



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
200 STOVALL STREET
ALEXANDRIA, VIRGINIA 22322-0300



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MEMORANDUM FOR LABOR RELATIONS SPECIALISTS AT MACOMS,
OPERATING CIVILIAN PERSONNEL OFFICES,
CIVILIAN PERSONNEL ADVISORY CENTERS,
INDEPENDENT REPORTING ACTIVITIES AND
CIVILIAN PERSONNEL OPERATIONS CENTERS

SUBJECT: Successorship or Accretion--Labor Relations
Bulletin No. 401

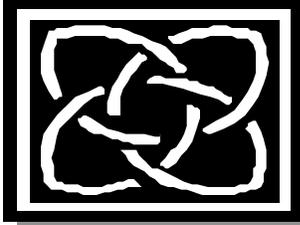
In a reorganization where two activities, each represented by a separate union, combine into a single unit, there is frequently a dispute as to which union, if any, represents the combined work force. The merging union argues that it retains exclusive representation of its employees since the new employer is a successor organization. The union for the gaining activity (or the gaining activity itself) claims the bargaining unit of the merging activity accretes into its unit. Resolution of these types of disputes cannot be accomplished by the parties as questions of representation are left to the sole discretion of the Federal Labor Relations Authority (the Authority.)

While the Authority determines representation issues on a case-by-case basis, its decision process is not a surreptitious endeavor. In United States Department of the Navy, Fleet and Industrial Supply Center, Norfolk, Virginia and American Federation of Government Employees, Local 53, AFL-CIO, et.al., 52 FLRA No. 97 (1997), the Authority provides the analysis it will use in deciding representational matters where a reorganization raises questions of successorship and accretion. Of course, even knowing the Authority's analysis will not guarantee that you'll be able to predict with certainty how the Authority will decide on any given case; *but after all, isn't that what makes labor relations such an exciting field?*

The attached bulletin provides a summary of the above decision. Please share this bulletin with your Civilian Personnel Officer, Labor Attorneys and other interested management officials.

<signed>
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Attachment



Labor Relations Bulletin

No. 401

May 30, 1997

Successorship or Accretion

How many times have you been faced with a situation where your employees are being merged with another organization represented by a different union and your managers want to know which union will represent the employees in the new organization? If this has never happened to you, consider yourself lucky. For those who have had the distinct "pleasure" of being in this situation, you know how difficult it is to provide a definitive answer to representational questions. *(The bright side, of course, is that halfway through any in-depth explanation you give of the representational process, half your audience will be sound asleep, anyway.)*

Well, for those of you actually facing this situation, the Authority has come to your rescue with its recent decision detailing how it will process disputes concerning successorship and accretion stemming from an agency's reorganization. United States Department of the Navy, Fleet and Industrial Supply Center, Norfolk, Virginia and American Federation of Government Employees, Local 53, AFL-CIO, et.al., 52 FLRA No. 97 (1997) (FISC).

Of course, even after reading this decision, you can't be assured of knowing with the utmost certainty how the Authority will rule on a given reorganization since each decision is made on a case-by-case basis. The FISC decision, though, should provide the background necessary for knowing which factors are important and how they will be applied by the Authority in determining union representation after an agency reorganizations.

What is Successorship and Accretion

For the Authority's FISC analysis to be applicable, there must be a reorganization resulting in a representational dispute involving questions of successorship and accretion. Before addressing the Authority's analysis, let's briefly take a look at what successorship and accretion mean.

As an example, assume Command B, whose employees are represented by Union B, is merging into Unit A, whose employees are represented by Union A. Union A would argue that the employees represented by Union B have **accreted** into the new bargaining unit represented by Union A and that Union B is no longer the employees' representative. On the other hand, Union B would argue that employees from Unit B remain a separate bargaining unit within the new organization and the employees remain represented by Union B. That is, Union B would claim that the new agency is a **successor** employer and it must recognize Union B as the exclusive representative of the employees transferred to the new agency.

Looked at another way, **successorship** is where a union keeps representation of its employees even after the employees have been reorganized into a new employing entity. **Accretion** involves the addition, without an election, of a group of employees to an existing bargaining unit. If the merging employees were represented by a union, that union would no longer be the employees' exclusive representative.

Determining Successorship

After a reorganization, a union files a petition claiming the new entity is a successor organization. How does the Authority make this representational determination?

In Naval Facilities Engineering Service Center, Port Hueneme and National Association of Government Employees, Local R12-28, et. al., 50 FLRA No. 56 (1995) (Port Hueneme), the Authority detailed three factors it will evaluate in determining whether, after a reorganization, a new employing entity is the successor to the previous one such that a secret ballot election is not

necessary to determine that the previous representative continues to represent the transferred employees. (Now *that's a mouthful.*) The Authority held that a gaining entity is a successor employer, and a union retains its status as the exclusive representative when:

(1) An entire recognized unit, or a portion thereof, is transferred and the transferred employees: (a) are in an appropriate bargaining unit, under section 7112(a) of the Statute, after the transfer; and (b) constitute a majority of the employees in such unit;

(2) The gaining entity has substantially the same organizational mission as the losing entity, with the transferred employees performing substantially the same duties and functions under substantially similar working conditions in the gaining entity; and

(3) It has not been demonstrated that an election is necessary to determine representation.

With regard to this last requirement, the Authority has rarely directed an election where successorship or accretion has been appropriate. Where an election would be appropriate is when, after a reorganization or consolidation, the number of unrepresented employees in the gaining entity exceeds the number of represented employees. Another situation where an election may be necessary after a reorganization is when more than one labor organization represents employees transferred into the new, appropriate, unit.

Determining Accretion

The Authority doesn't have such a neat test for determining accretion. In U.S. Department of the Air Force, Air Force Materiel Command, Wright-Patterson Air Force Base and American Federation of Government Employees, Local 1138, 47 FLRA No. 53

(1993), the Authority stated it was bound by the criteria for

determining the appropriateness of a bargaining unit set forth in section 7112(a)(1) of the Statute for determining whether a unit accretes into an established unit. The Authority may determine a unit to be appropriate only if the determination will: (1) ensure a clear and identifiable community of interest among the employees in the unit; (2) promote effective dealings with the agency; and (3) promote efficiency of the operations of the agency involved.

In a little more detail, the three factors are:

1. **Community of Interest:** Unfortunately, the Authority has not specified the individual factors or the number of such factors needed to establish that a clear and identifiable community of interest exists. It is the totality of the circumstances that allows it to make its decision (on a case-by-case basis.) Briefly, community of interest involves a commonality of sharing of interests between the employees in a unit. The Authority will look to see if the employees in the proposed unit are part of the same organizational component of the agency, support the same mission, are in the same chain of command, have related job titles and are subject to the same working conditions. Other factors such as geographic proximity, unique conditions of employment, and distinct local concerns are all factors that are considered in determining a community of interest.

2 & 3. **Effective Dealings and Efficiency of Operations:** Rarely are these two factors addressed in any detail in appropriate unit decisions. Normally, the Authority considers both factors together in rendering its findings. Absent significant countervailing factors, though, if the evidence demonstrates that employees in a proposed unit share a clear and identifiable community of interest, the unit will generally be found to promote effective dealings with, and the efficient operations of, the agency. The Authority may look to see what impact the make-up of the unit would have on the agency's budget (would one unit be more economical than many separate units?), whether there was a single personnel office and did the units operate under the same labor relations guidance.

The Authority, in rendering a decision on accretion (and

appropriate bargaining units) is not finding a unit as being **the most appropriate unit**. Rather, it is simply finding that the proposed unit is an appropriate unit.

Successorship or Accretion--How Does The Authority Decide?

Now that we all fully understand the concepts of successorship and accretion, the question arises, "What does the Authority look at when, after a reorganization, one union claims the impact of the reorganization results in a successorship organization and the other union claims it results in an accretion?"

In FISC, the Authority adopted the following framework when resolving cases arising from a reorganization where employees are transferred to a pre-existing or newly established organization [known as the gaining organization] and both successorship and accretion principles are claimed to apply:

(1) Initially, [the Authority] will determine whether employees who have been transferred are included in, and constitute a majority of, a separate appropriate unit(s) in the gaining organization under section 7112(a). The outcome of this inquiry will govern whether successorship or accretion principles should next be applied.

(2) If it is determined that the transferred employees are included in a separate appropriate unit(s) in the gaining organization under section 7112(a), and if they constitute a majority of the employees in that unit(s), [the Authority] will apply the remainder of the successorship factors set forth in Port Hueneme with respect to the unit(s) determined to be appropriate. The outcome of the Port Hueneme analysis will determine whether the gaining organization is a successor for purposes of collective

bargaining with the labor organization(s) that represented the transferred employees at their previous employer.

(3) If it is determined that the transferred employees are not included in, and constitute a majority of employees in, a separate appropriate unit in the gaining organization, [the Authority] will apply [its] long-established accretion principles. The outcome of this analysis will determine whether the transferred employees have accreted to a pre-existing unit in the gaining organization.
[FISC, at 958-59]

Lets take a look at the application of this framework.

Obviously, the first step that must occur is a reorganization where at least two organizations have merged and there are claims of both successorship and accretion. Next, a representation petition(s) must be filed to alert the Authority of the situation. In response to the petition(s), the Authority will determine whether the transferred employees are included in a separate appropriate unit in the gaining organization and whether they constitute a majority of the employees in that unit. As stated above, this determination is not whether the unit is the most appropriate unit, but whether it is an appropriate unit.

This finding can be particularly disheartening to the agency. Most management officials prefer a single command-wide unit within an installation rather than many smaller units. (This is not true with regard to tenant activities where it is beneficial to keep each tenant command in a separate unit.) Under FISC, the Authority will first see if the transferred employees can make up a smaller appropriate unit instead of determining whether they can more appropriately fit into the pre-existing unit. This can create a real problem of unit fragmentation.

The determination of whether the transferred employees make an appropriate unit is similar to the first factor in Port Hueneme. A unit is 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. All three factors are to be given equal weight by the Authority.

If the Authority finds that the transferred employees constitute a majority of the employees of a separate appropriate unit in the gaining organization, it will then determine whether the remaining factors in the Port Hueneme decision have been met. If the Port Hueneme factors are met (the gaining entity has substantially the same organizational mission as the losing entity, with transferred employees performing substantially the same duties and functions under similar working conditions in the gaining entity and it has not been demonstrated that an election is necessary to determine representation), the Authority will find the organization to be a successor organization for that unit.

On the other hand, if it is found that the transferred employees do not constitute an appropriate unit, the representation petition seeking successorship will be dismissed and the Authority will then consider the accretion claim. If the "transferred employees are functionally and administratively integrated into the gaining organization's pre-existing unit(s), and that adding the transferred employees to the unit(s) would be appropriate under section 7112(a), an accretion will be found." (FISC, at 963.)

As with successorships, accretions also require appropriate unit findings as defined in section 7112(a) of the Statute.

Clearly, the Authority has decided that it will provide first consideration to a request for successorship over a request for accretion. While the Authority does not state why it considers successorships before accretions, its reasoning can probably be found in the arguments submitted by the unions and the General Counsel in the FISC case. There, the parties claim:

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...a finding of successorship permits a union to retain its status as the exclusive repre-

representative of employees who have been acquired by a new employer. They further point out that a finding of accretion places the acquired employees in a new unit, usually with a different representative, thereby altering the relationship between the employees and the exclusive representative they had previously selected. ...[A]n approach that considers successorship first is "consistent with the Authority's goals of minimizing collective bargaining instability and preserving collective bargaining relationships whenever possible."
[954.]

One union also argued that accretions result in the acquired employees being deprived of their previously negotiated benefits. While we can't be sure how much of this the Authority agreed with, the overall argument was apparently persuasive.

Applying FISC

The first application of the Authority's reasoning as detailed in FISC is, as you probably could guess, the FISC reorganization. Employees of FISC were stationed in Norfolk and Cheatham, Virginia. AFGE, Local 53 and IAM, Local 97 each represents employees in both Norfolk and Cheatham. The reorganization merged Yorktown employees, represented by NAGE, R4-1 and Charleston employees, represented by AFGE, Local 2298, as two new detachments under FISC. As a result of the reorganization, the two new detachments now report up the chain of command to the Commanding Officer of FISC; they no longer report to the Commanding Officers of their respective stations.

The agency filed a petition seeking to clarify the FISC unit so that the Yorktown and Charleston employees would accrete into the established FISC units. NAGE R4-1 filed a petition arguing that the activity's Yorktown Detachment is a successor employer which must recognize NAGE as the exclusive representative of the

employees who were transferred from the Yorktown Station. AFGE Local 2298's petition sought an election for its unit members.

Using the FISC analysis, the Authority first decided whether separate units, comprised of Yorktown and Charleston Detachment employees, are appropriate in accordance with 5 USC § 7112(a).

Community of Interest

The Authority found the functions of the two new detachments are similar to the functions performed by the gaining FISC detachments. The employees are all subject to the same personnel policies with labor relations services administered by the same personnel office. Positions held by the employees of the new detachments are similar to those held by the other unit employees in FISC.

Based on the above, the Authority concluded that neither the Yorktown nor Charleston Detachment employees share an identifiable community of interest separate and distinct from the employees in the existing FISC units.

Effective Dealings

The Authority determined that a separate unit of Yorktown or Charleston employees would not promote effective dealings. The directors of the detachments do not have authority for establishing policies, procedures or working conditions within their respective locations. All personnel functions are administered centrally from FISC headquarters.

Efficiency of Operations

If Yorktown and Charleston were found to be separate units, the cost of negotiating individual agreements would be substantial as would the cost of administering the agreements. These units would also result in artificial and unwarranted fragmentation of an integrated organizational structure.

As neither Yorktown nor Charleston constitute separate appropriate units under section 7112(a), the successorship petition was dismissed.

The next consideration was whether the two detachments accreted into the FISC units. The Authority determined, for reasons stated above, that the employees have been so organizationally and operationally integrated with the FISC employees that they have lost their separate identity. The Authority found that accreting the two detachments into the FISC units would promote effective dealings and enhance the efficiency of the activity's operations. The Yorktown and Charleston employees accreted into the FISC units.

You Are Not Alone

Given the relative infrequency of representational issues arising at an installation, it's no surprise the majority of us lack any true expertise in this area. If you ever are confronted with a question of representation, you should immediately contact your labor attorney who can assist in the development of management's position. You can also raise questions to your MACOM and this office. Another valuable source is your Regional Director of the Federal Labor Relations Authority. That office should be able to assist the parties in formulating the specific issues concerning representational matters and, hopefully, expediting any required hearings.

Two of the best document sources of information concerning representational questions are the General Counsel's Representation Proceedings Hearing Officer Guide and its Representation Proceedings Case Handling Manual. Both of these documents can be obtained from the Superintendent of Documents. You can also receive an electronic copy of the Hearing Officer Guide by contacting David Helmer at DSN 225-4011 or by e-mail at "helmeda@asamrapol.army.mil". While questions of representation involve some of the more arcane areas in the Federal sector labor-management relations program, by using all your available resources, you should be able to get a pretty good handle on how the Authority will consider a particular representational dispute.