU) is certified by a Federal Labor Relations Authority (FLRA) Regional Director, or changes affiliation from one union to another (i.e. Fraternal Order of Police to International Brotherhood of Police Officers), the servicing labor relations specialist obtains a code that identifies the new unit, the agency, and the state where the unit is located. OPM refers to this identifying number as the Office of Labor-Management Relations (OLMR) number. OPM uses this number to report on recognized units in the Federal sector. Other Federal agencies and labor unions also use the number for accounting and reporting purposes.

The OLMR number is a six-digit number. The first two digits identify the agency in which the BU is certified. For example, the identifier for the Department of Navy is 07, the identifier for the Department of the Army is 06, and the identifier for the Department of the Air Force is 05. The remaining four-digit number is the number most commonly known as the BUS code. BUS codes are grouped by agency and in alphabetical order by state. For example, a BU in Connecticut has a lower numbered BUS code than a BU in Rhode Island.

<i>Example:</i>	<i>071920</i>	<i>National Association of Government Employees (NAGE), Local R1-100 Naval Submarine Base New London Groton, CT</i>
	<i>074465</i>	<i>National Association of Government Employees (NAGE), Local R1-134 Naval Underwater Warfare Center Newport, RI</i>

Locating the BUS code

Employees can find the BUS code by reviewing block 37 on their most recent Notification of Personnel Action (NPA), SF-50. The BUS code belongs to the position, not the employee.

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BUS CODE DETERMINATIONS

[Who has authority to certify the bargaining unit?](#)

The Civil Service Reform Act of 1978 established the authority of the Federal Labor Relations Authority (FLRA) to determine whether a bargaining unit is appropriate and what positions are in or out of the bargaining unit. The FLRA, in its regulations at 5 CFR 2422.32, established the Regional Director as the issuing authority for certificates of exclusive recognition as well as for resolving questions concerning amendments and clarifications of the bargaining unit. A Certificate of Representative is the only official description of the bargaining unit (BU) and identification of the union holding exclusive representation.

Prior to the establishment of the FLRA, Presidential Executive Orders gave that authority to the agency and then to the Assistant Secretary of Labor for Labor Management Relations (ASLMR). Thus, depending upon the Component or Defense agency delegation of authority, the earliest certificates of recognition may have been issued by either the Component Secretary, or delegated to the local Commander, and later issued by the ASLMR.

[What positions are included and excluded in the BU certification?](#)

The Federal Service Labor Management Relations Statute (Statute) assigns the FLRA the responsibility for appropriate unit and individual position BU status determinations. The FLRA issues an original Certification of Representative¹ following a union petition and election process that results in the majority of votes cast in favor of exclusive representation. During the petition process the activity and union may agree upon a unit description that stipulates the positions that are included and positions excluded from the BU. This is a very important step in the process, one that often is not given the attention necessary to avoid future disputes or the need for unit clarifications after the BU has been certified by the FLRA. Therefore, it is critical that the description of the unit clearly identify the positions that are included and specifically stipulate those that are excluded (e.g., temporary, intermittent and professional employees). However, the final unit definition, or a change to a unit definition, is a matter that must be raised to the FLRA Regional Director and an FLRA determination made before certification is lawful.

¹ See Attachment 2, Sample of “Certification of Representative.”

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The unit description is fixed once a unit determination is made, an election held, and the unit is certified by the appropriate FLRA Regional Director. There would have to be a substantial change in the mission of an organization or in the duties and responsibilities of a position to have the description of included or excluded positions changed. When such a change occurs, a unit clarification petition is filed with the appropriate FLRA Regional Director.

Positions that may be included in the bargaining unit

Professional Employees

Section 7103(a)(15) of the Statute defines professional employees, for labor relations purposes. Professional employees perform work that requires knowledge gained through advanced or specialized intellectual instruction, such as the field of science, and requires the exercise of independent judgment or discretion. The FLRA has noted that a college degree is not always required for an employee to be a professional under the Statute; however, a professional's work is predominately intellectual and varied in character as distinguished from routine, mental, manual, mechanical, or physical. Additionally, the work output and the accomplished results cannot be standardized.

Example:

A professional accountant, without a college degree, qualified for a position through a combination of college level accounting credits and professional work experience including board certification. Although many accountants might have accounting degrees, the qualifications standard also recognizes a combination of experience and education including required accounting coursework. This individual meets the labor relations definition of professional.

Additional assistance may be obtained by reviewing the OPM list of qualification requirements for positions generally considered to be professional. This list can be found, as part of OPM's qualification guidelines, on the OPM website (see <http://www.opm.gov/policy-data-oversight/classification-qualifications/general-schedule-qualification-standards/#url=Group-Standards>). However, decisions about whether a position is professional should be made after reviewing the specific duties and responsibilities of each individual position. This individual review produces a more

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defensible position than simply comparing positions with the OPM list of professionals according to classification series, grade, and title.

It is important to exclude professionals in a unit description even when there are no professional employees at the time the union is seeking recognition. If the organization changes and professionals are hired later, having professionals shown as excluded precludes any subsequent questions concerning representation. It cannot be assumed that professional positions are automatically included in the unit. Employees in professional positions are entitled to an independent election to determine whether they are or are not included in a unit with nonprofessional employees. The FLRA certifies a bargaining unit as appropriate based on the proposed unit described in the representation petition and the results of the election. If the proposed unit includes professional and nonprofessional employees, and the majority of professional employees who vote choose to be included in a bargaining unit with nonprofessionals, it is appropriate to assume a certificate stating that the union represents all GS employees, includes professionals.

Professional employees are not part of the bargaining unit when they are not included in the proposed unit the union sought to represent; or, the agency prevailed in an objection to the combined unit; or, the majority of professional employees voting elected to not be in the bargaining unit with nonprofessionals; or, that same majority voted to not be represented at all. If, as in most cases where professionals are not part of a bargaining unit, the unit is properly described in the certification, it is specifically noted in the excluded section of the certificate issued by the FLRA Regional Director. If there are any questions regarding the exclusion of a group of employees from the bargaining unit, activities should review historical documents such as the representation petition or the list of employees eligible to vote in the representation election, as identified in the election agreement. If the issue is still unresolved, filing a clarification of unit petition with the FLRA is the appropriate action.

The following is an example of that portion of the activity's non-professional bargaining unit description, which excludes professionals:

Excluded: All police and guards of the Security Division of the Public Safety Department, all firefighters and telecommunications equipment operators of the Fire Protection Division of the Public Safety Department, all supervisors, all management officials, professional

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employees, and employees described in 5 USC 7112 (b)(2),(3),(4),(6) and (7).

The following is an example of positions included in the bargaining unit and shows that the activity's professionals voted to be represented by a different union and are in a separate BU:

Included: All appropriated-fund professional employees employed at Naval Station Newport, Newport, Rhode Island.

An example of the included provision in a bargaining unit description for a combined unit may show:

Included: All professional and nonprofessional employees employed by the Supervisor of Shipbuilding Conversion and Repair, U.S. Department of the Navy, Bath, Maine.

The following is an example of BUS code options when a BUS code is assigned to professional employees. The FUSE/NAGE bargaining unit is a professional only unit because the majority of professional employees voting at that activity elected to be represented separately from the nonprofessional employees. However, the AFGE bargaining unit includes professional and nonprofessional employees because the professional employees voted to have a combined bargaining unit. As with any other positions, certain professionals are subject to statutory exclusions and are coded as 8888, if they meet the appropriate criteria, which are discussed later.

4235	<i>FUSE / NAGE</i>	<i>All professional employees</i>
2815	<i>American Federation of Government Employees (AFGE), Local 2906</i>	<i>All professional and non-professional employees combined)</i>
7777	<i>Eligible/Unrepresented</i>	<i>Unrepresented professionals</i>
8888	<i>Ineligible</i>	<i>Professionals meeting criteria for statutory exclusions</i>

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Non-Professional Employees

Non-professional employees occupy all positions other than professional positions within the broader category of the general schedule. The nonprofessional category also includes all prevailing rate/wage grade positions.

As mentioned earlier, certain professionals and also nonprofessionals are subject to statutory exclusions and are coded as 8888, if they meet the appropriate criteria, which are discussed later.

Non-Appropriated Fund and Appropriated Fund Employees

There have been two recent cases where the FLRA has determined that non-appropriated fund (NAF) and appropriated fund (AF) employees in the same bargaining unit is an appropriate. However, it is the position of the DOD, that NAF and AF employees should not be found to be an appropriate unit. Any LRO or LRS should immediately contact the LERD office whenever it has been determined that the union is attempting to file a petition which would create a BU with both NAF and AF employees. One reason for the DoD position is that it would be a violation of the Anti-Deficiency Act for an Appropriated Fund employee to use official time to represent a NAF employee.

Temporary / Intermittent / When Actually Employed (WAE) Positions

Non-permanent employees are not statutorily excluded from eligibility for representation. Although FLRA unit determinations are made on a case-by-case basis, there is some case law to provide us with guidance regarding a proposed unit that includes permanent and temporary and intermittent positions.

[What reasoning does the FLRA use in determining whether temporary positions should be included in a unit composed of permanent positions?](#)

A key factor in determining the appropriateness of the unit is whether or not the temporary employees in question have enough in common, i.e., share a community of

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interest, with the other employees in the BU. While temporary employees may have similar day-to-day working conditions, such as hours of work and tours of duty, they may not share the same appointment types, benefits, appeal protections, or work schedules as permanent employees. These differences in working conditions and community of interest factors that, differentiate temporary employees from permanent employees, are indicators as to whether it is appropriate to include or exclude such employees from the BU.

Temporary employees are generally hired for specific short-term needs. They may not be paid from comparable salary schedules, or receive premiums or differentials, and may not be receiving benefits such as health insurance, life insurance or annual leave. These conditions may be different from permanent employees. If the temporary employees in question are hired for specific periods of time, such as 6-9 months or less, and have no reasonable expectation of continued employment beyond the original appointment, the positions should be excluded from the unit. (See Federal Mediation and Conciliation Service, 5 FLRA No. 4 (1981)) Such exclusion should be noted in the unit description of the FLRA certification, particularly if it was agreed to at the time the original FLRA Certification of Representative was issued. If including temporary positions in the bargaining unit presents problems for the activity due to temporary employees' brief tenure, or because of other differences, and case law is indicative that the FLRA would decide in favor of such an exclusion, then proposing the exclusion during an original election/certification process is the correct action to take. That exclusion should also be noted under the coverage section in the local collective bargaining agreement(s) (CBA).

The following is an example of that section a unit description that excludes temporary employees:

Excluded: Professional employees, management officials, supervisors, temporary employees (intermittent employees), and employees described in 5 USC 7112(b)(1), (2), (3), (4), (6) and (7).

The bargaining unit status options for intermittent and WAE positions are similar to those for temporary positions. In the case of the intermittent and WAE positions, which may involve a permanent appointment, the answer to the question of reasonable expectation for continued employment might be positive. However, there are other considerations such as work schedules and other conditions of employment that must be viewed in terms of a shared community of interest with the regular full-time permanent employees.

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Intermittent employee work schedules may vary from week to week according to budgetary and workload considerations differentiating them from regular employees. Also, intermittent employees, who have permanent appointments, have a reasonable expectation of continued employment. While this expectation of continued employment is a major factor in making unit determinations concerning temporary positions, permanent intermittent positions may have differing conditions of employment which impact their community of interest and differentiate them from other bargaining unit employees.

As with the temporary positions, intermittent positions are not statutorily excluded from the BU. However, it is advised that the petition clearly identify the positions that are included or excluded descriptions in the unit prior to the election. Additionally, the Certification of Representative and CBA should clearly categorize intermittent, temporary, and WAE employees. In the absence of such exclusion in the unit description, the FLRA decides on a case-by-case basis if the positions are included in the BU. If the parties disagree over excluding certain types of positions, they must file a petition for unit clarification with the appropriate FLRA Regional Director. Since these matters are complex, the servicing labor relations specialist should seek the advice of their Component headquarters labor relations officer or the DoD Labor and Employee Relations Division staff.

Discussions concerning temporary employees do not include temporary promotion or temporary reassignment when filled with permanent status employees. Such positions and their incumbents are treated in accordance with the appropriate coding for the positions to which they are assigned. If the temporary assignment is to an excluded position, the employee's BUS code is changed removing him from the bargaining unit, such as a temporary promotion from the BU into a supervisory position.

Interns

The decision to include or exclude interns in the bargaining unit depends upon a number of factors. In *Department of the Army, Rock Island*, 5 FLRA No. 47 (1981), the Authority found that a group of Army interns were not in a bargaining unit during the first two years of their internship, but moved into the unit at their third year.

The Authority determined that during the initial two-year period of an interns' employment, prior to the permanent duty location assignment, a community of interest

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between interns and unit employees is lacking, primarily because of the movement of interns as required by their program of instruction (POI) training and their mobility agreement.

In this case, interns spend the first two years in POI training, which includes classroom attendance and rotation of job assignments. For each segment of training, the intern is under a branch supervisor who usually assigns him/her to a journeyman level trainer for assistance in learning the general duties of the particular job. A short period of time is spent in each related job area to obtain a general working knowledge of the operation. Also, performance appraisals are different from those of full performance employees, as the interns are not expected to perform at the journeyman level. Furthermore, the activity's Reduction-In-Force (RIF), overtime, and merit promotion regulations do not apply to interns because they are attached to Army headquarters. There is also evidence that the job training during this period is very general in scope and allows the interns to experience a number of duties as a result of rotating, without necessarily mastering the skills of any particular position.

Third-year interns, however, have permanent job assignments and consistently perform the same duties as unit employees. They are assigned to their permanent duty locations and usually, although not always, remain at their respective locations upon completion of the program if, they can be accommodated. Consequently, in this case, the third-year interns share a clear and identifiable community of interest with the unit employees.

[What is the difference between BUS code 7777 and 8888?](#)

Two BUS codes that are universal throughout the Federal sector are 7777 and 8888. A 7777 code identifies positions that are eligible for representation by a labor union; however, no union has been certified as the exclusive representative for those employees.

A union may seek to represent employees with a BUS code of 7777 through the petition, election and certification process. If the majority of the employees voting choose union representation, the BUS code is changed to a BUS code representing the newly certified exclusive representative. For example, when no union represented the professional employees at Naval Station Newport, Newport, RI, each eligible professional position was coded as 7777. In January 2001, the Federal Union of Scientists and Engineers / National Association of Government Employees (FUSE/NAGE) petitioned the Federal Labor Relations Authority (FLRA) Regional Director's office for an election to

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determine whether the professional employees at that activity wanted to be represented by FUSE/NAGE. The majority of employees voting chose representation; therefore, the professional positions at Naval Station Newport, Newport, RI, were assigned BUS code 4235.

Employees with the 8888 code cannot vote in a union representation election because they are excluded from coverage by the Statute. Positions coded as 8888 include supervisors, management officials, and personnelists, among others. The various positions ineligible for representation are discussed in greater detail in the paragraphs that follow.

[Use of a 7777 BUS Code](#)

Whether or not an employee wants to be a union member and pay dues is not a factor in determining BUS codes. As we have seen, the 7777 BUS code identifies that the employee holds a position eligible for representation, although no union currently represents the employee. This might include professionals or non-professionals, or both. What is pertinent is whether a union is certified as the exclusive representative of employees in a specified group of positions at the activity. Only when a union has been certified, are those positions no longer coded as 7777.

[Employees Ineligible for Representation \(8888\)](#)

Federal statute, at 5 USC 7102, provides for excluding certain employees from eligibility for representation as part of a BU. BUS code 8888 represents this designation. In order to be designated as 8888 the position must meet at least one of the seven following criteria:

1. **Supervisor** – The Statute, at 5 USC 7103(a)(10), defines a supervisor as “an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action.” There is no requirement that the supervisor must perform all of these duties or supervise a certain number of employees, but the supervisor must consistently exercise independent judgment. An individual who supervises only military members is not a supervisor within the meaning of the Statute; however, individuals who supervise for a portion of the year, or on a temporary basis, are excluded from the unit during the period they perform supervisory functions.

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Are leaders considered supervisors and also excluded from the union?

Depending upon the scope of authority, a team leader may or may not fall within the definition of supervisor for the purposes of exclusion from the bargaining unit. Team leaders are not supervisors if their primary duty is to give technical advice to others and their responsibilities are routine in nature. If the team leader does not consistently exercise independent judgment, but rather carries out the mission and work assignments designated by management, then the position is included in the BU. (See National Mediation Board, 56 FLRA No. 1 (2000))

Examples:

The Authority found that a GS-06 Hospital Facilities Work Coordinator was excluded from the unit as a supervisor within the meaning of the Statute. He assigned and directed the work of a maintenance employee and effectively recommended an award for that employee. These duties were performed with the consistent exercise of independent judgment. (Ft. Hood, 13 FLRA No. 84 (1983))

A Senior Technical Advisor was not excluded from the BU as a supervisor. When acting on behalf of the Associate Director, a second level supervisor, the employee did not exercise supervisory authority. The employee did not directly assign work to employees, and his assigning incoming correspondence constituted the performance of a routine function. The function did not require the exercise of independent judgment. The employee's technical review of the work of other employees did not require the consistent exercise of independent judgment. (Department of Labor, 59 FLRA No. 156 (2004))

2. Management Official – An individual whose position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency or participates in the formulation of that policy. See 5 USC 7103(a)(11). The distinctions between those who are and those who are not management officials are often difficult to make; thus, the FLRA will make these decisions on a case by case basis. However, as a guideline, the FLRA has found that a management official creates, establishes, or prescribes general principles, plans or courses of action, decides upon plans or courses of action, and obtains a result by the adoption of plans or courses of action. (See Navy, Automatic Data Processing Selection Office, 7 FLRA No. 24 (1981))

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Examples:

An Assistant Research Director was a management official since he made independent decisions, planned research projects, and monitored projects by evaluating reports. His recommendations and findings were accepted as authoritative and implemented without any meaningful review. (Department of Interior, 9 FLRA No. 14)

An Automated Data Processing security specialist was excluded from the BU as a management official because he had independently created the agency's computer security programs and retained the responsibility for shutting down all security operations in the event of a security breach. (Navy, Automatic Data Processing Selection Office, 7 FLRA No. 24 (1981))

Individuals who recommend new regulations, review legislative proposals, and analyze the impact of economic data were not management officials. (Department of Transportation, 12 FLRA No. 28 (1983))

A General Engineer was held not to be a management official because, as a professional, he assisted in implementing rather than shaping the agency's policies. (Army Communications Systems Agency, 4 FLRA No. 83 (1980))

A Safety Officer and a Fire Protection Inspector were not management officials because they did not formulate policy and had no authority to implement their suggestions. (Department of Navy, 7 FLRA No. 74, (1981))

3. Confidential Employee – An employee who assists and acts in a confidential capacity to an official who formulates or effectuates management policies in the field of labor relations and who has regular access to confidential labor relations material. An employee is confidential, as defined in section 7103(a)(13) of the Statute when (1) there is evidence of a confidential working relationship between an employee and the employee's supervisor; and (2) the supervisor is significantly involved in labor-management relations. An employee is not confidential, in this context, in the absence of either of these requirements. (Department of Labor, 37 FLRA No. 112 (1990)). Thus, employees who attend regular management meetings, where labor-management relations matters are discussed, are excluded from the bargaining unit because they meet this labor relations definition of confidential.

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Examples:

The FLRA found that secretaries who attended regular management staff meetings of the “principle decision-making body and policy-making management team” relative to activity policies wherein attendees’ views were solicited on how such matters would be handled in labor-management negotiations, were determined to be confidential employees. (National Aeronautics and Space Administration, 57 FLRA No. 103 (2001))

Support staff that have access to grievances and grievance decisions before they are presented to the union are confidential employees. (National Aeronautics and Space Administration, 57 FLRA No. 103 (2001))

Other individuals (such as attorneys, paralegals, or specialists) who are privy to LR policies as they are developed, and whose inclusion in a BU would create a conflict of interest between the employee’s work duties and unit membership, are excluded from the BU as confidential. The amount of time that an individual devotes to LR matters is not a controlling factor in determining confidential status. (Department of Labor, 37 FLRA No. 112 (1990))

4. **Personnelists** – A unit is not appropriate if it includes “an employee engaged in personnel work in other than a purely clerical capacity.” (5 USC 7112(b)(3)) The term personnelist includes an employee whose character and extent of involvement in personnel work is more than clerical in nature and the duties of the position are performed in a non-routine manner and require the exercise of independent judgment and discretion. Employees who hold positions that recruit and/or make recommendations to management on personnel actions are considered personnelists and are thus excluded from the bargaining unit. Also, individuals who hold positions where the duties create a conflict of interest, such as certain investigations or performing studies that may result in a change of organizational structures or staffing levels, are considered personnelist and thus are excluded from the bargaining unit because the employee’s job duties may require the individual to act in a manner adverse to BU interests.

Examples:

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Employees who provide employment information and assist applicants in filling out personnel forms are not personnelists because they perform their duties within prescribed guidelines and regulations which require little, if any, independent discretion or judgment. (Department of the Army, Ft. Sam Houston, 5 FLRA No. 46 (1981))

Employees who are involved in administration of personnel matters relating exclusively to military personnel are included in the BU. (Department of the Army, 13 FLRA No. 51 (1983))

5. National Security Personnel – An employee engaged in intelligence, counterintelligence, or national security work must be excluded from the bargaining unit. (5 USC 7112(b)(6)) This exclusion includes individuals involved in the design, analysis, or monitoring of security systems or classified information that directly affects national security. National security work does not include mere access to or use of sensitive information and material, rather, the material must directly affect national security. Examples:

Personnel security specialists who grant access authorizations or clearances through interviewing, examination, and evaluation are engaged in national security work. (Department of Justice, 52 FLRA No. 111 (1997))

A classified material systems custodian that maintained a classified material system was engaged in work that directly affected national security. The custodian reviewed and logged all classified material, and handled highly classified communications. (Department of the Navy, 7 FLRA No. 74 (1981))

Security specialists responsible for designing and auditing security systems and procedures are engaged in national security work. (Department of Energy, 4 FLRA No. 85, (1980))

A mail clerk that receives and distributes classified material in accordance with procedures is not engaged in national security work. (Department of Energy, 4 FLRA No. 85, (1980))

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6. Investigators/Auditors – This exclusion, under 5 USC 7112(b)(7)), includes individuals engaged in investigation or audit functions wherein the nature of the investigation/audit might uncover fraud, waste, and abuse. An individual who audits agency programs and/or contracts that may uncover employees' failure to comply with programs is excluded from the bargaining unit. The investigators and/or auditors do not have to be directly investigating unit employees for the exclusion to apply. Whether or not the investigators/auditors find violations of agency policies is not dispositive.

Examples:

Auditors and investigators in the Office of the Inspector General whose functions could uncover employee fraud, misuse of funds, or malfeasance are excluded from the BU because the work affects the internal security of the agency. (Small Business Administration, 34 FLRA No. 73 (1990))

Any individual who audits and/or investigates particular types of employees to ensure that the employees are discharging their duties with honesty and integrity is excluded from the BU. (Small Business Administration, 34 FLRA No. 73 (1990))

7. Administering a labor relations statute – Any employee who is engaged in administering any provision of law relating to labor management relations may not be represented by a labor organization which represents other individuals to whom the Statute applies or by a labor organization which is affiliated directly or indirectly with an organization which represents other individuals to whom the Statute applies. (5 USC 7112(c)). Although the Statute does not prohibit these employees from being represented by a union, they cannot belong to the same unit, or be represented by the same union or union affiliate as other activity employees. This rule is necessary in order to prevent the appearance of a conflict of interest between the labor law administration and its application to other employees in the same union. There is little case law encompassing this particular exclusion; however, the following examples can be supported based on the FLRA decision in Federal Mediation and Conciliation Service, 52 FLRA No. 140 (1997), where a bargaining unit including mediators is not appropriate because the mediators are engaged in the administration of the Statute.

Examples:

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Labor and employee relations specialists are excluded from the BU as administrators of the Statute (and also as personnelists).

General attorneys that provide advice on negotiations, grievance handling, and contract interpretation are excluded from the BU as administrators of the Statute.

Secretaries in the LR office are not excluded from the BU as administrators of the Statute; however, they are excluded as confidential employees because the nature and duties of their position make them privy to confidential LR materials.

It is recommended that in making determinations regarding eligibility for representation, consideration must be given to all applicable categories described above. For example, while an individual who supervises military personnel may not meet the definition of “supervisor” within the meaning of 5 U.S.C. 7103(a)(10), this individual may attend meetings where labor-management matters are discussed and, therefore, would be considered a confidential employee as defined in section 7103(a)(13) of the Statute.

Determinations Based Upon Current Duties and Responsibilities

BU exclusions can be subject to FLRA scrutiny whenever representational matters come before them. Therefore, when making assessments relative to excluding positions from the BU, it is important to recognize the basis on which the FLRA makes decisions on unit composition. Case law has demonstrated that the FLRA bases unit eligibility determinations on the employee's actual duties at the time of the hearing. (Department of Housing and Urban Development, 34 FLRA No. 143 (1990)) What the employee is actually doing currently carries more weight than written position descriptions (PDs) or documentation concerning duties that may be assigned or undertaken in the future. When individual positions are determined to be excluded and are coded as 8888, the current duties and responsibilities of the incumbent(s) should meet one or more categories described above. Since the statutory descriptions of these exclusions are subject to debate, it is wise to research the question thoroughly and rely on case law when giving advice to management.

There are some situations where employees are not yet performing duties that warrant an exclusion that is appropriate. In such cases, there are certain factors to consider, including whether an employee has recently encumbered the position. When reviewing the duties of recent incumbents, the FLRA will consider their duties to have been actually assigned where: (1) the employee has been informed that they will be performing the

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duties in question; (2) the nature of the job clearly requires those duties; and (3) the employee is not performing them at present solely because of a lack of experience, which is expected to be overcome. When these factors are clearly met, there can be greater confidence that unit exclusion decisions are defensible. However, the FLRA will consider that the duties simply have not been assigned where: (1) the assignment is speculative, where the nature of the duties and responsibilities may change or where the nature doesn't clearly require those duties; or (2) where it is not clear the duties were assigned or that the employee was informed of the assignment.

[Understanding local unions with multiple bargaining units](#)

When there is more than one union on an installation or in an activity, each union represents a different BU. Each BU has its own Certification of Representative, causing each BU to have a separate and distinct BUS code. For example, certain employees at an installation are represented by the following labor organizations and should be coded appropriately:

- 4430 - International Association of Firefighters (IAFF), F-100
All employees in the Fire Protection Division*
- 4435 - International Brotherhood of Police Officers (IBPO)
All police and guards of the Security Department*
- 4424 - NAGE, R1-134 All non-professional GS and WG employees*

[We have only one local union on our installation. Can we assume that there is only one bargaining unit?](#)

No, one cannot accurately assume that because there is one local union all positions represented are in the same bargaining unit. A local union may represent multiple employees who are in different bargaining units within the installation or activity; and, **each bargaining unit must have a separate BUS code.** For example:

4930 - International Federation of Professional and Technical Engineers (IFPTE), Local 259, certified on 08/28/67 as representative for all permanent year round non-seasonal nonprofessional District employees on dredges, with attendant plant, towboats, and patrol boats.

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4931 - IFPTE, Local 259, certified on 09/10/70 as representative for all GS and WG nonprofessional employees in the District office headquarters building.

4932 - IFPTE, Local 259, certified on 07/09/84 as representative of all temporary and seasonal employees assigned to the District dredges, bank protection parties; towboats, and patrol boats.

It is also interesting to note, in this example that the employees working on the dredges, towboats, and patrol boats may work side-by-side and be represented by the same local union, but they are in separate bargaining units.

Human Resources Office (HRO) Responsibilities

When an employee is given an assignment to a new or different position (different PD and position number), then processing the resultant personnel action necessitates a new review of the appropriate BUS code. The HRO is responsible for accomplishing that review in order to process actions such as an appointment, promotion, reassignment or any other temporary or permanent action that moves an employee to a different position.

The sections that follow provide some examples of opportunities to review BUS codes and make new BUS code determinations. These are important opportunities to make and correct BUS code determinations. The HRO must establish methods of analysis, detection, and correction to ensure that BUS codes are accurate when third party reviews or questions concerning representation occur. LR specialists may use the automated resources available to review the accuracy of BUS code determinations for their serviced activities. This should not be a one-time review, but one that is performed periodically and consistently. It will pay dividends to everyone involved when a marathon effort under short time constraints is avoided.

New positions

Initially, the Labor Relations Specialist, upon review of the duties and responsibilities assigned, determines whether or not a new position is included in the BU. The correct determination is not always the obvious one.

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For example, in most cases, secretaries are eligible for bargaining unit status in a non-professional unit because of the clerical nature of their duties and responsibilities. However, they will be excluded from eligibility as confidential employees if their duties include regular access to confidential labor relations material, such as management bargaining proposals.

In this example, if the secretary is coded as 7777, but works for the Commanding Officer (or another management official involved in LR) then the HR specialist handling staffing matters should consult with the LR specialist to determine whether the secretary performs duties that would exclude the position from the BU as a confidential employee. In such a case, the BU code is changed to 8888 since the position is appropriately excluded.

The labor relations specialist reviews the position description to determine if a position is in a bargaining unit as described on the FLRA Certification of Representative. There are often several unions (e.g., firefighters, police officers, trades and craft, engineers) representing different groups of employees in an activity. An installation or activity may also have one union with several bargaining units. Most of the time unit placement is not difficult, such as police in police officers' unit; but, particularly where there is a union with more than one bargaining unit, extra care must be taken to ensure that the position is assigned the correct BUS code. For example, a local union may represent all 1) GS professional 2) nonprofessional and 3) WG positions in the organization. Each of the three groups may, based on different certificates of recognition, be in separate bargaining units. When a recruitment action is initiated to fill a Budget Analyst position, number 2, nonprofessional, is the correct bargaining unit; if the recruitment action is for a Financial Accountant, number 1, professional, is the correct bargaining unit. Knowing how bargaining units are defined in the certificate of recognition, how to obtain BUS codes, and how to apply the codes is critical in maintaining an accurate BUS code system and ensuring the integrity of the bargaining units.

[Existing positions](#)

The HR Specialist conducts a similar analysis as performed for new positions. The specialist first looks at the organizational placement, the duties, and responsibilities of the incumbent position, and the corresponding BUS code that is currently applied. This BUS code assignment should be compared against the most recent description of the bargaining unit, as documented on the Certification of Representative to verify the accuracy of the bargaining unit definition.

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An existing position usually has more information available about the duties and responsibilities as performed by past or present incumbents. The first question to answer is whether the existing PD continues to serve as an accurate document and whether the new incumbent will perform the full range of duties.

Mistakes are often unnoticed by others and can go uncorrected for long periods. That is the reason that accurate determinations and verifications are vitally important during opportunities such as reassignment and promotion position changes. When erroneous BUS codes are encountered, follow up corrective action is critical. It is equally important to consult with all appropriate personnel including your LR specialist before making any isolated decisions.

Incorrect data in the system causes repercussions which may result in an Unfair Labor Practice (ULP) charge or representational petition being filed with the FLRA Regional Director. Incorrect data also has an immediate negative impact on employees, the accuracy of records, and on reports that rely on such data. For example, employees who are ineligible for dues withholding have lost monies that were erroneously withheld; employees have actively participated in union activities when ineligible to do so; inaccurate data may also result in a union obtaining National Consultation Rights (NCR), when correct reporting may indicate the union is ineligible. Finally, incorrect data impacts our ability to correctly identify represented employees when implementing new policies affecting conditions of employment for the purpose of fulfilling bargaining obligations.

[New supervisor selections](#)

In cases where an employee is reassigned or promoted to a supervisory position, the staffing specialist must ensure that the BUS code does not remain with the employee, but must be changed to 8888 as supervisory positions should already have an 8888 BUS code indicating that the supervisor is ineligible for BU representation. The HRO processing specialist must ensure that the BUS code change is processed at the time of a supervisor's assignment and verified on any subsequent RPAs processed.

[Assignment to different position or activity](#)

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When an employee accepts a different position with the same activity, but is included in a different BU, then the BUS code for that employee must be changed to reflect the new unit. When an employee accepts a position at the same general location, i.e. the same installation, but with a different activity having a different unit of recognition, the employee's BUS code must be changed to the BUS code representing the appropriate BU at the new activity (remember the BUS code is position specific not employee specific).

Examples:

The Naval Education and Training Center (NETC) has a BU of non-professional employees represented by the AFGE and the BUS code is 4420. Employee A works as an office automation clerk and Box 37 of their SF-50 indicates code 4420 showing that Employee A's position is included in the non-professional unit. After completing a degree program, Employee A accepts a position as an instructor at the NETC. No union currently represents the professional employees at the NETC. Employee A's BUS code must change from 4420 to 7777.

The Portsmouth Naval Shipyard has a BU of non-professional employees represented by the AFGE and the BUS code is 3231. Employee B works as a secretary at the shipyard and Box 37 of the SF-50 indicates code 3231 showing that Employee B's position is included in the non-professional unit. Employee B accepts a position at the Naval Ambulatory Care Center (NACC), a tenant activity of the Shipyard. The non-professional employees at the NACC are represented by the International Union of Painters and Allied Trades Union whose BUS Code is 3245. Employee B's BUS code must change from 3231 to 3245.

The HRO processing specialist must ensure that this BUS code change is processed at the time of the change in assignment.

[Improper Codes – Quality reviews and correction](#)

Over time, changes in duties and responsibilities may result from the different skills of successive incumbents. The duties and responsibilities sometimes evolve as the result of organizational or mission changes. When the controlling duties and responsibilities change significantly, it may warrant a different BUS code determination.

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For example, a confidential employee is an assistant to a manager who has integral involvement with LR responsibilities. Due to reorganization, the assistant now works for a different person who does not have LR responsibilities; therefore, the position's bargaining unit status code must be changed to show the position is included in the unit.

Many opportunities occur to perform quality reviews of the accuracy of activity BUS code determinations. The HR specialist must verify the accuracy of codes each time an RPA for a change of assignment is generated. Although some reviews are more complex than others, discovery and correction should be considered a vital preemptive effort. It is of critical importance that complete and comprehensive reviews are performed on a periodic basis.

HRO specialists commonly use computer generated printouts that produce included and excluded groupings by activity. This information should be reviewed periodically and consistently to verify the accuracy of the BUS codes. Some examples of the more obvious mistakes that such reviews might uncover include: BUS codes that are no longer active and should have certifications revoked; obvious positions that don't appear to fit the excluded criteria; and, supervisory positions that are coded as included in the BU. Periodic reviews must be done in advance of any representational proceedings. When a representational petition is initially filed with the FLRA Regional Director, BUS code verifications must be made to correctly present to the FLRA that the position should be included or excluded from the BU in question. This is the last favorable opportunity to make BUS code changes or corrections. Attempting to change the bargaining unit status of a position in the middle of the petition process can have negative consequences. Management might have to reverse a statement or position that is crucial to its case or have an adverse impact on management's credibility before the union, the FLRA, or both.

Once the bargaining unit determination is made, the BUS codes are assigned and employees are ultimately informed of the determination. This incumbent employee might not agree and could contest the decision. When considering all of the facts in making BU status determinations, the labor relations specialist, who can provide advice based on FLRA case law, should be consulted.

[Action by the Processing Specialist](#)

Once a determination is made that a BUS Code has changed, whether due to a new assignment or as a correction, the HRO specialist is responsible for initiating a personnel

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action, which documents the change. The gaining activity's HRO processing specialist will generate an RPA for each employee. For example, if an unrepresented unit of eligible employees (7777) voted in an election to be represented, then the BUS code assigned to this unit by OPM must be assigned to each member of the bargaining unit by processing an RPA.

In this case a nature of action code² 800 - Change in Data Element - is used. The BUS code determination decision should be recorded and the old and new BUS code information provided in the notepad feature when processing the RPA. Another example is a case where an individual is reassigned into or out of an ineligible (8888) position and the BUS code was not changed, as it should have been. In these cases a DOD Correction RPA is used.

An important step in ensuring that the BUS codes assigned on RPAs are proper is to know and be thoroughly familiar with the BUS codes for each activity. This information is readily available from the servicing LR Office. The LR specialist should be able to give the HRO specialist the name of each union that represents activity employees, the BUS code for each bargaining unit that union represents, a description of the BU, and what employees and/or positions are included in that unit. Also, OPM publishes a document called Union Recognition in the Federal Government that provides information on union representation in the federal government by agency and state. This document also indicates the BUS code for each federal union. It is important to note that any changes in the local union representation must be reported through the Component headquarters to OPM, so the Union Recognition in the Federal Government document is kept current. These changes should be submitted via the OPM Form 913B, Change Form - Recognitions and Agreements, which is available at http://www.opm.gov/forms/pdf_fill/opm913.pdf. DoD 1400.25-M, Subchapter 711 requires activities to provide the Defense Civilian Personnel Advisory Service (DCPAS) with copies of this form to report any changes in representation. (These forms can be forwarded to DCPAS by email to <mailto:labor.relations@cpms.osd.mil>) Additionally, the HRO specialist should have the list of activity unions and BUS codes for each bargaining unit at the workstation for easy reference when initiating an RPA.

[Informing Designated Personnel Regarding Dues Withholding and/or Changes](#)

² NOA / NOAC – Nature of Action Codes are a 3 digit code that is assigned to every personnel action form 50 that is processed. These codes are recognized throughout the Federal government and have specific meanings in regards to the type of personnel action processed.

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It is the responsibility of the activity's Customer Service Representative (CSR) to promptly notify the payroll office to terminate automatic union dues deductions when a BU employee moves into a non-BU position. The HRO should ensure that CSRs know how and when to notify the payroll office to terminate dues deductions when such job changes occur.

The CSR is responsible for notifying employees newly assigned to positions outside of the BU that they are no longer eligible for dues withholding. Since the cessation of dues withholding is not automatic, there are instances where withholdings have erroneously continued for some time. This is a potential problem for employees because they may not be able to recoup the money lost. To perform quality reviews, the specialist should obtain a list of included and excluded employees and contact the payroll office for a list of union dues withholdings made for the activity. A comparison should be made to determine if there are ineligible employees who are having dues withheld. When dues are being incorrectly withheld, it is necessary to notify the payroll office to correct the erroneous withholdings.

ACTIONS THAT REQUIRE PETITIONS TO CHANGE BUS CODES

During the normal operations of an activity, events occur that may impact the current FLRA unit recognition and the labor-management relationship. When such events occur, they require amendments to existing certifications through the filing of petitions with the appropriate FLRA Regional Director. When the outcome of the FLRA Regional Director proceeding is certified, the amended certifications are recognized and an OPM Form 913B must be submitted through the Component headquarters and DCPAS to OPM. The final step is to process personnel actions that record those changes in the Defense Civilian Personnel Data System for each of the affected employees. The following are events that cause such changes to occur.

Elections

If a union wants to represent a specific group of employees, the union can file a petition with the appropriate FLRA Regional Director for an election. The positions in the proposed bargaining unit can be grouped on an activity or installation-wide basis, on an occupational basis, on an organizational basis, or other basis determined appropriate by the FLRA. For instance, a group of professionals working for the same activity may be

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an appropriate group. Another may be an occupational group such as firefighters, police officers, craft and trades workers, or technical and administrative employees at an activity. If the FLRA orders an election, that group of employees may vote on whether or not they want union representation. If the majority of votes cast are for representation, then all of those employees in the proposed bargaining unit become members of a represented BU. All members of that BU are subject to exclusive representation by the certified union regardless of whether or not they are dues paying members of the union.

As in the case of any union-filed petition, when a union serves the HRO or activity with a copy of a representation petition, a copy should immediately be faxed to the servicing labor relations specialist. It is particularly important that the HRO is prepared to verify the alphabetic lists of included and excluded employees. The HRO must perform an expeditious review of these lists of employees to verify that all are coded correctly and that any errors are discovered and corrected. This also means that the HRO needs to determine that the proposed inclusions and exclusions to the bargaining unit are sound and supportable decisions when evaluated against current case law. Once all changes and corrections are accomplished, the HRO processing specialist must make the changes by submitting RPAs in the Defense Civilian Personnel Data System.

Revocation of certification

A petition must be filed with the FLRA Regional Director to request revocation of a unit's Certification of Representative when the BU is no longer appropriate. When a base or activity closes, a petition must be filed revoking the unit's Certification of Representative so the BUS code can be removed from the Defense Civilian Personnel Data System and the OPM system. A revocation of the Certification of Representative can also be filed by the agency when the exclusive representative is unwilling or is unable to represent employees.

When a function of an activity is eliminated, it is important to determine if there are any unit certifications that need to be addressed.

Example:

The activity converted its security guards to a private contract security force, thus eliminating the guard function. Since the certified BU description included only

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guards, it was necessary for the agency to file a petition with the FLRA Regional Director to revoke the Certification of Representative for that BU since its function was eliminated.

When the date to close or eliminate a function is known, the servicing LR specialist must file a revocation petition with the FLRA Regional Director. If the union represents employees in other activities or at nearby facilities, then the LR specialist should make it clear to those union officials that the petition relates only to the specific BU that is being eliminated.

When the FLRA Regional Director revokes the certificate for a BU, the BUS code is no longer active. The LR specialist must forward the Regional Director's decision and order through the Component headquarters to OPM, with a copy to the DOD Labor and Employee Relations Division. The LR specialist, with assistance from the Component headquarters, must then ensure that the BUS code changes are made in the Defense Civilian Personnel Data System.

[Good faith doubt as to union's continued majority status](#)

Occasionally, a certified union's majority status of its BU employees is questioned. This might occur if the union has no dues paying members and/or where the union is not actively representing the employees' interests. Under 5 CFR 2422.1(a)(2) and (c) of the FLRA regulations, an agency or activity may file a petition seeking to clarify a representation matter if there is a good faith doubt, based on objective considerations, that the currently certified union represents a majority of the employees in the existing unit. The FLRA has held, in Overseas Private Investment Corporation, 36 FLRA No. 59 (1990), that a reasonable doubt existed as to the union's continued majority status by using a "totality of the circumstances" test. The combined circumstances, including low levels of membership, no stewards representing the employees, and a history of inactivity are examined on a case-by-case basis. In this case, an election was ordered to determine if a majority of eligible employees voting would favor continuing the union as their exclusive representative.

If the activity can demonstrate a good faith doubt as to the continued majority status of the union, then the agency may petition the FLRA Regional Director. If the Regional Director determines that there is a good faith doubt, holds an election, and the majority of

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employees voting vote for no union, the HRO must change the employees' BUS codes to 7777 since they are eligible for representation, but are no longer represented.

Reorganizations and Realignments

When reorganizations and realignments lead to the creation of new organizations, the consolidation of employees from different activities, or a name change for an activity, a petition must be filed with the FLRA Regional Director to amend the BU certification. The LR specialist must consult with activity management in determining the impact on the existing BU and how the BU should be defined.

Successorship principles:

Successorship involves a determination of the status of a bargaining relationship between an activity, which acquires employees who were in a previously existing BU, and a union that exclusively represented the employees prior to their transfer. The FLRA defines a successorship as when a whole BU, or a portion of it, is organizationally transferred to a new or existing activity where the transferred employees constitute a majority of the employees at that activity and the unit is still an appropriate unit for collective bargaining.

Example:

Activity A has a department that performs information technology (IT) services for Activity A and other tenant commands at the base. The AFGE local represents those 125 IT department employees. As a result of a reorganization, all 125 IT employees are physically and organizationally realigned and create a totally new organization in Activity B. The 125 employees of Activity B are an appropriate unit and the IT employees constitute a majority. Activity B has substantially the same mission as the former IT department and the employees are performing substantially the same duties and functions under similar working conditions.

The labor relations specialist must file a petition with the FLRA to clarify the unit at Activity A to exclude the employees, who were transferred to Activity B and also result in certification of a new BU in Activity B, the successor employer. Should

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the FLRA determine this is a valid successorship, then the BUS code for all 125 BU employees at Activity B changes to a new AFGE BUS code.

Amendment of certification

A successorship does not include a mere activity name change. This type of change may occur when the realignment changes the name of the activity but the employees do not see any change to their chain of command, to the mission they support, or experience any meaningful changes in their duties, functions or job circumstances. A petition to amend certification is appropriate when either party seeks to have the original certification conform to changes which have occurred affecting the identity of either party, such as the name of the activity or union. The labor relations specialist must promptly file a petition with the FLRA Regional Director to amend the BU certification. An amendment petition involving only an activity or union name change, should not result in the assignment of a different BUS code.

However, an OPM Form 913B must be completed and sent through the Component headquarters and DCPAS to OPM as a result of successorship or an amendment to the original certification. The change must also be made in the Defense Civilian Personnel Data System.

Reorganizations become more complex when a new activity is formed and employees are realigned to the new activity from more than one losing activity. Different unions might represent portions of the realigned employees and some employees might be eligible, but unrepresented. In such cases, the FLRA Regional Director looks at the totality of the circumstances surrounding the reorganization, makes a determination as to the appropriateness of a proposed unit, and certifies the exclusive representative. Otherwise, if there are questions concerning representation, the FLRA Regional Director orders an election for the employees to determine either their choice of exclusive representative or no representative.

Depending on the outcome of any representation petitions, the BUS code may be changed for some or all of the employees at the activity. When there is a change, the labor relations specialist must complete the OPM Form 913B and send it through the

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Component headquarters and DCPAS to OPM. Appropriate BUS code and name changes must also be made to the Defense Civilian Personnel Data System.

Accretion principles:

Accretion refers to the addition, without an election, of a group of employees to an existing BU. The resulting unit must be an appropriate unit and the employees must be functionally and operationally integrated such that they have a clear and identifiable community of interest.

For example:

Activity A performs public works services for the base and its tenant commands and the AFGE represents the activity's 300 employees. As a result of an organizational change, 50 public works employees at Activity B, represented by the NAGE, are physically and organizationally moved to Activity A. The employees from Activity B are fully integrated with the employees at Activity A to the point where the employees' origin is indistinguishable. The labor relations specialist files a petition with the FLRA to clarify the unit at Activity A to include the employees from Activity B to determine if the same union will represent all of the public works employees. Should the FLRA Regional Director find an accretion, then the BUS code for the 50 NAGE employees changes to the AFGE BUS code.

In this case, there may be a need for the labor relations specialist to file two OPM Form 913Bs. If the existing NAGE unit description identifies the public works positions along with other activity positions, the OPM Form 913B must be filed showing the new bargaining unit description for NAGE. There is no change to the NAGE BUS code. The second OPM Form 913B is filed to show the new bargaining unit description for the AFGE unit, provided AFGE does not already show public works employees in its unit description. There is no change to the AFGE BUS code. The Defense Civilian Personnel Data System must be changed to reflect the new BUS codes for the public works positions which accreted to the AFGE bargaining unit.

Activity closings

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During the 1990's, DOD experienced a high level of activity closings across the country. When a base closure occurs, the BUs at that activity cease to exist and the filing of a revocation of certification may be necessary. If all of the BU employees are reassigned or realigned, but their exclusive representative continues to exist, then a petition other than a revocation may be appropriate. For example, if a successorship or an accretion is apparent following a base closure and transfer of function, then a unit clarification petition should be filed with the gaining FLRA Regional Director.

[Changes in duties and responsibilities that may exclude positions from the BU](#)

A position is designated as either in or out of the BU when the unit is initially determined by the FLRA Regional Director. Inclusions are binding unless there is a substantial change in circumstances regarding the duties and responsibilities of an established position. At times, a position could undergo meaningful change, excluding the employee under one or more provisions of the Statute.

The following are some examples of changed circumstances:

A secretary or other employee becomes privy to certain labor relations information, either through participation in management meetings discussing negotiations or other labor relations issues, or has direct knowledge of management's position on grievances. These duties exclude the position from the unit under 7112(b)(2) because the nature and duties of the position are confidential under the Statute.

A management analyst is newly assigned to perform commercial activity cost comparative studies that are designed to permit the activity to be competitive with private industry. These duties exclude the position under section 7112(b)(3) of the Statute because the employee is directly involved in performing personnel work affecting the bargaining unit.

An office automation clerk is now responsible to maintain and protect classified material. This duty would exclude the position as national security work under section 7112(b)(5).

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When the duties and functions of a position change, the labor relations specialist should analyze those changes, review the current case law, and if appropriate, take action to exclude the position from the bargaining unit. An agreement might be reached with the union about the new exclusion. However, only the FLRA has the authority to determine the unit status of an employee or position, thus, even when management and the union agree regarding the exclusion, a unit clarification petition must be filed with the FLRA Regional Director.

[Responding to union-filed petitions](#)

Unions seeking to protect their exclusive representational status may file petitions when informed of an impending reorganization. Unions generally seek to continue as exclusive representatives of their original BUs, which may result in their filing a petition for successorship or accretion, depending on the circumstances. Unit clarification petitions may also be filed at any time by a union seeking to challenge positions that management claims are excluded from the bargaining unit.

Prior to responding to the union's petition to represent, the labor relations specialist should conduct an analysis of the positions to determine whether they are appropriate for the proposed and impacted bargaining units. This analysis should include a review of the current duties of the positions, whether they are professional or nonprofessional, pertinent FLRA case law, and the basis for the bargaining unit inclusion or exclusion determination.

[Representing the agency in the representational process](#)

Once the FLRA case-opening letter is received, the agency representative (e.g. labor relations specialist, attorney) must return the completed designation of representative form or letter to the FLRA Regional Director's office. If the FLRA Regional Director's office requires additional information, the agency representative will provide the additional information, as requested. The agency representative will also ensure that the FLRA notice of petition is properly posted and report the date and place of postings by email or fax to the FLRA Regional Director's office.

Joint Stipulations

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After the initial responses to the information requests are provided to the FLRA Regional Director's office, the FLRA ascertains the positions of the parties. If there is consensus regarding the issues, the FLRA discusses the proposed resolution with the parties and drafts joint stipulations. The stipulations are sent to each of the parties for review, resolution of any objections, and approval. When the stipulations are received on behalf of management, the agency representative(s) (normally labor relations specialist, attorney) will advise the activity leadership and determine whether there are any specific objections. When the objections, which may be raised to the FLRA, are resolved, the designated agency representative signs and returns the stipulations to the FLRA Regional Director's office. The final step, unless an election is held, is the receipt of a decision from the FLRA Regional Director.

Prehearing conference (5 CFR 2422.17)

Prior to a hearing, the FLRA Regional Director's office schedules a meeting or teleconference with the parties. The purpose of this meeting is to confirm the positions of the parties, state the issues to be resolved, and attempt to narrow and resolve those issues. If a resolution by informal agreement appears unlikely, the FLRA Regional Director's office discusses hearing dates and determines whether the issues are scheduled for resolution through a formal hearing.

Hearing Preparations

The hearing schedule includes the estimated number of hearing dates required (normally from one to three consecutive dates) and one afternoon immediately preceding the hearing for a pre-hearing conference. Witnesses will not attend the pre-hearing conference, but the LR specialist should attend, if not designated as the agency representative.

The agency representative (typically the LR specialist) prepares the necessary documentary and testimonial evidence and any additional relevant activity background information, agency exhibits, and schedules. Consideration should also be given regarding the need for a schedule of witnesses for witness interview, preparation and for their testimony at the hearing. The FLRA Regional Director's office requires that a witness list be provided in advance of the hearing, as well as copies of any documentary evidence be provided to all parties, either in advance or at the pre-hearing conference. Examples of materials that should be prepared, in addition to that filed with the petition:

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- *Instructions/policies that affect employees' conditions of employment;*
- *Meeting agenda that establishes the place, frequency, and membership topics of discussion;*
- *Email memoranda covering a wide variety of information that may support the integration of the activity's workforce;*
- *Email memoranda issued to a specific audience that is demonstrative of the group's makeup;*
- *PDs, when required by FLRA or when select PDs are needed as management support.*

The Hearing (5 CFR 2422.18)

The labor relations specialist typically represents the agency at a FLRA Regional Director's hearing and coordinates the presentation of the agency's case and all responses to questions posed to the activity. After the hearing, a post-hearing brief, to summarize and further support the case presented at the hearing, may be filed. Copies of the brief must be served to the other parties to the case.

Appeal (5 CFR 2422.30 and .31)

If the Hearing Officer's/Regional Director's decision is not in the best interests of the installation or activity, the agency may file an appeal to the FLRA called an Application for Review (AFR) of a Regional Director (RD) Decision. Such an appeal must meet the criteria under 5 CFR 2422.31. The FLRA will grant an AFR only when the application demonstrates that review is warranted on one or more of the following grounds:

- (1) The RDs decision raises an issue for which there is an absence of precedent;
- (2) Established law or policy warrants reconsideration; or,
- (3) There is a genuine issue over whether the RD 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 FLRA will not allow the introduction of new evidence that was, or should have been, available at the time of the hearing. The official record is closed at the conclusion of the hearing.

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When the RD's decision order is received and the agency is contemplating an appeal, the agency representative and/or labor relations specialist will consult with the activity and develop a strategy for the appeal. The labor relations specialist will then consult with the major command, if applicable, and Component headquarters labor relations office. After consultation with the Component headquarters regarding any potential agency-wide impact of the case, the activity will make a decision regarding an appeal.

[Decision and order on petition and unit certification](#)

The servicing labor relations specialist coordinates the implementation of the FLRA Decision and Order on Petition and Certification (or Amendment) of Representative, when received and ensures that any actions falling under its jurisdiction that are required by the FLRA are completed.

[OPM-issued BUS codes](#)

Upon receipt of the decision and order documents from the FLRA Regional Director, the servicing labor relations specialist must attach a copy of the certification to a completed OPM Form 913B, Change Form - Recognitions and Agreements. The certification and OPM Form 913B are sent, through the Component headquarters to OPM for input into the Labor Agreement Information Retrieval System (LAIRS). The need for additional BUS codes or changes to existing BUS codes or bargaining unit descriptions should be noted. An electronic copy of the certification and completed OPM Form 913B must also be sent to DOD, DCPAS, Labor and Relations Division at: labor.relations@cpms.osd.mil.

OPM will assign a new BUS code number, revoke the BUS code, or note the amended description assigned to an existing BUS code in the LAIRS system. The labor relations specialist must forward the new BUS code and description of the bargaining unit, through the Component headquarters, to the Defense Civilian Personnel Advisory Service (DCPAS) for inclusion in the Department of Defense (DOD) database. Defense Civilian Personnel Data System will reject any BUS codes that are not officially built into the system, so this step is critical.

[HRO generates RPAs changing BUS codes](#)

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The labor relations specialist will coordinate the generation of an RPA for each employee included in the new unit changing the information in Box 37 to indicate the new BUS code. In this case the nature of action code 800 – Change in Data Element is used. The BUS code determination decision should be explained and the old and new BUS code information provided in the notepad feature.

The labor relations specialist should also coordinate the completion of an excel spreadsheet identifying the core PD and PD sequence numbers for any vacant or obligated positions that are affected by the BUS code change.

[Verification of changes to employee BUS codes](#)

It is recommended that the LR specialist produce an automated report that accesses data refreshed from the Defense Civilian Personnel Data System database. This report should be used once the processing of BUS code changes is complete. This report enables the specialist to review the employee lists indicating positions included and excluded from the bargaining unit and use the list to verify the correct coding of the new or clarified unit employees.

LESSONS LEARNED FROM INACCURATE BUS CODES AND UNTIMELY PETITIONS

When BUS codes are not coded correctly or petitions are not filed timely, there are costs to the activity and the HRO in needlessly expended resources. It is imperative that HROs and labor relations specialists are aware of the importance of reviewing the accuracy of BUS codes and correcting errors in a timely manner. The following are lessons learned in this regard:

A GS-11 Health Systems Specialist was newly assigned to an excluded position (confidential) following a promotion. It was verbally communicated to the employee that he was ineligible for the BU. However, the HRO processing specialist did not verify that the BUS code previously assigned was actually changed to 8888 at the time of the employee's promotion to GS-11. When the BUS code was not changed, the employee continued dues withholding. After nine months, when a union memorandum appointing this employee as a union steward came to management's attention, the union filed a unit clarification petition and five unfair labor practice charges (ULP) because the NPA

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stated he was a BU employee. Subsequently, a hearing was held and the FLRA ruled that the position was correctly excluded from the unit.

In February of 1999, an activity was disestablished due to base closure. However, a revocation petition was not filed until October 2001. After such a lapse in time, necessary documentation became very difficult to obtain and both management and union officials were difficult to locate resulting in little or no institutional memory of the events. There were no original or amended BU certifications or other documents important to the filing of a revocation of certification. The facts presented to the FLRA were incomplete, which resulted in an opportunity for a union challenge. A former union official contested the revocation of certification even though the activity was closed and the local had no members. Management expected to prevail at a hearing, but the process was costly to the organization. After extensive discussions between the parties, the agency managed to obtain a favorable decision without a hearing, thus minimizing the potential costs in litigating the matter.

An activity processed a transfer of function and realignment in October 1995. However, no representational petition was filed at that time, because the union did not raise any concerns regarding the realignment. In 1998, four employees raised concerns that a reduction in force (RIF) might impact their jobs and they sought union assistance. The union filed a representational petition in August of 1998, seeking a determination of a successorship and continued representation. When the case went to a hearing, there was a pervading sense of employee and union dissatisfaction, members of the management team present during the realignment were gone, and some of the most knowledgeable witnesses were no longer with the organization or available to provide testimony. The case took two and one-half years to resolve.

In January of 1997 Activity A was disestablished. The BU employees were realigned under Activity B. In May 2002 an FLRA representational petition was filed to revoke the certification of the union local since the positions no longer constituted an appropriate unit. The Activity A employees were now aligned and integrated with a geographically distant Activity B. The unit was not appropriate because the employees were no longer aligned with their former base where their former union local continued to represent employees of other activities. The union challenged the petition and filed a successorship petition claiming to continue as the exclusive representative. Ultimately, the union withdrew the petition, but not until management spent considerable resources defending the revocation petition.

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In October 1996, fifty employees from Activity A were realigned with a command of about 250 employees in Activity B. Both management and the two unions agreed at the time that the Activity A employees had effectively accreted into the existing BU and would be represented by the exclusive representative for the existing BU in Activity B. When management filed a representational petition for unit clarification in January 2002, there was a very different environment. A disgruntled individual from the Activity A BU filed a petition to decertify the union. The union that previously represented Activity A employees joined his efforts. This case went to a hearing and both the documentary and testimonial evidence was difficult to assemble due to the lapse in time. This was further complicated because the FLRA looks at the totality of circumstances existing at the time of the reorganization as well as the present. In addition to the need to act in a timely manner, it is important to note that only the FLRA can determine if an accretion to another bargaining unit is appropriate.

SUMMARY

This document is intended to provide the necessary steps in dealing with BUS Codes and to emphasize the importance of making timely and accurate BUS code determinations. The Lessons Learned Section is intended to give real-life examples of the costly and time-consuming issues and disputes that could have been avoided had there been closer attention to the BUS code details.

Attachments to this Guide include a glossary of acronyms used in this document; a copy of a sample Certification of Representative, FLRA Form 28; and, a list of questions and answers that serves as a quick reference guide. A list of FLRA Regional Director's addresses is available at: <http://www.flra.gov/gc/regions/map.html>. Additional information regarding the FLRA Regional Director representation proceedings is available at: http://www.flra.gov/gc/rep/rep_faq.html.

Questions concerning this document may be raised to the Labor Relations Team at 703-882-5192 or via electronic mail at: labor.relations@cpms.osd.mil.

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Attachment 1

Glossary of Acronym Abbreviations

AFR	Application for Review
ASLMR	Assistant Secretary of Labor for Labor Management Relations
BU	Bargaining unit
BUS	Bargaining Unit Status (also Bargaining Unit Status Code)
CBA	Collective Bargaining Agreement (also Agreement or Contract)
DCPAS	Defense Civilian Personnel Advisory Service
DoD	Department of Defense
FLRA	Federal Labor Relations authority
HRO	Human Resources Office
LR	Labor Relations
NOA	Nature of Action (also Nature of Action Code)
NPA	Notification of Personnel Action, SF-50
OPM	Office of Personnel Management
OLMR	Office of Labor-Management Relations number
PD	Position Description
RD	Regional Director
Statute	The Federal Service Labor-Management Relations Statute, 5 USC Chapter 71
ULP	Unfair Labor Practice Charge
WAE	When actually employed

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Attachment 2
Sample FLRA Certification of Representative

Sample

UNITED STATES OF AMERICA

BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY

U.S. Department of the Navy
Naval Station Newport
Newport, Rhode Island (Activity/Petitioner)

AND

American Federation of Government
Employees, Local 190, AFL-CIO
(Labor Organization/Incumbent)

CASE NO. BN-RP-01-0083

AND

National Association of Government
Employees, SEIU, AFL-CIO, Local R1-134
(Labor Organization/Incumbent)

CERTIFICATION OF REPRESENTATIVE

An election was conducted in the above matter under the supervision of the undersigned Regional Director of the Federal Labor Relations Authority, in accordance with the provisions of Chapter 71 of Title 5 of the U.S.C., and with the Regulations of the Federal Labor Relations Authority. A majority of the valid ballots has been cast for a representative for the purpose of exclusive recognition. Pursuant to authority vested in the undersigned,

IT IS CERTIFIED that the

National Association of Government Employees, SEIU, AFL-CIO, Local R1 - 134 has been designated and selected by a majority of the employees of the

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FLRA Form 28
(Rev. 1/96)

above-named Activity or Agency, in the unit described below, as their representative for purposes of exclusive recognition, and that pursuant to Chapter 71 of Title 5 of the U.S.C., the named labor organization is the exclusive representative of all employees in the unit.

UNIT:

Included: All non-professional wage grade and general schedule employees of the Naval Station Newport, Newport, RI (NAVSTA).

Excluded: All police and guards of the Security Division of the Public Safety Department, all firefighters and telecommunications equipment operators of the Fire Protection Division of the Public Safety Department, all supervisors, all management officials, professional employees, and employees described in 5 U.S.C. 7112(b)(2),(3),(4), (6) and (7).

Sample

FEDERAL LABOR RELATIONS AUTHORITY

Richard D. Zaiger
Regional Director
Boston Region

Dated: July 5, 2002
Attachment: Service Sheet

FLRA Form 28
(Rev. 1/96)

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Attachment 3

Questions and Answers

1. Q: Who issues the Certification of Representative which describes the bargaining unit and the union holding exclusive representation?

A: The Civil Service Reform Act of 1978 established the authority of the Federal Labor Relations Authority (FLRA) to determine whether a bargaining unit is appropriate and what positions are in or out of the bargaining unit. The FLRA, in its regulations at 5 CFR 2422.32, established the Regional Director as the issuing authority for the Certification of Representative as well as for resolving questions concerning amendments and clarifications of the bargaining unit.

Prior to the establishment of the FLRA, Presidential Executive Orders gave that authority to the agency and then to the Assistant Secretary of Labor for Labor Management Relations (ASLMR). Thus, depending upon the Component or Defense agency delegation of authority, the earliest Certifications of Representative may have been issued by either the Component Secretary, or delegated to the local Commander, and later issued by the ASLMR.

2. What are bargaining unit status (BUS) codes?

Bargaining unit status codes are numbers which are used in identifying specific agency Components and their labor organizations. BUS codes are assigned by the Office of Personnel Management (OPM). The first two numbers designate the agency, i.e. 05XXXX designates Air Force. The last four numbers identify a specific labor unit, such as 050700 which designates AFGE Local 1709 at Dover Air Force Base. Each bargaining unit has its own Certificate of Representative, which causes every bargaining unit to have a separate and distinct BUS code. Thus, if more than one union holds exclusive recognition on the installation or in an activity, there will be more than one bargaining unit. Also, one union can hold separate Certifications of Representative for different bargaining units on the installation, which causes the union to have a separate BUS code for each bargaining unit represented.

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3. Q: What is the difference between positions coded 8888 and 7777?

A: Positions that do not meet the statutory eligibility requirements for representation by a union are assigned a BUS code of 8888. Employees in positions that are coded 8888 include:

- 1) supervisors, management officials, and confidential employees, as defined in 5 USC 7103;
- 2) those engaged in personnel work in other than a purely clerical capacity;
- 3) those engaged in administering the provisions of 5 USC Chapter 71;
- 4) those engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; and,
- 5) those primarily engaged in investigation or audit functions relating to the work of individuals employed by the agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

Positions that are eligible for inclusion in a bargaining unit, but are not organized and represented by a union holding exclusive recognition, are coded 7777. For example, a group of professional employees, who have the option of being included or excluded from a bargaining unit of non-professionals (5 USC §7112(b)(5)), would be coded as 7777 when they are not represented. If a majority of voting employees elects representation, the positions coded as 7777 become represented. Once the employees are represented by a union, a BUS code must be obtained and the BUS code in the Civilian Personnel Data System must be changed to reflect the bargaining unit representation.

4. Q: How do I identify a professional position?

A: Section 7103(a)(15) of the Federal Labor Relations Statute describes professional employees. They perform work that requires knowledge gained through advanced or specialized intellectual instruction, such as the field of science, and requires the exercise of independent judgment or discretion. The FLRA has noted that a college degree is not always required for an employee to be a “professional” under the Statute; however, a professional’s work is predominately intellectual and varied in character as distinguished from routine, mental, manual, mechanical, or physical.

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Additional assistance can be obtained by reviewing the OPM list of qualification requirements for positions generally considered to be professional. This list can be found, as part of OPM's qualification guidelines, on the OPM internet website (see <http://www.opm.gov/policy-data-oversight/classification-qualifications/general-schedule-qualification-standards/#url=Group-Standards>). However, decisions about whether a position is professional should be made after reviewing the specific duties and responsibilities of each individual position. This produces a more defensible position than simply comparing positions with the OPM list of professionals according to the classification series, grade, and titles.

5. Q: Can we assume the union represents both professional and nonprofessional positions, if representation of professional positions is not mentioned in the Certification of Representative?

A: Employees in professional positions are entitled to an independent election to determine whether they are included in a unit with non-professional employees. The FLRA certifies a bargaining unit as appropriate based on the proposed unit described in the representation petition and the results of the election. If the proposed unit includes professional and non-professional employees and the majority of professional employees who vote choose to be included in a bargaining unit with non-professionals, it is appropriate to assume a certification stating that the union represents "all GS employees", includes professionals.

If professional employees are not part of the bargaining unit, they were either not part of the proposed unit the union sought to represent, or voted not to be in a bargaining unit with non-professionals, or voted to not be represented by a union at all. If, as in most cases where professionals are not part of a bargaining unit, the unit is properly described in the certification, it is specifically noted in the "Excluded" section of the certification issued by the FLRA. If there are any questions regarding the exclusion of a group of employees from the bargaining unit, activities should review historical documents such as the representation petition or the list of employees eligible to vote in the representation election, as identified in the "Election Agreement." If the issue is still unresolved, filing a clarification of unit petition with the FLRA is an appropriate option.

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6. Q: Can we verify what positions are included in the bargaining unit by looking at the unit description in the collective bargaining agreement?

A: No. The only way to verify you have an accurate description of the bargaining unit and how many bargaining units each union represents is to refer to the Certification of Representative. Depending on when the unit was recognized, the certificate may have been issued by the Commander, the ASLMR, or the FLRA. If the Certification of Representative cannot be located, the parties should contact the servicing Regional Director for guidance on how to obtain a valid certification.

7. Q: We have only one local union on our installation. Can we assume that there is only one bargaining unit?

A: No, one cannot accurately assume that a local union represents only one bargaining unit. A local union may represent several employees who are in different bargaining units within the installation or activity. For example, Local No. 45 represents all GS employees on the installation. However, the union also organized the hospital, the guards, and the firefighters during separate organization campaigns. Each organization campaign resulted in a separate bargaining unit with its own Certification of Representative, thus, Local No. 45 has four separate bargaining units. Each of the four bargaining units must have its own BUS code.

In another example, Local 1234 holds exclusive representation for all of the GS and WG employees employed under the installation Commander. The union organized the GS and WG groups at different times, therefore, regardless that the employees are in the same organization, and both units are covered by a single collective bargaining agreement there are two separate Certifications of Representative. Thus, Local 1234 includes two separate bargaining units, one has all GS positions and one has all WG positions. Each of these bargaining units must have a separate BUS code.

8. Q: Can management and the union negotiate a new bargaining unit or change the description of an existing bargaining unit?

A: No, only the FLRA has the authority to determine an appropriate bargaining unit. This includes any clarifications and amendments to the existing bargaining unit description.

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9. Q: Can we enter into an agreement with the union to include or exclude a certain position, or just a couple of positions, from a bargaining unit?

A: No, as described in the response to question 1, only the Federal Labor Relations Authority as the authority to determine an appropriate bargaining unit, including any clarifications or amendments to the existing bargaining unit. However, the parties may submit a joint petition to the appropriate FLRA Regional Director requesting an amendment to the Certification of Representative. The form for representation issues is available on the FLRA web site at http://www.flra.gov/ogc_forms.

10. Q: Our organization has recently undergone a name change; can the local parties simply agree to modify the bargaining unit definition to reflect the new organization's name?

A: The parties do not have the authority to make any changes to the Certification of Representative. However, the parties may submit a petition, either separately or jointly, to the FLRA Regional Director requesting an amendment to the Certification of Representative.

11. Q: Are agreements entered into between the agency and the union to include/exclude certain positions from a unit binding upon the Federal Labor Relations Authority (FLRA)?

A: No. The parties do not have the authority to determine an appropriate unit; therefore, agreements entered into between the agency and the union to include or exclude certain positions from a unit are not binding upon the Federal Labor Relations Authority (FLRA). When the parties are in agreement, they may file a joint petition with the FLRA Regional Director for a clarification or amendment of the existing bargaining unit.

12. Q: How do I obtain a BUS code, if I discover that my local union has more than one bargaining unit or when there is a union election and a new bargaining unit is certified?

A: Components and agencies in the Department of Defense must complete the Recognitions and Agreements Change Form (OPM Form 913B) to provide information regarding the establishment of a new or revised bargaining unit. This form, along with the Certification of Representative, should be submitted, as an e-mail attachment, to your Component headquarters labor relations office and the Defense Civilian Personnel

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Advisory Service (DCPAS) Labor and Employee Relations Division. The e-mail address for DCPAS is labor.relations@cpms.osd.mil. The Component labor relations officer will forward the OPM Form 913B and Certification of Representative attachments to the Office of Personnel Management at e-mail address CWRAP@opm.gov. The OPM Form 913B is accessible via the internet at: http://www.opm.gov/lmr/html/913b_794.asp. If a new BUS code is established, that information must be provided to DCPAS and to your agency point of contact for updating the Defense Civilian Personnel Data System.

13. Q: How is a determination of a management official, as defined in 5 USC 7103(a)(11), made?

A: Under section 7103(a)(11) of the Statute, a management official is defined as, "... an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency." The FLRA looks at each position on a case by case basis considering whether the individual creates, decides upon, or obtains a result regarding the adoption of general principles, plans or courses of action for the agency. This is probably the most difficult of all positions to ascertain bargaining unit status.

14. Q: Who is considered a confidential employee?

A: Section 7103(a)(13) of the Statute defines a "confidential employee" as an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations. An employee is confidential if: (1) there is evidence of a confidential working relationship between an employee and the employee's supervisor; and (2) the supervisor is involved in labor-management relations. An employee is not confidential in the absence of either of these requirements. An example of this is a secretary who types and maintains files on labor-management relations issues for a supervisor. Similarly, employees who in the normal performance of their duties may obtain advance information of management's position with regard to contract negotiations, the disposition of grievances, and other labor relations matters, are considered confidential under the Statute.

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15. Q: What is the criteria for under § 7112(b)(3) of the Statute for engaging in personnel work in other than a purely clerical capacity?

A: Under § 7112(b)(3) of the Statute, a bargaining unit will not be found appropriate if it includes an employee engaged in personnel work in other than a purely clerical capacity. For a position to be excluded under that section, it must be determined that the character and extent of involvement of the incumbent is more than clerical in nature and that the duties of the position in question are not performed in a routine manner. Further, the incumbent must exercise independent judgment and discretion in carrying out the duties.

16. Q: What is an appropriate unit?

A: Under § 7112(a) of the Statute, the FLRA will determine a unit to be appropriate only if it will: (1) ensure a clear and identifiable community of interest among the employees in the unit; (2) promote effective dealings with the agency involved; and (3) promote efficiency of the operations of the agency involved.

17. Q: How is a community of interest among the employees in the unit established?

A: In determining whether a community of interest has been established, the Authority examines factors such as the agency's mission, organizational and geographic structure, chains of command, working conditions, conditions of employment, and personnel and labor relations policies. The FLRA examines the factors presented on a case-by-case basis.

18. Q: What is the criterion for promoting effective dealings with the agency?

A: The criterion of effective dealings pertains to the relationship between management and the exclusive representative selected by unit employees in an appropriate bargaining unit. In assessing this requirement the Authority examines such factors as: the past collective bargaining experience of the parties; the locus and scope of authority of the responsible personnel office administering personnel policies covering employees in the proposed unit; the limitations, if any, on the negotiation of matters of critical concern to employees in the proposed unit; and the level at which labor relations policy is set in the agency.

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19. Q: What is the criterion for promoting the efficiency of the operations of the involved agency?

A: The efficiency of operations criterion pertains to whether the structure of the bargaining unit bears a rational relationship to the operational and organizational structure of the agency. In determining the effect of a proposed unit on the efficiency of agency operations, the Authority considers factors pertaining to cost, productivity, and resources.

20. Q: What happens when the agency reorganizes and employees are moved into an organization that has an existing bargaining unit?

This circumstance could be a case of accretion. Accretion involves the addition of a group of employees to an existing bargaining unit without an election taking place. In accretion cases, the FLRA examines whether employees have been organizationally and operationally integrated into the existing unit. Determining whether employees are sufficiently integrated is based on, among other things, the degree of interchange between employees, the similarities in positions and duties, and the commonality of administrative and organizational functions, missions, and chains of command. See 56 FLRA No. 174, Naval Air Warfare Command Aircraft Division Patuxent River, MD and Naval Air Systems Command Headquarters Patuxent River MD and American Federation of Government Employees, Local 1603, December 22, 2000.

21. Q: Should interns be included or excluded from the bargaining unit?

A: The decision to include/exclude interns in the bargaining unit depends upon a number of factors. In *Department of the Army, Headquarters, U.S. Army Armament Material Readiness Command Rock Island, Illinois Activity*, 5 FLRA No. 47 (1981), the Authority found that group of Department of the Army interns were not in a bargaining unit during the first two years of their internship, but moved into the unit at their third year.

The Authority determined that during the initial two-year period of interns' employment, prior to the permanent duty location assignment, a community of interest between interns and unit employees is lacking, primarily because of the movement of interns as required by the mobility agreement and their program of instruction (POI) training.

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The interns generally spend the first two years in POI training which includes classroom attendance and rotation of job assignments. For each segment of training, the intern is under a branch or section supervisor who usually assigns him to a journeyman level trainer for assistance in learning the general duties of the particular job. The intern normally spends a short period of time in each related job area to get a general working knowledge of the operation.

Performance appraisals are different from those of full performance employees and the interns are not expected to perform at the journeyman level. Furthermore, the activity's Reduction-In-Force (RIF), overtime and merit promotion regulations do not apply to interns because they are Department of the Army employees. There is also evidence that the job training during this period is very general in scope and allows the interns to experience a number of job duties as a result of rotating, without necessarily mastering the skills of any particular position.

Third-year interns, however, have permanent job assignments and consistently perform the same duties as unit employees. They are assigned to their permanent duty locations and usually, although not always, remain at their respective locations upon completion of the program if they can be accommodated. Consequently, the third-year interns share a clear and identifiable community of interest with the unit employees.

22. Q: What factors should be considered in determining whether a community of interest exists between interns and unit employees?

A: The following is a check list of factors to consider in determining whether a community of interest exists between interns and unit employees. This list is not intended to be exhaustive. The FLRA has not specified individual factors necessary to establish a community of interest; rather, it examines factors presented on a case-by-case basis.

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Factors to consider in determining community of interest for interns		Yes	No
1	Did interns vote in the recognition election and are included in the unit definition?		
2	Is the intern placed in a permanent job assignment?		
3	Does the intern consistently perform the same duties as unit employees?		
4	Is the intern expected to perform at the journeyman level?		
5	Is the intern assigned to a permanent duty location?		
6	Are performance appraisals, such as objectives and rating chains, the same for the intern as for those of regular employees?		
7	Do the installation's personnel rules such as Reduction-In-Force (RIF), overtime and merit promotion regulations apply to the intern?		
8	Does the intern have a mobility agreement in effect?		
9	Is the intern on job rotation being exposed to a variety of functions?		

If your response to questions 1 through 7 is yes, and the response to questions 8 and 9 is no, then it is very likely that the intern position is included in the bargaining unit. However, if the intern has a mobility agreement in effect and rotates among different functions as part of a training program, it is very likely the position is not in the bargaining unit.