



**DEPARTMENT OF THE NAVY
OFFICE OF CIVILIAN HUMAN RESOURCES**

**BARGAINING UNIT STATUS (BUS)
CODES**

A GUIDE

**Prepared by the
Human Resources Service Center-Northeast
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TABLE OF CONTENTS

TITLE	PAGE #
INTRODUCTION	1
BACKGROUND	2
BUS CODE DETERMINATIONS	4
HRO RESPONSIBILITIES	14
HRSC RESPONSIBILITY IN BUS CODE RPA PROCESSING	21
ACTIONS THAT REQUIRE PETITIONS TO CHANGE BUS CODES	22
HRSC/HRO RESPONSIBILITIES REGARDING PETITIONS	28
LESSONS LEARNED FROM INACCURATE BUS CODES AND UNTIMELY PETITIONS	34
SUMMARY	37
SAMPLE FLRA CERTIFICATION OF REPRESENTATION	ATTACHMENT 1
HRSC-NE BUS CODE INTERNAL OPERATING PROCEDURE	ATTACHMENT 2



INTRODUCTION

After reviewing the Department of Navy (DON) system that tracks Bargaining Unit Status (BUS) codes Navy-wide, the Office of Civilian Human Resources (OCHR) found incorrect data that adversely impacted its capability for fast and accurate reporting of bargaining unit (BU) information to the Deputy Assistant Secretary of the Navy (DASN), the Department of Defense (DOD) and the U.S. Office of Personnel Management (OPM). As a result, OCHR requested the Human Resources Service Center-Northeast (HRSC-NE) develop this Guide for the HRSCs and the Human Resources Offices (HROs) to use when making BUS code changes. The Guide explains how to identify appropriate BUS codes and outlines the different actions that cause BUS codes to change.

The objective of this Guide is to illustrate some of the many reasons why timely actions resulting in updated BUS codes will avoid costly future labor relations (LR) disputes. Incorporation of these concepts will ensure that DON properly records BUS codes and improves the speed and accuracy of reports to the DASN and to OPM.

Keep in mind that BUS codes are not just numbers, but represent collective bargaining rights under federal law. Ensuring prudent decisions about BUS codes is an important responsibility executed by HRSCs and HROs on behalf of employees as well as Navy management.

BACKGROUND

What is a BUS Code?

When a new BU is certified, or changes affiliation from one union to another (i.e. Fraternal Order of Police to International Brotherhood of Police), the OCHR obtains a code from OPM that identifies the new unit. OPM refers to the number as the Office of Labor-Management Relations (OLMR) number. OPM uses that 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.

What do BUS codes represent?

The OLMR number is a six-digit number. The first two digits identify the Agency in which the BU is certified. The identifier for the Department of Navy is 07. 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. So, in the Northeast Region, 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 RI-100 Submarine Base New London Groton, CT</i>
	<i>074465</i>	<i>National Association of Government Employees (NAGE), Local RI-134 Naval Underwater Warfare Center Newport, RI</i>

Two BUS codes that are universal throughout the Federal sector are 7777 and 8888. A 7777 code is used for positions that are eligible to be represented by a labor union; however, no certified unit currently exists for those employees. BUS code 7777 is also used in the case of certain temporary employees when the BU does not include those temporary employees.

Employees with the 7777 code can be represented by a union through the election process. If the majority of the employees voted for union representation, the BUS code would be changed. For example, since no union represented the professional employees at Naval Station Newport, Newport, RI, each professional employee had a BUS code of 7777. In January 2001, the Federal Union of Scientists and Engineers (FUSE)/NAGE petitioned the Federal Labor Relations Authority (FLRA) for an election to determine whether the professional employees at that Activity wanted to be represented by FUSE/NAGE. The majority of employees voted for representation, and now the professional employees at Naval Station Newport, Newport, RI, have BUS code NV4235.

Federal statutes provide for excluding certain employees from eligibility to be represented as part of a collective BU. BUS code 8888 represents this designation that is commonly used to indicate the exclusion of supervisors, management officials, and personnelists to name a few.

[Where are BUS codes found?](#)

Employees can find out their BUS code status by reviewing block 37 on the latest Notification of Personnel Action (NPA). Since the inception of the Modern Defense Civilian Personnel Data System (Modern), only the BUS codes for specific unions are preceded by "NV." BUS codes 7777 and 8888 are not preceded by a "NV" on the NPA.

BUS CODE DETERMINATIONS

Who is Included / Excluded in the BU Certification

The Federal Service Labor Management Relations Statute (the Statute) assigns the FLRA the responsibility for making appropriate unit and individual employee BU status determinations. The FLRA issues an original Certification of Representative¹ following a union petition and election process. During that process the activity and the union agree upon a unit description that spells out who is “included” and who is “excluded” from the BU. The unit description is fixed once a unit determination is made, an election held, and the unit is certified. There would have to be a substantial change in the mission of an organization or in the duties and responsibilities of a position in order to petition to have the included or excluded descriptions changed (unit clarification).

Employees Who May Be In Included Positions

Professional Employees

Section 7103(a)(15) of the 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. Additionally, the work output and the accomplished results cannot be standardized.

Example:

A professional accountant 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 would be included or excluded dependant on where professionals are found in the activity's unit description.

OPM publishes a fairly comprehensive list of qualification requirements for positions generally considered to be professional. This list can be found as part of OPM's qualification guidelines on its internet site (see www.opm.gov/qualifications/sec-iv/a/gs-prof.htm). However, decisions about whether a position is professional should be made after reviewing the specific duties and responsibilities of each individual position. This will produce a more

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

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

It is important to exclude professionals in a unit description even when there are no professional employees at the time, since positions would later be considered “included” if not specifically “excluded.” If professionals were hired later they should be automatically included unless the BU certificate was successfully amended.

Professionals might choose to be represented by a different union than those non-professional employees in their activity. Professionals might also choose the same union as the non-professionals but desire to be part of a separate BU (different/unique BUS code number, NVxxxx), or to be a part of the same BU as the non-professionals (sharing same BUS code as non-professionals, NVxxxx). They might also choose not to be represented at all (BUS code 7777).

For example, this activity’s non-professional unit description “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 employees, and employees described in 5 USC 7112 (b)(2),(3),(4),(6) and (7).

However, the activity’s professionals have voted to be represented by a different union and are “included” in their own separate BU:

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

An example of a combined BU might look like this one:

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 assigning a BUS code to professional employees. The correct code is dependant upon whether the professional employees at that activity have voted in an election in favor of being represented separately; being represented in a combined unit (professionals and non-professionals), or not being represented at all. Professionals are also subject to statutory exclusion if they meet the appropriate criteria.

NV4235

FUSE / NAGE

All professional employees

NV2815	<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>

Non-Professional Employees

Non-professional employees occupy all positions other than professional positions within the broader category of employees described, such as “all General Schedule” or “all Wage Grade.” An exception is all of those positions that are specifically excluded in the “excluded” part of the unit description.

Example:

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

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 USC 7112 (b)(2),(3),(4),(6) and (7).*

If all of the “included” employees of an activity’s various BUs are represented by one or more unions, then all of those “included” employees must be coded by using one or more unique (NVxxxx) BUS codes. So, if there is more than one union at a base, then they each represent different BUs. Each BU has its own “certification of representative,” causing each BU to have a separate and distinct BUS code. For example, certain employees at Naval Station Newport, Newport, RI, are represented by the following labor organizations and should be coded appropriately:

NV4430 - International Association of Firefighters (IAFF), F-100 All employees in the Fire Protection Division

NV4435 - International Brotherhood of Police Officers (IBPO) All police and guards of the Security Department

NV4424 - NAGE, RI-134 All non-professional employees

Temporary / Intermittent / When Actually Employed (WAE) Employees

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. The key factor is whether or not the temporary employees in question have enough in common (share a “community of interest”) with the other employees in the BU. While temporary employees may have similar day-to-day working conditions (hours/tours of duty), they might not share the same appointment types, benefits, or work schedules in common with permanent employees.

Let’s examine other differences in working conditions or “community of interest” factors that might differentiate temporary employees from permanent employees. Considered together, these differences will be indicators as to whether to include or exclude such employees from the BU. Temporary employees may be hired for specific short-term needs. They may not get paid from comparable schedules, or receive premiums or differentials, and may not be receiving benefits such as health insurance, life insurance, or annual leave. This may be different from other permanent employees in the BU. If the temporary employees in question were hired for specific periods of time (particularly when 6-9 months or less) and have “no reasonable expectation of continued employment beyond the original appointment,” excluding them from the unit may be an appropriate decision. Such an exclusion would be found in the unit description of the FLRA unit certification for the activity in question if it was agreed at the time the original FLRA Certification of Representative was issued. If inclusion would present 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 it during an original election/certification process is the correct method. It should then appear under the unit description in the activity’s collective bargaining agreement(s) (CBA).

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

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

The options for labor-management treatment of temporary employment are similar for intermittents and WAE employees alike. In the case of a WAE, generally 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.

Intermittent employees' work schedules may vary from week to week according to budgetary and workload considerations, differentiating them from regular employees. If intermittents have permanent appointments (appointments can be permanent or temporary), they will be considered to have a "reasonable expectation of continued employment." This is the major factor in making unit determinations that "include" temporaries in the BU. However, intermittents might have other factors such as conditions of employment that are very different from those of full-time permanent employees and as a result not share a "community of interest" with other BU employees.

As with temporary employees, intermittent employees are not automatically (statutorily) excluded from the BU. However, all Navy activities must ensure that the included or excluded descriptions in the unit certification and CBA clearly categorize intermittents, temporary employees, or WAEs. In the absence of such unit description exclusions, the FLRA will decide on a case-by-case basis if they are to be included in the BU. If the parties are in disagreement over excluding certain types of employees, they must petition for unit clarification with the FLRA. Since these matters are complex, the HRO specialist must seek the advice of an HRO LR specialist² who has many resources to call upon, including the HRSC Code 40.

Discussions concerning temporary employees do not include assignments like temporary promotions or temporary reassignments (having "not to exceed [NTE]" dates) 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. Since they are permanent employees and otherwise eligible for the BU, they are coded accordingly unless their temporary assignment is in an excluded position. An example of this is a temporary promotion from the BU into a supervisory position.

[Use of a 7777 BUS Code](#)

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

² When the term "LR specialist" is used in this Guide, it includes HR generalists and others that are assigned significant LR program responsibilities.

Employees Ineligible for Representation (8888)

While the Statute provides that employees may form, join, or assist any labor organization, there are some Federal employees that cannot be represented by a union. That exclusion is noted on the NPA as BUS code 8888. In order to be designated as 8888 the position needs to meet at least one of the following criteria:

1. Supervisor – The Statute 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 supervise employees.

A supervisor should not be confused with a team leader for the purposes of exclusion. Team leaders are not always supervisors. They 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.

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.

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.

2. Management Official – An individual that exercises independent judgment in formulating and effectuating agency (civilian) policies, or participates in the formulation of that policy. 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.

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.

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.

Individuals who recommend new regulations, review legislative proposals, and analyze the impact of economic data were not management officials.

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.

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.

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 LR and who has regular access to confidential LR material. This employee has access to management strategies for dealing with union matters such as negotiations or grievances. Employees that attend regular management meetings where labor-management relations issues are discussed, are excluded as confidential.

Examples:

The FLRA found that secretaries that 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.

Support staff that have access to grievances and grievance decisions before they are presented to the union are confidential employees.

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.

4. Personnelists – 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 that recruit or make recommendations to management on personnel actions are excluded as personnelists. Also, individuals whose duties create a conflict of interest, such as certain investigations or performing studies that change organizational structures or staffing levels, are excluded as personnelists because the employee's job duties may require the individual to act in a manner adverse to BU interests.

Examples:

Management analysts that performed studies that determined the appropriateness of the activity's organizational structure, staffing, method of operations, and capital investments were excluded from the BU as personnelists.

Employees that provided employment information and assisted applicants in filling out personnel forms are not personnelists because they performed their duties within prescribed guidelines and regulations which required little, if any, independent discretion or judgment.

Employees who process military personnel information are not engaged in federal personnel work and are included in the BU.

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

5. National Security Personnel – An employee engaged in intelligence, counterintelligence, or national security work. This 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. The material must directly affect national security.

Examples:

Personnel security specialists that grant access authorizations or clearances through interviewing, examination, and evaluation are engaged in national security work.

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.

Security specialists responsible for designing and auditing security systems and procedures are engaged in national security work.

A mail clerk that receives and distributes classified material in accordance with procedures is not engaged in national security work.

Secretaries that take dictation, typing, and filing of correspondence on security issues are not engaged in security work that directly affects national security.

6. Investigators/Auditors – Individuals engaged in investigation or audit functions wherein the nature of the investigation/audit might uncover fraud, waste, and abuse. An individual that audits agency programs or contracts that may uncover employees' failure to comply with programs is excluded. The investigators and/or auditors do not have to be directly investigating unit employees for the exclusion to be considered. 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.

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.

7. Administering a Labor Relations Statute – An employee who is engaged in administering any provision of law relating to labor management relations is ineligible to be included in the same BU with other activity employees. Although the Statute does not prohibit these employees from being represented by a union, they cannot belong to the same unit 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.

Examples:

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.

Union officials, although they administer provisions of Statute, are not excluded from the BU. The duties associated with administering the Statute do not create a conflict of interest between their administration and the interest of the unit employees.

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 makeup. Case law has demonstrated that the FLRA bases unit eligibility determinations on the employee's actual duties at the time of the hearing. What they are actually doing on a current basis 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 coded as 8888, then the current duties and responsibilities of the incumbent(s) should meet one or more categories of the criteria above. Since the statutory descriptions of these exclusions are subject to being debated, it is wise to rely on technical advice from the HRO LR specialist based on recent case law.

As stated, FLRA unit eligibility decisions will normally emphasize the employee's actual duties currently assigned at the time of a hearing. Nonetheless, there are some situations where employees are not yet performing the duties that primarily warrant an exclusion and the exclusion of that incumbent is still 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 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 also consider that those duties simply have not been assigned where: (1) the assignment is speculative, where the nature (of duties and responsibilities) may change or where the nature doesn't clearly require those duties; or (2) where it is not clear that duties were assigned or that the employee was informed of that assignment.

HRO RESPONSIBILITIES

Whenever 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 determination of the appropriate BUS code. The HRO has the responsibility to make that determination in order to process actions such as an appointment, promotion, reassignment, or any other action that moves an employee to a different position.

For instance, an activity hires an employee --- an electrician, new to the agency and assigns him to a specific position. The position might have a preexisting PD, or, if it is entirely new, the creation and approval of a new PD would be required. Whether a new or preexisting PD, the PD might apply to more than one incumbent, or this electrician might be a one-of-a-kind employee.

How do these variables impact BUS code determinations? They provide a source of information as to duties, responsibilities, and interactions within an organization. The existence of prior incumbents provides more evidence for managers and personnelists (also FLRA) to weigh in considering how these positions compare to the benchmarks and statutory criteria for one category or another of BU inclusions or exclusions.

The sections that follow provide some examples of opportunities to review BUS codes and make new BUS code determinations. Certainly these are very important opportunities to make correct determinations. However, there is an enormous number of erroneous BUS code assignments, ranging from simple coding errors to BUS codes that should have been eliminated. It is the HRO's responsibility to ensure the accuracy of BUS code determinations. Accordingly, the HRO must establish methods of analysis, detection, and correction to ensure that there is a reasonable level of accuracy when third party reviews occur unexpectedly. HRO LR specialists need to use the resources available to produce spreadsheet records of included and excluded positions within their assigned activities which can be used in reviewing the accuracy of BUS code determinations for that activity. This should not be a one-time review, but must be performed periodically and consistently. It will certainly pay dividends to everyone involved the first time a marathon effort under short time constraints is avoided. Customer activities neither appreciate nor understand analyses done under panicked conditions. They also do not appreciate receiving grievances, unfair labor practice (ULP) charges, or having a disgruntled employee working for them because of errors that could have been located and corrected.

New Positions

Initially the specialist, upon review of the duties and responsibilities assigned, determines whether or not a new position belongs to the BU. The correct determination is not always the obvious one.

An example would be secretaries that in most cases are eligible for 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 LR material.

The specialist reviews the BUs for the activity and assigns the position to the unique BUS code (NVxxxx) for the appropriate unit at the activity. If the position is included in a BU, a determination must be made as to the specific BU it belongs in. There are often several unions (e.g., firefighters' union, police officers' union, trades union, engineers' union) representing different groups of employees at an activity. Most of the time unit placement is unmistakable (police in police officers' unit) but where there is any doubt the specialist must ensure that employee is assigned the correct BUS code.

The BUS code for an eligible position that is unrepresented is 7777. The BUS code for an excluded position is 8888. In our example, if that "included" secretary works for the Commanding Officer (or another high level management official involved in LR) then the HR specialist should consult with the LR specialist for a determination of whether or not that secretary performs duties that would exclude the position from the BU as a confidential employee. In such a case, the specialist would designate the position as 8888 since the position would be appropriately excluded.

Existing Positions

As with new positions, the specialist conducts a similar analysis. The specialist first looks at the organizational placement, the duties and responsibilities of the incumbent position, and the corresponding BUS code. This BUS code assignment should be reviewed and its correctness verified.

A previously 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 this existing PD continues to serve as an accurate document and whether the new incumbent will actually perform the full range of duties as other incumbents.

Mistakes that remain unnoticed by others and go uncorrected for long periods can produce serious consequences. Therefore it is essential that the accuracy of determinations be reviewed and verified during changes in position (reassignment, promotion, etc.). When potentially erroneous BUS codes are encountered, follow up is critical, although it is equally important to consult with all appropriate personnel including your LR specialist before making any fast or isolated decisions.

Incorrect data in the system will cause repercussions and could result in a ULP or representational petition being filed with the FLRA. 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 that are ineligible for dues withholdings have lost monies that were withheld; employees have actively participated in union activities when ineligible to do so; inaccurate data has also been reported to a variety of sources that later

caused embarrassment and marathon correction projects. BUS code data must be correct because it is relied upon in meeting Navy reporting requirements.

New Hires, Reassignments, Promotions

As noted above, a new determination of the appropriate BU status and resultant BUS code is necessary whenever an employee is given a new assignment. This process will be very similar for each of several personnel actions. One difference discussed above is whether the PD previously existed or whether it is being newly classified. Beyond that, the process is the same whether the new assignment is the result of a new hire (an individual employee who is new to the agency or to the government), a reassignment (lateral movement at the same pay grade), or a promotion (increase in pay grade or promotion potential). The essential thing is that the employee is being given new duties and responsibilities.

Consider that recruitment for a position requiring specialized scientific training culminates in a new hire for a professional position. If other professionals share a community of interest and all are presently represented, then the same unique BUS code would be appropriate for this new professional (NVxxxx) and not the 7777 designation. This is a frequent coding error. The result is that an individual may likely be told that they are ineligible for union representation. The union may have an issue to raise since this employee would be excluded from having union dues deducted.

If other professionals are unrepresented, then the assignment of a 7777 BUS code would be appropriate. However, if the professional status of the position were missed and the individual was erroneously given the BUS code for the BU representing the non-professionals, there may be a problem with lost union dues deductions. Moreover, some employees are understandably upset when given erroneous information about their rights to be represented. Now, if this newly hired professional is also a supervisor or compares solidly against other benchmarks for excluding ineligible employees such as a management official, then this professional would be coded 8888.

New assignments of employees to analyst type positions at the GS-12, GS-13, GS-14 can be a source of incorrect BUS codes. For example, a newly assigned analyst is put into the same grade and series with a different PD from other excluded (8888) analysts, while lacking the controlling duties to put them on a par with the excluded positions. This position was coded 8888 in error, rather than assigning the unique BU code (NVxxxx) if that unit is represented or 7777 if unrepresented.

In summary, BUS code determinations have a lot riding on their absolute accuracy. Since these are serious decisions they should be given adequate research and should always involve the appropriate experts in classification, staffing and LR as necessary.

New Supervisor Selections

In cases where an employee is reassigned or promoted to a supervisory position, the BUS code must be changed from the NVxxxx number to 8888. In many cases this change is overlooked and supervisors carry the BUS code as if eligible for BU representation. The HRO processing specialist must ensure that this BUS code change is processed at the time of a supervisor's first assignment and verified on any subsequent Request for Personnel Actions (RPAs) processed.

Assignment to Different Position or Activity

When an employee accepts a different position with the same activity, but is included in a different BU (i.e., a pipefitter in an AFGE local BU accepts a position in a firefighters local 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 Navy base), but with a different activity, the employee's BUS code must be changed to the BUS code representing the appropriate BU at the new activity.

Examples:

The Naval Education and Training Center (NETC) has a BU of non-professional employees represented by the AFGE and the BUS code is NV4420. Employee A works as a office automation clerk and Box 37 of their SF-50 indicates code NV4420 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 NV4420 to 7777.

The Portsmouth Naval Shipyard has a BU of non-professional employees represented by the AFGE and the BUS code is NV3231. Employee B works as a secretary at the shipyard and Box 37 of their SF-50 indicates code NV3231 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 NV3245. Employee B's BUS code must change from NV3231 to NV3245.

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

Even though BU status determinations were originally accurate, 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.

One example involving a confidential employee is an assistant to a manager who has integral involvement with LR responsibilities. That assistant now works for a different person who doesn't have LR responsibilities and must be coded with the BU designation (NVxxxx).

Another example involving a confidential employee is one who holds a position similar to others in the BU and coded with the BU designation (NVxxxx) rather than 8888, indicating an excluded confidential employee.

Other mistakes are sometimes the result of very simple errors that can go undetected for long periods.

One example is an unrepresented professional (7777) erroneously coded as 8888. Another example is an eligible position not represented, that was originally coded as 7777 and inadvertently not changed after an election provided representation to that employee that should have resulted in a new (unique) BUS code (NVxxxx).

Many opportunities to perform quality reviews of the accuracy of activity BUS code determination occur. The HR specialist must verify the accuracy of codes each time an RPA for a change of assignments 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 be performed on a periodic basis.

HRO specialists commonly use computer runs that produce included and excluded groupings by activity. These runs should be reviewed periodically and consistently to verify the accuracy of activity 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.

If one of these periodic reviews has not been done recently, then it must be done in advance of any representational proceedings, since the FLRA imposes time constraints on such proceedings. When a FLRA representational petition is initially filed, the HRSC will request the HRO to perform BUS code verifications on positions in order to correctly present them to the FLRA as either "included" or "excluded" from the BU in question. This is the last favorable opportunity to make BUS code changes or corrections. Doing so 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 its credibility before the union, the FLRA, or both.

Here is one other thought regarding BU status determinations. Once they are 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, you will need to consult with your LR specialist who can provide advice based on FLRA case law.

Action by Processing Specialist

Once a determination is made that a BUS Code has changed due to a new assignment or to make corrections as discussed, the HRO specialist has the responsibility to initiate a personnel action. The gaining activity's HRO processing specialist will generate an RPA for each individual 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 would then be assigned to each member of the unit by processing an RPA.

In this case a nature of action code "800 - Change in Data Element" would be used. The BUS code determination decision should be explained 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" would be used.

An important step in ensuring that the BUS codes assigned on RPAs are proper is to know the BUS codes for each activity. This information is readily available from the local LR Office. The LR specialist should be able to give the HRO specialist the names of each union that represents activity employees, the BUS code for that union, 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. The HRO specialist should have the list of activity unions and BUS codes at the workstation for easy reference when initiating an RPA.

Specialist Informs Designated Personnel Regarding Dues Withholding and/or Changes

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

The CSR has a responsibility to notify employees newly assigned to positions outside of the BU that they are no longer eligible for dues withholding. Since the cessation of dues withholding (also termed dues checkoff) is not automatic, there have been many instances where withholdings have continued in error for some time. This is a potential problem, particularly since employees will probably not be able to recoup money lost. To perform quality reviews the specialist should run a list of included and excluded employees for the activity within set timeframes and contact their payroll office for a list

of dues withholdings being made for that activity. A comparison should be made to determine if there are ineligible employees who are still having dues withheld. It will then be necessary to notify the payroll office in order to correct any erroneous withholdings.

HRSC RESPONSIBILITY IN BUS CODE RPA PROCESSING

In the case of new BUS code determinations, once an RPA has been generated by the gaining HRO, the HRSC specialist will receive the RPA with the nature of action code “800 - Change in Data Element.” The HRSC specialist should then review the RPA Notepad for the new BUS code information and then process the RPA, which will update the current “position build.”

Once an RPA has been generated by the gaining HRO in the case of corrections to BUS code errors, the HRSC specialist will receive the “DOD Correction RPA” indicating the date that the action should have been effective. The HRSC specialist should then review the RPA Notepad for the corrected BUS code information and then process the RPA.

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 will require amendments to existing certifications through petitions filed by the HRSC. In all cases, however, the HRO should promptly notify the HRSC of any changes impacting the BUS code determinations of its activity's employees. This will ensure that the HRSC is prepared for union-filed petitions or those necessarily filed on behalf of the activity. When the outcome of the FLRA proceeding is certified, those amended certifications are recognized and recorded by OPM. The final step is to process personnel actions that record those changes in the Modern database for each of the affected employees. Now, let's look at the different events that will 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 FLRA for an election. These employees can be grouped on an activity-wide basis, on an occupational basis, on an organizational basis, or other basis determined appropriate for collective bargaining purposes by the FLRA. For instance, a group of professionals working for the same activity could be an appropriate group. Another could be occupational groups 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 will vote on whether or not they want union representation. If the majority of votes are for representation, then those employees will become members of a represented BU. All members of that BU have 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 an election petition, a copy should immediately be faxed to the HRSC. The HRSC will contact the HRO LR specialist for information in order to respond to FLRA information requests. It is particularly important that the HRO is prepared to verify the alphabetic lists of included and excluded employees. The HRO will need to 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 will also mean that the HRO needs to determine that the inclusions and exclusions are sound and supportable decisions when evaluated against current case law. Once all changes and corrections are communicated to the HRSC, the HRO processing specialist must make the changes by submitting RPAs in the Modern system.

Revocation of Certification

A petition will be filed in order to revoke a unit certification that is no longer appropriate. When a base or activity closes, a petition must be filed revoking the unit certification so the BUS code can be removed from the DON computer system. A revocation of

certification can also be filed 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:

One activity converted its security guards to police officers, thus eliminating the guard function. Since the BU was made up only of guards, it was necessary to file a petition to revoke the certification for that BU since its function was eliminated.

Whenever evidence of a closure or elimination of function occurs, the HRO LR specialist must advise the HRSC and forward supporting documentation. The HRSC must promptly file a petition. If the union represents employees from other activities or nearby facilities, then the HRSC should make it clear to those officials that the petition relates only to the specific BU that is being eliminated.

When the FLRA revokes the certificate for that BU, its BUS code is no longer active. The HRSC will forward that decision and order to OCHR. OCHR in turn reports the revocation to OPM. Upon notification that this process has been completed, the HRO will process BUS code changes as directed by the HRSC.

[Good Faith Doubt as to Union's Continued Majority Status](#)

Occasionally, a certified union has the majority status of its BU employees questioned. This might occur if the union has a relatively small percentage of covered employees as dues paying members and where the union is not actively representing the employees' interest. The FLRA found in one case with these circumstances that a reasonable doubt existed as to the union's continued majority status by using a "totality of the circumstances" test. The combined circumstances such as low levels of membership and 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 HRO should request the HRSC to petition the FLRA. If the FLRA determines that there is a good faith doubt and the employees vote for no union in an election, the HRO must change the employees' BUS codes to 7777 since they are eligible for representation, but no longer represented.

[Reorganizations / Realignment](#)

When reorganizations/realignments lead to the creating of new activities, the combining of employees from different activities, or a name change for an activity, a petition must be filed with the FLRA to amend the BU certification. The HRO LR specialist must consult with activity management to develop a position regarding the impact on the existing BU and how they now see the BU defined. The HRO LR specialist needs to

provide background history and documentation in order for the HRSC to properly analyze the essential case elements. This is necessary in order to be prepared to respond to union-filed petitions or to file petitions on behalf of management.

One key document issued to commands by the Chief of Naval Operations (CNO) is an OPNAV Notice 5450. The OPNAV Notice 5450 is used when activities are formally established and disestablished and should be obtained from the activity point of contact (POC) by the HRO. The OPNAV Notice 5450 will normally indicate if either the entire mission of the disestablished activity, or some part thereof, is transferred. Although they do not apply in all cases, when an OPNAV Notice is issued it serves as important evidence in FLRA cases.

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 AFGC local represents those 125 IT department employees. As a result of a reorganization, all 125 IT employees are physically and organizationally realigned and now exist as 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 HRSC will file a petition with the FLRA to clarify the unit at Activity A to exclude the employees from Activity B and also result in certification of a new BU in Activity B, the successor employer. Should the FLRA find a successorship, then the BUS code for all 125 BU employees at Activity B would change to a new AFGC BUS code.

A successorship case includes administrative realignments such as an activity name change. This would occur if the employees were realigned on paper but did not see any change to their chain of command; change to the mission they support; or “meaningful changes” in their duties, functions, or job circumstances. The HRO must promptly inform the servicing HRSC of any activity name changes and a petition should be filed to amend the BU certification. The petition

and subsequent proceedings can become substantially more difficult when not filed within a reasonable time. If the petition involves only an activity name change, it should not result in the assignment of a different BUS code.

Unfortunately, not everything in labor relations is so black and white. There are cases wherein 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 unrepresented. In such cases, the FLRA will look at the totality of the circumstances surrounding the reorganization, make a determination as to the appropriateness of a proposed unit, and certify the exclusive representative. Otherwise, if there are questions concerning representation, the FLRA will order an election for the employees to determine the exclusive representative or to determine whether there is no representative.

When a reorganization occurs, the HRO should provide the HRSC the background history and documentation, including a list of those BUS codes that are being affected and contact information for key activity resource personnel. This must be done in order for the HRSC to properly analyze the essential case elements in order to respond to any union-filed petitions or to file petitions on behalf of management. Depending on the outcome of any FLRA petitions, the BUS code could be changed for some or all of the employees at the activity.

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 do not have a separate, clear, and identifiable community of interest.

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 HRSC will file a petition with the FLRA to clarify the unit at Activity A to include the employees from Activity B so that the same union will represent all of the public works employees. Should the FLRA find an accretion, then the BUS code for the 50 NAGE employees could change to the AFGE BUS code.

Since an accretion potentially affects employee BUS codes, the HRO LR specialist must promptly forward historical documentation to the HRSC relative to these events, including a list of affected BUS codes. This must be done in

order for the HRSC to properly analyze the essential case elements to respond to any union-filed petitions or to file petitions on behalf of management. Depending on the outcome of any FLRA petitions, the BUS code might need to be changed for some or all of the employees at the activity.

Activity Closings

During the 1990's, DON experienced a high level of activity closings across the country. When a closure occurs, the BUs at that activity cease to exist as they were. When an activity ceases operation, the HRO must advise the HRSC promptly, since it might necessitate a "revocation of certification" petition. If all of the BU employees are reassigned or realigned, but their exclusive representative continues to exist, then a petition might be needed for something other than a revocation. For instance, if a successorship or an accretion has occurred following a base closure and transfer of function, then a unit clarification petition is needed.

The HRSC will request, and the HRO specialist will provide, the necessary information in order to file a petition with the FLRA. OPNAV Notice 5450 is especially important when an activity has been formally disestablished. The HRSC must now file a petition with the FLRA for the specific unions (BUS codes) affected. It is critical that the HRO advise the HRSC promptly of such events, since these petitions must be filed in a timely manner.

Changes in Duties and Responsibilities that may Exclude Positions from the BU

A position is designated either in or out of the BU when the unit is initially determined. 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 would exclude the position from the unit because the nature and duties of the position are confidential under the Statute.

A management analyst is newly assigned to perform studies on organizational structure and staffing levels. These duties would exclude the position as a personnelist because the nature and duties of the position require the employee to act in a manner adverse to bargaining unit's interest and create a conflict of interest.

An information technology specialist is newly assigned to establish activity standards and policies regarding computer equipment and can shut down computer equipment in the

event of a security breach (i.e. hackers). These duties would exclude the position as a management official.

An office automation clerk is now responsible to maintain classified material. This duty would exclude the position as national security work.

When the duties and functions of an established position change, the HRO should analyze those changes, review the current case law; and, if appropriate, exclude the position. An agreement might be reached with the union about the new exclusion. However, an agreement between management and the union will not hold up should the union later change its mind. In cases such as this, the HRO should consult with the HRSC in the event of a union-filed petition for unit clarification. Only the FLRA can determine the unit status of an employee.

HRSC / HRO RESPONSIBILITIES REGARDING PETITIONS

A FLRA petition is required when changes occur as described in the previous chapter that impact the size, nature, description, and appropriateness or identification (unit description or unit makeup) of a BU. Now, we will look at the actions that are required when these changes occur.

Determining the Necessity of Filing a FLRA Petition

It is important that the HRO LR specialist promptly notify the HRSC Code 40 of any changes as described in the previous chapter when they occur and provide the name and phone number of the activity POC for further details. The HRSC will fully explore an activity's LR history and analyze the impact.

When the HRSC receives information concerning a change, it must analyze the impact in terms of the evidence for, and the implications of, a management-initiated petition. The HRSC will review this information with the activity and the HRO LR specialist and will determine the need for filing a petition. The HRSC will also advise the HRO/activity of the best position and strategy for filing a petition. The responsibility for filing the petition that best represents DON's interests lies with the HRSC.

Filing the Petition with the FLRA

If a decision has been made to file a petition, the HRSC shall identify the Code 40 agency representative. The agency representative (HRSC) will then develop the facts and determine the documentary evidence required to be filed with the petition. The HRSC representative will identify those information needs in a request to the HRO. The HRO will collect the information identified and provide it to the HRSC. It is important that the HRSC receives complete information from the HRO about any changes that affect LR issues.

The HRSC representative will assemble the evidence provided by the HRO and attach it to the petition when filed. The evidence that must be provided to the HRSC includes:

- Full name and address of old activity, including recognized abbreviation;
- Full name and address of new activity, including recognized abbreviation;
- Old and new UICs and BUS codes;
- Activity POC, including name, title, address, and phone;
- Union POC, including name, title, address, and phone;
- Organizational charts (before and after change);
- Mission statements (before and after change);
- FLRA "Certification of Representative" (last amended copy);
- Relevant documentation concerning issues raised by the petition (e.g., "OPNAV Notice 5450", formal notification about activity disestablishments, establishments and changes); and
- Name and address of any other unions that may have any interest in the petition.

Before filing a petition, the HRSC may communicate the reasons for the chosen course of action to the union and subsequently to the FLRA. This will better enable the HRSC to anticipate whether management's position will be contested. Additionally, the FLRA often takes a more favorable approach when the petition transmittal letter indicates that the union has no objection to the petition.

The HRSC will prepare the petition and review it with the HRO/activity to ensure completeness and accuracy. Finally, the HRSC will file the petition with the FLRA and serve all union representatives as required. Copies will be sent to the HRO LR POC and to the activity POC.

Union-Filed Petitions

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

It is important that all union-filed petitions that are served upon the activity or the HRO are faxed to the HRSC immediately upon receipt. The HRSC needs as much time as possible between the union-served copy and the FLRA case-opening letter for appraising the case elements and formulating a position for a timely statement to the FLRA.

Representing the Agency Through the Representational Process

Once the FLRA case-opening letter is received, the HRSC will prepare a "Designation of Representative" form or letter to the FLRA. Information copies of FLRA correspondence will be forwarded by the HRSC to the HRO and activity POCs. If the FLRA requires additional information, the HRSC will communicate the need to the HRO and the HRO will provide the additional information to the HRSC. The HRO will also post the FLRA "Notice of Petition" when received and report the date and place of postings by email or fax to the HRSC for response to the FLRA.

Joint Stipulations

Once the initial information requests are provided to the FLRA, the FLRA will ascertain the positions of the parties. If there is consensus over the issues, the FLRA will further discuss the proposed resolution with the parties and draft "joint stipulations." The stipulations are sent to each of the parties to resolve any objections and to approve them. When the stipulations are received on behalf of management, the HRSC representative will forward a copy to the HRO and the activity to determine whether there are any specific objections. Once the objections are resolved with the FLRA, the HRSC will sign and return the

stipulations. This will normally end the representational process (unless an election is involved) until a decision order is issued.

“13-B” Meeting

Prior to a hearing, the FLRA will schedule all parties (HRSC and the unions) for a meeting or teleconference that is described in its regulations as a “13-B” meeting. The purpose of this meeting is to confirm the positions of the parties, state the issues to be resolved, and attempt to narrow and/or resolve those issues. If a resolution by informal agreement appears unlikely, the FLRA will discuss hearing dates (unless dates are already set) and determine that the issues are scheduled for resolution through a formal hearing.

Hearing Preparations

The hearing schedule will include 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 HRO LR specialist may wish to attend.

The HRSC will determine the need for documentary and testimonial evidence and will keep the activity and HRO informed of the case’s progress. The HRO LR specialist will help facilitate the provision of any additional relevant activity background information, agency exhibits, and schedules. The HRSC will establish a schedule of witnesses for witness interview, preparation, and for their testimony at the hearing. The FLRA will require a witness list to be provided by the HRSC in advance of the hearing, as well as copies of any documentary evidence (exhibits) to be provided to all parties, either in advance or at the pre-hearing conference.

Examples of evidence that must be provided to the HRSC, in addition to that filed with the petition, include:

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

The Hearing

The HRSC represents DON at a FLRA hearing and coordinates the presentation of its case and all responses to questions posed to the activity. The HRO may provide assistance to the HRSC at the hearing. After the hearing, the HRSC usually prepares and files a post-hearing brief to summarize and further support the case presented at the hearing. Copies of the brief should be provided to the HRO and the activity as well as being served to the other parties to the case.

Appeals

If the decision is not in the best interests of the DON, the HRSC may file an appeal to the FLRA in representational proceedings 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.

Appeals must clearly establish a case under the criteria of the regulations. 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.

When the RD's decision order is received and the HRSC is contemplating an appeal, the HRSC will consult with the HRO/activity and develop a strategy for the appeal. The HRSC will then consult with the OCHR. After consultation with OCHR regarding any potential agency-wide impact of this case, the HRSC will then make a decision on whether to appeal. The HRSC is responsible for any appeals and will keep the HRO and the activity informed and will respond to the FLRA as required.

Decision and Order on Petition and Unit Certification

The HRSC coordinates the implementation of FLRA Decision and Order on Petition and Certification (or Amendment) of Representative when received. Copies will be forwarded to the HRO and to the activity. The HRO will ensure that any actions falling under its jurisdiction that are required by the FLRA are completed.

OPM Issued BUS Codes

The FLRA mails a Decision and Order on Petition and Certification (or Amendment) of Representative to HRSC Code 40 establishing, clarifying, amending, or revoking a BU certification. Upon receipt of these documents, the HRSC Code 40 faxes a copy to the designated LR Specialist at the OCHR, who then forwards form OPM 913B “Change Form - Recognitions and Agreements” to OPM for input into the Labor Agreement Information Retrieval System (LAIRS).

OPM informs the OCHR LR specialist of a new BUS code number assignment or the amended description assigned to an existing BUS code. The OCHR LR specialist enters the information into the DON BU inventory system that is used to generate reports such as the number of BU employees in DON. The OCHR specialist also forwards the information to the Civilian Personnel Management Service (CPMS) for inclusion in the Department of Defense (DOD) database, and to the OCHR information technology specialists who build the information into the Modern system at the San Antonio, Texas site. Modern will reject any BUS codes that are not officially “built” into the system, so this step is critical.

OCHR then informs the HRSC, who in turn must inform the HRO, to begin the process of BUS code changes. When OPM designates a BUS code for a newly certified unit, the HRSC notifies the HRO POC.³ The HRSC will reference the FLRA case decision order, the OPM BUS code assignment, and will advise the HRO of the required changes to employee BUS codes. It is recommended that the HRSC Code 50 be provided a copy of that communication for the impending process of changing position builds.

HRO Generates RPAs Changing BUS Codes

The HRO specialist will generate an RPA for each employee included in the new unit changing the information in Box 27 to indicate the new BUS code. In this case the nature of action code “800 – Change in Data Element” should be used. The BUS code determination decision should be explained and the old and new BUS code information provided in the “Notepad” feature when processing the RPA.

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 would then be assigned to each member of the unit by processing individual RPAs.

The HRO will also need to provide the HRSC with 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.

³ See Attachment 2 for HRSC-NE internal operating procedure for notifying point of contacts to initiate RPAs to change BUS codes.

HRSC Responsibility in BUS Code RPA Processing

In the case of new BUS code determinations, once an RPA has been generated by the gaining HRO, the HRSC specialist will receive the RPA with the nature of action code “800 - Change in Data Element.” The HRSC specialist should review the RPA Notepad for the new BUS code information and then process the RPA which will update the current “position build.”

The HRSC will process changes in accordance with the HRO’s excel spreadsheet identifying core PD and PD sequence numbers for any vacant or obligated positions affected by a BUS code change.

HRO Verifies Changes to Employee BUS Codes

It is recommended that the HRO LR specialist produce a report that accesses data “refreshed” from the Modern database (i.e., Cognos Reports). This report should be used once the processing of BUS code changes is concluded. This will enable the specialist to review the “included” and “excluded” employee lists and use them 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, it costs the activity, the HRO, and the HRSC needlessly expended resources. It is imperative that HROs are aware of the importance of reviewing the accuracy of BUS codes and contacting the HRSC as indicated in this Guide. The following are actual lessons learned in this regard:

A GS-11 Health Systems Specialist was newly assigned to an excluded position (confidential employee) following a promotion. It was verbally communicated to the employee that he was ineligible for the BU. However, the HRO processing specialist should have verified that the BUS code previously assigned (NVxxxx) was changed to 8888 at the time of this employee's promotion to GS-11. When that did not happen, this employee continued dues withholding and union membership. 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 ULPs because the NPA stated he was a BU employee. Subsequently a hearing was held and the FLRA ruled that the position was correctly excluded from the unit.

It was the HRO's failure to change the BUS code that opened the door to these events. These were all costly and time-consuming cases lasting approximately sixteen months. HROs need to ensure that BUS code changes are made promptly when employees are reassigned or promoted to positions with a different BU status. Additionally, the HRO needs to have a process in place to verify the cessation of dues withholdings for any former BU members who have become ineligible.

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 became difficult to locate resulting in little or no institutional memory of the events. There were no original or amended BU certifications or other documentation important in filing for a revocation of certification. The facts presented to the FLRA were incomplete and this opened the door 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. Even though management expected to prevail at a hearing, that process would have consumed a significant amount of organizational resources. After many time-consuming discussions between the parties, the HRSC managed to get a favorable decision without a hearing.

The result of this delay in filing a revocation petition caused that process to be more complicated and costly than necessary. Many of the problems in this example could have been avoided by filing the revocation petition in 1999. HROs should always ensure that the HRSC Code 40 is notified promptly of disestablished activities, and the HRSC Code 40 should always ensure that a representational petition is filed in a timely manner.

An activity underwent a transfer of function and realignment in October of 1995. However, no representational petition was filed at that time, even though the union did not have any concerns or problems with the realignment. In 1998, four affected employees developed concerns that a Reduction in Force (RIF) might impact their jobs. They complained to the union, who filed a representational petition in August of 1998, seeking a determination of a successorship and continued representation. By the time this case went to a hearing, some of the management team was new and some of the most knowledgeable witnesses were lost.

These circumstances could have been avoided had a representational petition been filed in 1995 when the realignment took place. Ultimately, the cost to management involved two hearings and two appeals that spanned a two and one-half year period. This example again reminds HROs to promptly notify the HRSC to file petitions and also reminds the HRSC of the importance of filing petitions in a timely manner.

In January of 1997 Activity A was disestablished. The BU employees were realigned under Activity B. In May of 2002 a FLRA representational petition was filed in order to revoke the certification of the union local, since these employees were no longer an appropriate unit. The Activity A employees were now aligned and integrated with a geographically distant Activity B. These employees were no longer aligned with their former base where their former union local continued to represent employees of other activities.

The late filing in this case caused a lack of management documentation needed to support the required representational petition. As a result, the union seized the open door and contested management's petition, claiming successorship and claiming to continue as the exclusive representative. The union made this challenge even though management had recently prevailed in a case involving an identical successorship claim (see previous example). The previous case occupied that union in two FLRA hearings and two appeals over a two and one-half year period. Fortunately the prospect of such a prolonged process and the contrary case law helped to convince the union not to pursue those employees.

It should be noted that this union may have withdrawn its objection due in part to a lack of union interest from the employees. However, it takes only one employee to motivate the union to contest management's petition. Therefore, HROs must ensure that the HRSC Code 40 is notified promptly of disestablished activities so the HRSC can take timely action in filing a representational petition.

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 those Activity A employees had effectively accreted into the existing BU and would be serviced by the exclusive representative for the existing BU in Activity B.

However, 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 in order to decertify the present 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.

Many of the problems in this example could have been avoided by filing the representational petition in 1996. HROs should always ensure that the HRSC Code 40 is notified promptly of activity changes such as reorganizations. If the HRSC determines a petition is needed, the HRSC should ensure the petition is filed in a timely manner.

SUMMARY

The HRSC-NE hopes that this Guide will serve as an easy reference for the HRSCs and the HROs to use when making BUS code changes. The Guide was intended to not only provide the correct steps to take in this regard but also to emphasize the importance of making timely and accurate BUS code determinations. The Lessons Learned Section was intended to give real-life examples of the costly and time-consuming problems that could have been avoided by paying more attention to this area.

HRSCs and HROs have a responsibility to ensure that DON maintain accurate records and avoid costly third party proceedings where possible. By properly following the steps in this Guide, HRSCs and HROs will be able to ensure that they carry out this responsibility in the best interest of the DON.

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 above-named Activity or Agency, in the unit described below, as their representative for purposes of exclusive recognition, and that pursuant to

FLRA Form 28
(Rev. 1/96)

ATTACHMENT 1

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).

FEDERAL LABOR RELATIONS AUTHORITY

Richard D. Zaiger
Regional Director
Boston Region

Dated: July 5, 2002
Attachment:
Service Sheet

FLRA Form 28
(Rev. 1/96)

ATTACHMENT 1

6 May 2002 (Rev)

**INTERNAL OPERATING PROCEDURE FOR INITIAL ESTABLISHMENT
AND ADMINISTRATION OF UNION BARGAINING UNIT STATUS (BUS)
CODES**

1. Purpose: To establish procedures for internal management of new BUS codes at the Human Resources Service Center – Northeast (HRSC-NE).

2. Discussion: The Federal Labor Relations Authority (FLRA) serves as the appropriate authority to certify a union as the exclusive representative for a bargaining unit. When the FLRA certifies a union as the exclusive representative, the FLRA will mail a copy of the “Decision and Order on Petition” and “Certification of Representation” to the HRSC-NE Code 40 office. This serves as the starting point for HRSC-NE involvement.

3. Action.

a. HRSC-NE Appeals Division, Code 42, will forward a copy of the “Decision and Order on Petition” and “Certification of Representation” to the relevant Human Resources Office (HRO) Labor Relations Point of Contact (POC) for information purposes. Code 42 will also forward a copy of the above documents to the Department of the Navy Office of Civilian Human Resources POC and request a BUS Code. Upon receipt of the BUS Code, Code 42 shall:

(1) Update relevant Code 40 computer database(s).

(2) Notify the relevant HRO Labor Relations POC of the new Bus Code number and HRO responsibilities via an E-mail message. The Head, Customer Service, Code 53 will be copied on the message. The E-mail message shall contain the following information:

(HRO Labor Relations POC):

Through the “Decision and Order on Petition” and “Certification of Representation” information I recently sent, you are aware that (name of union) became the exclusive representative for a bargaining unit at {insert name of activity and Unit Identification Code (UIC)} on (date). As such, a new Bargaining Unit Status (BUS) Code was developed. The BUS Code is (insert BUS Code).

Request that your office initiate action to update the employee's records with the new BUS Code information. Updates are initiated through the MODERN System via a Request for Personnel Action (RPA). There should be coordination between the HRO

ATTACHMENT 2

and appropriate HRSC-NE Code 53 Team Lead or Supervisor regarding submission of these actions. If the HRO will be submitting more than 50 RPAs, please contact the Team Lead for routing instruction.

(3) Follow-up with HRSC-NE Code 53 (Team Lead) for status, if necessary.

(4) Notify the HRO Labor Relations POC when all action regarding establishment of the BUS Code is complete.

b. HRSC-NE Code 53, shall:

(1) Upon receipt of RPAs, process the change in BUS Code actions.

(2) Notify the Head, HRSC-NE Appeals Division, Code 42, when action is completed.

ATTACHMENT 2