



**LABOR RELATIONS ISSUES  
RESULTING FROM THE  
IMPLEMENTATION OF THE  
2005 BASE REALIGNMENT AND CLOSURE  
JOINT BASING INITIATIVE**

**A GUIDE**

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## **INTRODUCTION**

The objective of this document is to provide a labor relations reference for use in implementing the Joint Basing Initiative provided for under the requirements of the 2005 Base Realignment and Closure (BRAC) legislation. The implementation of the Joint Basing Initiative will result in interesting and complex labor relations scenarios possibly affecting current representation certification, including the composition of bargaining units, the union(s) representing those units, the application of collective bargaining agreements and bargaining obligations.

The portion of the Joint Basing Initiative covered by this guide is that which deals with the consolidation of base operations functions and transfer of authority for those functions from individual bases and Components to that of the "lead" base. It includes guidance on the changes to representation which may result from the movement of employees from their current base to that of the lead base, regardless of whether or not the movement is organizational and/or physical.

## **BACKGROUND**

The Defense Base Closure and Realignment Act of 1990 (Part A of Title XXIX of Public Law 101-510; 10 U.S.C. 2687 Note) requires DoD to close and realign all installations so recommended by the Commission. This realignment includes the relocation of installation management functions and the establishment of Joint Bases as specified in the 2005 Defense Base Closure and Realignment Commission Report to the President. Within DoD, installations use military, civilians, and contractors to perform common Installation Support functions. All installations execute these functions using similar processes.

Installations identified in Appendix 1 (Joint Base Sites) share a common boundary or are in near proximity, which provides significant opportunity to consolidate the delivery of Installation Support functions and realize savings. In addition, this is an opportunity to create the conditions for more consistent and effective delivery of Installation Support.

The responsibility for Installation Support (also referred to as "Base Operations"), including geographically separated locations, will be transferred to the "Lead Base," also referred to as the "supporting Component." Installation Support definitions are being finalized in overall Joint Basing Guidance.

The Under Secretary of Defense for Personnel and Readiness maintains authority for the alignment of and model for all Human Resources Management services for Joint Basing. Policy guidance on transitioning to this end state will be developed to support Joint Basing guidance.

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Once the Joint Base organization is fully implemented, all civilian personnel billets providing Installation Support will become part of the supporting Component's Joint Base Command under the supporting Component's civilian personnel management system.

## **LABOR RELATIONS ISSUES RESULTING FROM JOINT BASING IMPLEMENTATION**

The threshold labor relations issue resulting from the Joint Basing implementation is that of representation. As employees and authorities are transferred to the supporting Component, or "lead base", the certification of any exclusive representative(s) will likely be impacted. In addition, questions on the authority to bargain, by whom, with whom and over what will need to be resolved.

**Representation Petitions.** In order for the representation issues to be resolved, within the Department of Defense, a Representation Petition **must** be filed. Title V, Code of Federal Regulations, Section 2422.3 outlines the general information to be submitted with every petition and gives guidance on specific information that should also be submitted for various purposes. Petitions that seek a clarification of and/or amendment to, a recognition or certification in effect or any other matter pertaining to representation or a consolidation of existing units are filed on FLRA Form 21. (See [http://www.flra.gov/forms/flra\\_21c.pdf](http://www.flra.gov/forms/flra_21c.pdf))

**Pre-Petition Activities.** In its regulations at 5 CFR 2422.13(a), the FLRA offers the parties an opportunity to seek FLRA assistance to minimize disruption on the parties and employees affected by reorganization issues such as the Department's Joint Basing initiative, prior to the filing of a petition. This non-adversarial pre-petition process allows all parties affected by the representation issues to meet prior to the filing of the petition to discuss their interests and narrow and resolve the issues. If requested by all parties, a representative from the appropriate FLRA Regional Office will participate in these meetings. After the petition is filed, the Regional Director usually requires the affected parties to meet to narrow and resolve the issues raised in the petition.

Nothing in the Statute or FLRA regulations prohibits the parties from meeting and establishing interim agreements during the non-adversarial process described in section 2422.13(a). These agreements can narrow the scope of the issues in the representation petition as mentioned earlier in this guidance and may serve to establish the manner in which the parties will deal with each other during the pendency of the representation petition, such as which union, if any, continues to represent which employees, if any, and in what unit(s), if any. These agreements also enable the parties to have common understanding of their rights and responsibilities during the representation petition processing. If entered into, the agreements should take into account the particular

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circumstances so that all of the parties' interests are satisfied to the fullest extent possible during the interim period and there is stability in the labor management relations and in the workplace while the representation proceeding is in process. This non-adversarial process described in section 2422.13(a), may minimize the likelihood of an unfair labor practice. Agreements reached as a result of the pre-petition initiative are binding agreements, subject to FLRA unfair labor practice proceedings, if repudiated.

*Note: Pre-petition agreements cannot modify existing certifications of representation. The parties cannot negotiate over exclusions/inclusions in or the definition of the unit.*

**Who can file?** A representation petition may be filed by: an individual; a labor organization; two or more labor organizations acting as a joint-petitioner; an individual acting on behalf of any employee(s); an agency or activity; or a combination of these parties except that:

- Only a labor organization has standing to file a petition to request an election to determine if employees in an appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, and/or a determination of eligibility for dues allotment in an appropriate unit without a representative;
- Only an individual has standing to file a petition to request an election to determine if employees in a unit no longer wish to be represented for the purpose of collective bargaining by an exclusive representative; and,
- Only an Agency or a labor organization may file a petition clarification or amendment petition or a consolidation petition.
- More than one labor organization or one or more labor organizations and the Activity/Agency may file a joint petition to resolve representation issues.

**Content of the Petitions.** As stated above, guidance on the content requirements for petitions is provided in the Code of Federal Regulations and on the Federal Labor Relations web site, <http://www.flra.gov>. Below is an overview of the specific information required in representation petitions, which may be used for planning purposes and advance development of the information as Joint Basing is implemented.

When a petition is filed to clarify and/or amend a certification already in effect and/or any other matter relating to representation, the petition must contain the following information:

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- A copy of the current certificate(s) of exclusive recognition and a description of the currently certified unit(s) affected by the issues raised in the petition.
- Identification of all parties affected by the issues raised by the petition, including all parties to any exclusive bargaining relationship(s) so that the affected parties receive proper notification of the petition.
- A clear and concise statement of the issues raised by the petition and the results sought by the petitioner. Typically this information includes:
  - Petitions seeking to clarify the bargaining unit status of certain employees/positions should contain a description of the present unit and the date of recognition or certification; the proposed clarification; the title of the position(s) sought to be clarified, and the name of incumbent(s) currently occupying the position(s). The petitioner should provide a detailed explanation of the reasons supporting the request.
  - Petitions seeking to amend a recognition or certification in effect should also contain a description of the present unit(s) and the date(s) of recognition or certification; the proposed amendment; and a statement of reasons in support of the proposed amendment.
  - Petitions seeking to clarify or amend any matter relating to representation should attach a description(s) of the present unit(s) for which the petition seeks clarification; a detailed explanation of the reasons to support the party or parties questions relating to the continued appropriateness of an existing unit(s); a statement outlining the issues raised, if known; and the proposed results, if known.

If the petition is filed jointly by one or more parties, the parties may not agree on the proposed results and the petition should include the parties' various positions. If one party files a petition, all parties affected by the issues will have an opportunity to provide information and state their agreement/disagreement with the content of the petition including factual information and proposed results.

Additional DoD guidance on the representation petition process and the requirements for updating Bargaining Unit Status codes is provided on pages 25-31 in the DoD Bargaining Unit Status Code Guide (Version 1.0) October 2006

**Duty to Furnish Information and Cooperate in the Petition Process  
(5 CFR 2422.15)**

Additional Information: After a petition is filed all parties must comply with any request from the FLRA Regional Director, to furnish the Regional Director and all parties affected by the issues with information concerning the parties, issues, and agreements raised in or affected by the petition.

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In addition, the FLRA advises that this information should be developed early in the process to allow for reasonable discussion by the parties in an attempt to come narrow the issues and inform the FLRA on which issues the parties have agreed. Compiling and maintaining good documentation helps to facilitate expeditious resolution of the issues and ensure that the resolutions are based on correct information. Following is a list of the types of information likely to be requested and the questions the FLRA will want to be answered while processing a petition resulting from a reorganization/realignment:

Mission. Formal mission and function statements from the former and new Activities. Changes in mission, if any, should be explained, as well as the effect on organizational structure and unit function(s).

Organization. Before and after organization charts illustrating the overall structure as well as complete breakdown, branch by branch, including the functions performed before and after, and a description of the work flow and flow of authority (chain-of-command) before and after reorganization.

Numbers. The number of unit employees in old and new organizations. Indicate those who were directly affected by the reorganization. Types of personnel actions used to staff the new organization.

Geography. An explanation of the physical lay-out before and after (if different) and the geographic location, before and after of all employees affected.

Bargaining History. Copies of collective bargaining agreements, a listing of effective and termination dates for each, current negotiating status of all contracts, if any. Copies of certification/recognition for each unit involved in the petition. History of negotiations (level of management where bargaining occurs both term and impact) at former and present Activities.

Supervisory Hierarchy. Employee breakdown before and after, including lists of employees by name, position title, classification series/occupation code, pay plan, grade and organizational placement. Supervisory structure, including numerical ratios to employees before and after the reorganization with numbers and classification series/occupation code reporting to each supervisor. Explanation of supervisory controls, e.g., central or local, nature and extent of supervision in terms of the organizational structure before and after, and the chain of command/lines of authority before and after the reorganization.

Job Functions and Skills. The listing provided in the section above accompanied by an explanation of job duties before and after including copies of position descriptions for classes of employees. An explanation of any new functions or old functions no longer performed. What is the actual impact on the positions/employees resulting from the reorganization? For example, are new skills/training needed?

Integration and Interchange. What facilities and equipment existed before and after? A detailed explanation of any changes to agency functions and employee interdependence of work functions. Detail the effect, if any, on interchange between organizational entities, work locations of employees and intra-employee dealings/work relationships. Did the employees have any supervisors or managers in common? Did that change as a result of the reorganization? Explain the changes and the effect they had on employees' day-to-day dealings within and between Activities.

Transfers. How were employees moved to the new organization? What appointing authorities or special placement programs were used?

Pay. Where was payroll servicing provided before and after?

Personnel. Are hiring, firing, promotion, transfer, layoff and recall, controlled centrally or locally? How did this change as a result of the reorganization. Where did authority for classification and employment, promotion, training, disciplinary and adverse actions, and RIF lie before and after the reorganization? Define the RIF areas of consideration both before and after the reorganization. Discuss the impact on employees as a result of changes to the area of consideration, if any. Physical and organizational location of the servicing personnel office before and after. Indicate services provided and whether they are controlled centrally or locally, both before and after the reorganization such as Employee Assistance Program, health and life insurance administration, etc.

Conditions of Employment. Discuss differences, if any, in conditions of employment before and after the reorganization. Be sure to cover, hours of work, presence or absence of alternative or compressed work schedules, availability of overtime/compensatory time/credit hours, access to credit unions, health clubs, blood drives, etc. Provide information on old and new manpower utilization and explain changes, if any. Discuss impact on conditions of employment in proposed unit(s) versus prior unit(s).

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Effective Dealings. Explanation of the efficient use of resources derived from inclusion in existing units and negotiation in one unit rather than many units in segments of the Activity. Information about bargaining history under the existing unit structure(s) and the current exercise of labor relations policy and authority. Information outlining the past history of grievance process and the impact of the proposed unit(s) involved in the petition on bargaining and grievance procedures. Each party to the petition will have an opportunity to take a position on how the proposed units would/would not promote effective dealings.

In addition, the following questions may be asked:

- What is the focus and scope of responsible personnel office(s)? Who handles the various personnel processes before and after the reorganization? What effect would the proposed unit(s) have on the servicing personnel arrangements for the new organization?

- What is the extent of the authority to negotiate? Who has authority in the new organization? Are there matters that could be negotiated if the proposed unit structure(s) were different? Only if the structure(s) were different? Why?

- In particular where and how is labor management relations handled, and what impact (positive or negative) does the proposed unit have on obtaining the necessary labor management relations expertise and servicing?

- At what level is labor relations policy set? How does the existence of multiple negotiated agreements, bargaining obligations and grievance procedures affect labor relations dealings?

- What is the impact (positive or negative) on the proposed structure(s) on agency operations in terms of cost, productivity and effective use of resources?

- What savings or costs (in terms of labor relations personnel, productivity, etc.) result from existing unit(s), proposed unit(s), or other possibly appropriate units?

Efficiency of Agency Operations. Explanation of the benefits derived from a unit structure bearing a rational relationship to the operational and organizational structure of the Activity. Specifically, what are the structure, chain-of-command, line of authority, and uniformity of personnel policy and practice considerations supporting the effectiveness of the various unit structure options, including those proposed in the petition? This should include discussion of the supervisory hierarchy, authority over work functions, performance appraisal processes, personnel and labor policy and servicing, etc. Compare the benefits of the

proposed structure(s) and alternatives. Would the proposed unit(s) result in fragmentation, and if so, how?

Cooperation. All parties are required to cooperate in every aspect of the representation process. This includes full cooperation with the Regional Director, submitting all required and requested information, and participating in pre-hearing conferences and hearings. Failure to cooperate in the process may result in an appropriate action by the Regional Director, including dismissal of the petition or denial of intervention.

**Rights and Obligations.** FLRA regulations at 5 CFR 2422.34 provide the following guidance:

(a) *Existing recognitions, agreements, and obligations under the Statute.*

During the pendency of representation proceedings, parties are obligated to maintain existing recognitions, adhere to the terms and conditions of existing collective bargaining agreements, and fulfill all other representational and bargaining responsibilities under the Statute.

(b) *Unit status of individual employees.* Notwithstanding paragraph (a) of this section and except as otherwise prohibited by law, a party may take action based on its position regarding the bargaining unit status of individual employees, pursuant to 3 U.S.C. 431(d)(2), 5 U.S.C. 7103(a)(2) and 7112(b) and (c): *Provided however*, that its actions may be challenged, reviewed, and remedied where appropriate. While paragraph (b) allows a party to act at its peril in taking actions based on its position regarding an employee's status as a member of any bargaining unit, or the specific unit to which the employee belongs.

*Note: In the Department of Defense, activities are prohibited from taking any action related to 5 U.S.C 7112(b) (6), without approval from the Department of Defense Civilian Personnel Management Service Field Advisory Service, Labor and Employee Relations Division, prior to taking action. Additionally, if approved, activities must file a petition with the appropriate FLRA Regional Director's Office.*

Paragraph (a) requirements to maintain existing recognitions and adhere to the terms and conditions of existing bargaining agreements are consistent with case law. In the supplemental information accompanying the proposed regulations, the Authority cited two cases to illustrate that these aspects of the section reflect existing case law requirements. In *U.S Department of the Navy, Naval Air Engineering Center, Lakehurst, New Jersey*. 3 FLRA 567 (1980), the Authority

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found a violation of E.O. 11491, as amended, (the predecessor to the current Statute for labor management relations) when the agency withdrew recognition and terminated an agreement, including refusing to process grievances, while a representation case concerning the status of the unit was pending.

In *Department of Energy, 2 FLRA 838 (1980)*, the Authority ruled in an E.O. case that until any issues raised by a representation petition are decided, a gaining employer is enjoined, in order to assure stability of labor relations and the well-being of its employees, to maintain recognition and to adhere to the terms and conditions of the prior agreement, including dues withholding, to the maximum extent possible. The Authority found that the gaining activity's failure to accept new dues withholding requests from a union which represented employees prior to the reorganization between the time the new employer was created and a decision on the case was issued, was an unfair labor practice.

Therefore, until the issues raised by a petition are resolved, the parties continue to deal with each other as if the petition had not been filed, i.e., continue current recognition, maintain existing terms and conditions of employment (such as dues check off, access to the negotiated grievance procedure, official time) and fulfill all other representational responsibilities (such as the right to representation in formal discussions and investigatory examinations, and the duty to fairly represent employees).

Paragraph (a) also makes substantive changes to case law existing prior to March 15, 1996, by requiring the parties to fulfill all other bargaining responsibilities under the Statute during the pendency of any representation proceeding. An agency may make changes in conditions of employment after fulfilling their bargaining obligation with the incumbent representative(s). For example, during the processing of a petition seeking an election, an agency may make changes in conditions of employment by giving notice to the incumbent union(s) and fulfilling its bargaining obligations under the Statute. Also, during the pendency of a representation petition, the parties may continue negotiations for a new contract, a renewal of a contract, or mid-term bargaining proposals presented by the incumbent union.

**Elections.** As a result of processing a representational petition, the FLRA Regional Office may order an election if the facts of the case indicate a question of representation. Supervisors should be reminded to remain neutral during any resulting election procedures and to cooperate fully in allowing employees the opportunity to vote, as appropriate. Information on the election process and regulatory framework can be found in 5 CFR Part 2422.

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**Agency Neutrality.** The government must remain neutral as to competing unions and in any election campaign. 5 USC 7116 (e), [http://www.law.cornell.edu/uscode/html/uscode05/usc\\_sec\\_05\\_00007116----000-.html](http://www.law.cornell.edu/uscode/html/uscode05/usc_sec_05_00007116----000-.html), permits only those statements publicizing the election, encouraging employees to vote, correcting misstatements, and informing employees of the government's policy as to labor-management relations and representation. Any courtesy, access, solicitation, or other accommodation provided to one union must be afforded equally to any other involved union having equivalent status. For example, if both AFGE and NAGE represent employees of the restructured activity where an election has been ordered and AFGE is allowed to post flyers on Agency bulletin boards advocating their position, NAGE must be afforded the same opportunity.

Additionally, the Agency also has no control over the union's position in a representation petition on the level at which recognition should exist. Recently, several unions, most notably AFGE, have begun requesting that exclusive recognition be afforded at the national level when petitioning before the FLRA. Only the FLRA has the authority to make the determination on exclusive recognition. Consequently, for example, even if AFGE Local 123 was previously the recognized exclusive representative of a group of bargaining unit employees, don't be alarmed or surprised that as part of any clarification petition that AFGE seeks to have any new exclusive recognition be afforded at the national level. If as a result of the petition and/or any election, recognition is afforded at the national level, the Agency must recognize that fact. Typically, the union National Office will then assign, in writing, the responsibility to act on their behalf and represent employees on a day-to-day basis back to AFGE Local 123.

**Representation Issues and Supporting Case Law.** In resolving Joint Basing representation disputes, the FLRA will determine whether **successorship** or **accretion** principles apply to the individual circumstances of the case in making their determinations. (Successorship and accretion are explained in greater detail later in this guide.) If both successorship and accretion are claimed, the FLRA will first process the successorship claim. If there is no successorship, the FLRA will then proceed to process the accretion claim. *Department of the Navy, Fleet and Industrial Supply Center, Norfolk, Virginia*, 52 FLRA No. 97 (1997), <http://www.flra.gov/decisions/v52/52-097-4.html>.

In any representation case, however, before either a successorship or accretion analysis is considered, the FLRA must first determine the appropriateness of the bargaining unit using the criteria established in 5 U.S.C. 7112 (a). For a unit to be

appropriate, it must have:

- 1) a clear and identifiable **community of interest**;
- 2) promote **effective dealings** with the Agency; and
- 3) promote the **efficiency of operations** of the Agency involved.

**Community of Interest.** The Authority has not definitively defined individual factors or the number of factors required to demonstrate a community of interest. *AFGE Local 2004 and Letterkenny Army Depot*, 47 FLRA No. 93 (199e), <http://www.flra.gov/decisions/v47/47-093-4.html>. However, when determining a clear and identifiable community of interest, consideration is given to whether employees:

- Are part of the same organizational structure;
- Support the same mission;
- Have similar/related duties;
- Are subject to the same general working conditions;
- Are governed by the same personnel and labor management relations policies;
- Are serviced by the same personnel office

See also *SEC and NTEU*, 56 FLRA No. 44, (2000), <http://www.flra.gov/decisions/v56/56-044.html>.

**Effective Dealings.** An explanation of the efficient use of resources derived from inclusion in existing units and negotiation in one unit rather than many units in segments of the Activity. It may include information about the bargaining history under the existing unit structure(s) and the current exercise of labor relations policy and authority and the impact of the proposed unit(s) involved in the petition on bargaining and grievance procedures. Each party to the petition will have an opportunity to take a position on how the proposed units would/would not promote effective dealings. In order to make an “effective dealings” analysis, questions such as the following may be asked:

- What is the focus and scope of responsible personnel office(s)?
- Who handles the various personnel processes before and after the reorganization? What effect would the proposed unit(s) have on the servicing personnel arrangements for the new organization?
- What is the extent of the authority to negotiate? Who has authority in the new organization? Are there matters that could be negotiated if the proposed unit structure(s) were different? Only if the structure(s) were different? Why?
- In particular where and how is labor management relations handled, and what impact (positive or negative) does the proposed unit

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have on obtaining the necessary labor management relations expertise and servicing?

- At what level is labor relations policy set? How does the existence of multiple negotiated agreements, bargaining obligations and grievance procedures affect labor relations dealings?

- What is the impact (positive or negative) on the proposed structure(s) on agency operations in terms of cost, productivity and effective use of resources?

- What savings or costs (in terms of labor relations personnel, productivity, etc.) result from existing unit(s), proposed unit(s), or other possibly appropriate units?

**Efficiency of Operations.** The degree to which a bargaining unit has a rational relationship to the operational and organizational structure of the Activity and the benefits to be gained from such. Consideration is given to the effect of the unit on Agency costs, use of resources, and productivity. In addition, the level at which labor management policy is set by the Agency, and the focus and scope of the authority of the personnel office which will administer the policies must also be considered. What are the structure, chain-of-command, line of authority, and uniformity of personnel policy and practice considerations supporting the effectiveness of the various unit structure options, including those proposed in the petition? This should include discussion of the supervisory hierarchy, authority over work functions, performance appraisal processes, personnel and labor policy and servicing, etc. Compare the benefits of the proposed structure(s) and alternatives. Would the proposed unit(s) result in fragmentation?

Although the Statute establishes criteria as to how an "appropriate unit" is determined, it does not describe what that is nor does it require the "most" appropriate unit. An organization may have more than one appropriate unit with each one satisfying the criteria of section 7112(a).

**Successorship** results when employees move into a new organization and the union retains its status as the exclusive representative of the employees who transferred. The successorship standard was developed to address what happens to both collective bargaining and employee representatives when an Agency reorganizes. The standard involves application of three criteria developed in *US Navy, Naval Facilities Engineering Service, Port Huenenme*, 50 FLRA 363 (1995), <http://www.flra.gov/decisions/v50/50-056-4.html>. In *Port Huenenme*, the FLRA identified the criteria/characteristics it will evaluate to determine if successorship exists. These characteristics included that "at least a portion of a recognized unit must be transferred; the post-transfer unit must be appropriate; and, the transferred employees must constitute a majority of the new unit".

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Second, the Authority required that the claimed successor have "substantially the same organizational mission as the losing entity and that transferred employees perform substantially the same duties and functions under substantially similar working conditions after the transfer." When the first and second factors apply and a determination is made that the unit is appropriate and the mission of the organization and work of the employees is similar in the new activity, successorship will be granted, unless in the application of the third factor, it is determined that an election is necessary.

In considering the second criteria in applying its successorship analysis, the FLRA considers questions such as:

- Does the gaining activity have a mission similar to that of the former and are employees performing similar duties, under similar working conditions? For example, accounting technicians in several organizations transfer to a new accounting activity and although the customers they service may vary, and the mission is expanding to include accounting for additional types of activities, the work and work environment remain the same for the employees.

- Is the change of employer transparent to employees? For example, was the change merely a reporting relationship change at the highest level of the chain-of-command within the same Component, which does not change the supervisory chain, personnel servicing or policies, working conditions, physical environment or duties of the employees.

If only one union is involved and the remaining employees are not represented an election is not necessary if the employees who had come from a bargaining unit constitute a majority of the employees in the newly-formed bargaining unit. The requirement here is for a simple majority. *Bureau of Land Management, Sacramento California and BLM, Ukiah District Office*, 53 FLRA No. 126 (1998), <http://www.flra.gov/decisions/v53/53-126-4.html>.

If more than one union is involved, an election is not necessary if one union is "sufficiently predominate." This means that more than 70% of the employees in the post-transfer unit were represented by one of the unions. *U.S. Army Aviation Missile Command, Redstone Arsenal, Alabama*, 56 FLRA No. 14 (2000), <http://www.flra.gov/decisions/v56/56-014.html>.

If there are competing successorship claims alleging different appropriate units, the existing unit that continues to be found appropriate will have its claim chosen as this most fully preserves the status quo in terms of unit structure and the

relationship of employees to their union. *U.S. Department of the Navy, Commander, Naval Base, Norfolk, Virginia*, 56 FLRA No. 47 (2000), <http://www.flra.gov/decisions/v56/56-047.html>. This case addressed the effect on bargaining units of reorganizations that modify portions of the chain-of-command at managerial levels, but do not affect the day-to-day working conditions of bargaining unit employees. A change in the agency's chain-of-command does not, by itself, render an existing unit inappropriate. Rather the Authority will evaluate how the change has affected each of the three criteria for appropriate units, as applied to existing units and any proposed new units.

**Accretion** involves the addition, without an election, of a group of employees to an existing bargaining unit. Accretion issues most frequently arise as a result of a reorganization or realignment of agency operations. The employees at issue in an accretion case may come from another agency entity (i.e., agency or activity or subdivision thereof) or may be a newly established category of employees. Accretion may also arise as an issue in an election case if a party contends that the employees subject to an election petition have accreted to an existing unit. In order for accretion to be found, resulting unit must be determined to be appropriate, i.e., the employees share a community of interest, and the resulting unit must promote effective dealings with and efficiency of operations of the agency.

When unrepresented employees transfer to an existing appropriate unit, the existing unit employees must constitute a simple majority in the expanded unit to avoid the necessity of an election. *Bureau of Land Management, Sacramento California and BLM, Ukiah District Office*, 53 FLRA No. 126 (1998), <http://www.flra.gov/decisions/v53/53-126-4.html>. In this case the agency conducted a reorganization in which 56 non-professional employees not part of a bargaining unit joined 58 non-professional employees who were in an appropriate unit. The FLRA determined that the unit of 114 non-professional employees was appropriate and concluded that an election was not necessary as the represented employees constituted a majority of the post-transfer unit.

**NOTE:** If both **successorship** and **accretion** are claimed, for example one union claims that through successorship it remains the exclusive representative, while another union claims employees accreted into its existing unit, the FLRA will first process the successorship claim. If there is no successorship, the FLRA will then proceed to process the accretion claim. *Department of the Navy, Fleet and Industrial Supply Center, Norfolk, Virginia*, 52 FLRA 950 (1997)

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## Other Representation Related Cases

*Department of the Navy, Naval Supply Center, Puget Sound, Bremerton, Washington*, 53 FLRA No. we (1997), <http://www.flra.gov/decisions/v53/53-023-4.html>. (Successorship principles properly applied in case of administrative and not physical transfer of employees.)

*Defense Logistics Agency, Defense Supply Center, Columbus, Columbus, Ohio*, 53 FLRA No. 89 (1998), <http://www.flra.gov/decisions/v53/53-089-4.html>. (Reorganization involving two unions resulting in an order for an election.)

*U.S. Department of Homeland Security, Bureau of Customs and Border Protection*, 61 FLRA No. 92 (2006), <http://www.flra.gov/decisions/v61/61-092.html>. (The Department of Homeland Security filed a representation petition when it transferred employees from Agriculture, Justice and Treasury to form the Office of Field Operations in the Bureau of Customs and Border Protection, recommending and obtaining a single bargaining unit for all non-Border Patrol employees.)

## Bargaining Issues Associated with Joint Basing

The decision to consolidate base functions and transferring the authority for those functions from individual bases and Components to a “lead” base is not negotiable from the perspective of negotiating substance. See American Federation of Government Employees, Local 3529 and Department of Defense, Defense Contract Audit Agency, Central Region, Irving, TX, 55 FLRA 830 (1999) (two proposals regarding the transfer of function of the staffing function when it went from DCAA to DFAS). However, the obligation to bargain the impact and implementation of joint basing will be wide and varying and, as is with most negotiations, will be determined by the individual circumstances.

The first thing to consider is whether or not there has been a Representation petition filed with the Federal Labor Relations Authority. As noted under Rights and Obligations, once the petition is filed, parties must adhere to the terms and conditions of the **existing** collective bargaining agreement and to fulfill all bargaining responsibilities under the Statute (See 5 CFR §2422.34(a)).

Whether or not one or all of these bargaining obligations will occur at a specific joint base may depend on the content of existing collective bargaining agreements; the impact of proposed changes on employees, and, the timing and results of any representation petitions filed with the FLRA and whether or not there have been

any agreements signed that discuss/outline what is going to happen during the course of the petition..

Careful review of existing contract requirements will determine the bargaining obligations for joint basing issues. Collective bargaining agreements may have specific language regarding procedures and appropriate arrangements to be used during a realignment or reorganization. If, so the issues may be "covered by" terms of the existing agreement and may preclude a duty to bargain. See US Department of Health and Human Services, Social Security Administration, Baltimore, MD, 47 FLRA 1004 (1993); U.S. Department of the Interior, Washington, D.C. and U.S. Geological Survey, Reston, VA and National Federation of Federal Employees, Local 1309, 56 FLRA 45 (2000); and, U.S. Department of Justice, Federal Bureau of Prisons, federal Correctional Institution, Fairton, NJ and American Federation of Government Employees, Council of Prison Locals, Local 3975, 62 FLRA 187 (2007). Basically, the Authority has ruled that if a particular issue is "expressly contained" in an agreement then there is not duty to bargain. If there is a question on whether the subject matter is "expressly contained" in the agreement, then the Authority will determine if the subject is "inseparably bout up with, and thus plainly an aspect of, a subject covered by the agreement." 62 FLRA 187.

If not covered by an existing agreement, management will be required to provide advance notice to the union(s) in accordance with any applicable terms of the collective bargaining agreement concerning the decision to form a joint base. If the union makes a timely request to bargain, management will be obligated to bargain over the procedures and/or appropriate arrangements in accordance with the Federal Service Labor Relations Statute (5 U.S.C. § 7106 (b) (2) and (3)). The following are some topics that the union may be required to negotiate:

***Hiring Freezes.*** Two of the most interesting cases for hiring freezes are Association of Civilian Technicians, Montana Air Chapter and Department of the Air Force, Montana Air National Guard, Headquarters, 120<sup>th</sup> Fighter Interceptor Group (ADTAC), 20 FLRA 717 (1985), Proposal 1 (MT NG) which was on remand from the 756 F.2d 172 (D.C. Circuit, 1985) and National Association of Government Employees, Local R1-203 and Department of Interior, U.S. Fish and Wildlife Service, Hadley, MA, 55 FLRA 1081 (1999), Proposal 5 (Fish and Wildlife). In MT NG the issue was once a general notice of a RIF went out, there would be a temporary hiring freeze until all RIF actions had been taken, except for internal placement. The Authority's purpose on remand was whether the proposed hiring freeze excessively interfered with management's right under 7106(a). They determined that it did excessively interfere with management's ability to provide the numbers and types of employees to perform the agency's work and it is

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negotiable only at the election of the agency as a §7106 (b) (1) issue. The proposal in the Fish and Wildlife stated that the agency would negotiate with the Union to determine if a hiring freeze is necessary to protect reemployment rights of employees and to establish a freeze board to determine when the freeze should end. The Authority in this case stated that they construed the term “hiring freeze” as precluding the agency from hiring persons from outside the agency to fill positions. They noted that since this proposal prevents the agency from hiring anyone from outside the agency, it affects management’s right to hire. Additionally, the requirement that a board would determine when the freeze would stop conditions the length of the freeze and as such that, as well, interferes with the right to hire. They noted that the union did not argue that it constituted a procedure, or a (b) (1) issue and only made an unsupported claim that it was an appropriate arrangement, the Authority found the proposal to be outside the duty to bargain. As in most cases, the way the language is written and its intent is important in determining negotiability. It is also worth noting that the Authority does tend to look at hiring freezes as a 7106(b) (1) right.

***Relocation of Employees/Positions.*** In American Federation of Government Employees, Local 1336 and Social Security Administration, Mid-American Program Service Center, 52 FLRA 794 (1996), the agency was going to abolish a part of the organization as a centralized unit and move positions and personnel to six other sections within the larger organization. There were three proposals which were alternative configurations at keeping the Reconsideration Section as a centralized unit. The parties in this case disagreed if these proposals were governed by 7106(a) or 7106(b) (1). In those cases, the Authority stated that it will identify the requirements of the proposal. Once they identify the requirement, they will then determine if it is encompassed by § 7106(b) (1). If it is then it will be “electively negotiable under that section without regard to whether one or more of the other requirements is encompassed only by section 7106(a).” If it doesn’t encompass a (b) (1) right, but does involve an (a) (1) right, then it will not be electively negotiable. In this case they found the dominant requirement of all three positions to be the establishment of an organizational subdivision. Going through their analysis process they found that it was the right to determine the organization, an (a)(1) right, since the Authority, “has construed this right as encompassing the determination of the administrative and functional structure of the agency, including the relationship of personnel through lines of authority and the distribution of responsibilities for delegated and assigned duties.” Thus, the proposals in this case were not within the duty to bargain.

Proposals that require management to reassign duties from one unit employee to another were found to directly interfere with management's right to assign work and were outside the duty to bargain. Rotational assignments were nonnegotiable as both a procedure and an appropriate arrangement because of undue intrusion on management's right to assign employees and work in a highly specialized unit. Management's right to assign work and employees when several identical positions are available at more than one location includes the determination of whether a particular employee has the requisite individual characteristics, e.g., judgment and reliability to do the work in a particular location.

Proposals that require seniority to be a factor in determining which employees will relocate (when it is not required for all to relocate) have generally been found to be negotiable when all other factors are equal, e.g., qualifications, judgment, reliability, etc. For example, if there are too many volunteers, seniority will determine which employees move. If there are not enough volunteers, inverse seniority will be used to determine which non-volunteers will move.

***Duty Station Determinations.*** One of the most often looked management right is the right to determine the organization (5 USC § 7106(a) (1)), and part of that right includes the agency's determination as to how it will structure itself to accomplish its mission and functions. This includes the geographic locations where an agency will provide its services and conduct its operations. See National Federation of Federal Employees, Local 7 and Department of Agriculture, Office of Rural Development, Portland, OR, 53 FLRA 1435 (1998), Proposal 2.

***VERA/VSIP.*** One of the issues that has a high probability of showing up at the table, in the event there is a reduction-in-force is an early out. In American Federation of Government Employees, Local 1827 and Department of Defense, National Imagery and Mapping Agency, St. Louis, Missouri, 58 FLRA 344 (2003), the Authority for the first time addressed the right to retain employees. They defined it as "... the right to establish policies or practices that encourage or discourage employees from remaining employed by an agency." Having done that, they found two proposals to interfere with that right, however in the end; they were found to be appropriate arrangements and were therefore found to be negotiable. The first proposal had the Agency providing VERA/VSIP for position targeted for outsourcing and the Agency, at its discretion. "this authority will be in lieu of or concurrent with any other methods being used to drawn down the workforce..." while the second proposal had those with the most seniority

getting the early out when there were more applicants than there are slots. In American Federation of Government Employees, Local 2004 and Department of Defense, Defense Logistics Agency, Defense Distribution Depot, Susquehanna, PA, 56 FLRA 660 (2000), a proposal which would only allow VERA/VSIP and attrition to reduce the numbers of employees was found to be outside the duty to bargain since it precluded the agency from conducting a reduction in force.

**ROLE OF DEFENSE CIVILIAN PERSONNEL MANAGEMENT SERVICE (CPMS), FIELD ADVISORY SERVICES (FAS), LABOR AND EMPLOYEE RELATIONS DIVISION (LERD)**

FAS LERD is available to provide advice and guidance to all labor relations professionals who are representing management in any representation proceeding.

All servicing labor relations professionals should provide their Component Labor Relations Officer with a copy of any representation petitions filed in order to provide Departmental oversight for the labor issues resulting from Joint Basing. Component Labor Relations Officers should then submit a copy to FAS LERD. This may be done via email to: [labor.relations@cpms.osd.mil](mailto:labor.relations@cpms.osd.mil) or via regular mail at:

CPMS FAS LERD  
1400 Key Blvd. Suite 500  
Arlington, VA 22209

In addition, servicing labor relations professionals, and Component Labor Relations Officers, are required to forward in the same manner as above resulting decisions of the FLRA Regional Director on those petitions.

As a reminder, DoD 1400.25-M, Subchapter 711 at SC711.6.6.1.2., requires that where a union files a representation petition involving the creation of a bargaining unit encompassing two or more Components, the servicing labor relations professional must immediately provide CPMS and the appropriate DoD Component headquarters with a copy of the petition(s), and the subsequent FLRA Regional Director's decision on the petition, immediately upon receipt.

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## **ADDITIONAL INFORMATION AND HELPFUL WEB SITES**

Additional information on representational matters can be obtained from the Web Sites listed below.

Representation Petitions and Proceedings FAQs: <http://www.flra.gov/gc/rep/rep-faq.html>

Representation Issues: [http://www.flra.gov/gc/rep/rep\\_faq.html#rpq1](http://www.flra.gov/gc/rep/rep_faq.html#rpq1)

FLRA Representation Procedures - 5 CFR 2422:

[http://www.flra.gov/gc/rep/rep\\_faq.html#representation%20proceedings](http://www.flra.gov/gc/rep/rep_faq.html#representation%20proceedings)

DoD Bargaining Unit Status Codes Guide

[http://www.cpms.osd.mil/ASSETS/DE429D01955F47828A71BB31A1B90E0A/BUS%20Code%20Guide%20\(2\).pdf](http://www.cpms.osd.mil/ASSETS/DE429D01955F47828A71BB31A1B90E0A/BUS%20Code%20Guide%20(2).pdf)

## **APENDIX 1**

### **JOINT BASES**

Lewis-McChord, WA: installation management functions move from McChord AFB, WA to Fort Lewis, WA

McGuire-Dix-Lakehurst, NJ: installation management functions move from Naval Air Engineering Station Lakehurst, NJ, and Fort Dix, NJ, to McGuire AFB

Andrews-Naval Air Facility Washington, MD: installation management functions move from Naval Air Facility, Washington, MD to Andrews AFB, MD

Anacostia-Bolling, DC: installation management functions move from Bolling AFB to Naval District Washington at the Washington Navy Yard, DC

Myer-Henderson Hall, VA: installation management functions move from Henderson Hall, VA to Fort Myer, VA

Elmendorf-Richardson, AK: installation management functions move from Fort Richardson, AK to Elmendorf, AFB, AK

Pearl Harbor-Hickam, HI: installation management functions move from Hickam AFB, HI, to Naval Station, Pearl Harbor, HI

Lackland-Sam Houston-Randolph, TX: installation management functions move from Fort Sam Houston, TX and Randolph AFB, TX to Lackland AFB, TX

Charleston SC: installation management functions move from Naval Weapons Station, Charleston, SC to Charleston AFB, SC

Langley-Fort Eustis, VA: installation management functions move from Fort Eustis to Langley AFB, VA

Little Creek-Story, VA: installation management functions move from Fort Story, VA to Commander, Naval Mid-Atlantic Region, Naval Station Norfolk, VA

Marianas-Anderson, Guam: installation management functions move from Anderson AFB to Commander, US Naval Forces, Marianas Islands, Guam

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