

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY  
DALLAS REGION**

**United States Department of Justice  
Federal Bureau of Prisons  
Federal Correctional Institution  
Bastrop, Texas**

**- Activity**

**and**

**Case No. DA-RP-12-0002**

**American Federation of Government Employees, AFL-CIO**

**- Petitioner/Labor Organization**

**DECISION AND ORDER**

Pursuant to Section 2422.1 of the Rules and Regulations of the Federal Labor Relations Authority (Authority), a petition was filed seeking to clarify a unit of certain employees of the United States Department of Justice, Federal Bureau of Prisons (Agency), Federal Correctional Institution, Bastrop, Texas (Activity), represented by the American Federation of Government Employees AFL-CIO (Petitioner, AFGE or Union). Pursuant to the provisions of Section 7105(e)(1) of the Federal Service Labor-Management Relations Statute (Statute), the Authority has delegated its powers in connection with the subject case to the undersigned Regional Director. A hearing was held before a Hearing Officer of the Federal Labor Relations Authority on August 2, 2012. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Upon the entire record in the case, including the post-hearing briefs submitted by the parties, I find and conclude as follows:

**I. STATEMENT OF THE CASE**

On October 27, 2011, the Petitioner filed a petition in the above-numbered case with the Dallas Regional Office of the Federal Labor Relations Authority seeking a unit clarification to determine whether the Special Investigative Support Technician (SIS) position, GS-0303-08 currently encumbered by Ginger Soza and Johnny Ramirez, should be included in the existing certified nationwide consolidated bargaining unit of professional and non-professional employees represented by the Union. On July 13, 2012, a Notice of Hearing issued, setting an August 2, 2010, hearing date.

On March 31, 2006, in Case No. WA-RP-06-0016, a certification was issued by the Regional Director of the Federal Labor Relations Authority San Francisco Region certifying AFGE as the exclusive representative of the following unit of employees:

- Included** All professional and nonprofessional employees, including Central Office employees of the Bureau of Prisons and Federal Prisons Industries, Inc. U.S. Department of Justice.
- Excluded** All Central Office temporary employees on appointments not to exceed 90 days; management officials, supervisors; and employees described in 5 U.S.C. 7112b(2),(3),(4),(6) and (7).

On October 21, 2011, the American Federation of Government Employees, AFL-CIO, designated Jeffrey Ormsby as its representative in this case.

## II. ISSUE

Whether, pursuant to 5 U.S.C.7112(b)(7), the position of SIS Technician GS-0303-08, currently encumbered by Ginger Soza and Johnny Ramirez, should be excluded from the bargaining unit set forth above for which AFGE is the exclusive representative, because the SIS Technicians are primarily engaged in investigative functions relating to individuals employed by the Activity whose duties directly affect the internal security of the Activity and the SIS Technicians' duties are undertaken to ensure that those employees' duties are discharged honestly and with integrity?

The United States Department of Justice, Federal Bureau of Prisons, AFL-CIO, Bastrop, Texas. (Activity) asserts that the SIS Tech position encumbered by Ginger Soza and Johnny Ramirez should be excluded from the bargaining unit pursuant 5 U.S.C.7112(b)(7) of the Statute because they are primarily engaged in investigative functions relating to the work of individuals employed by the Activity whose duties directly affect the internal security of the Activity and that they ensure that those employees' duties are discharged honestly and with integrity.

The Union maintains that the employees who occupy the SIS Tech position, Soza and Ramirez, are not primarily engaged in investigative functions involving the Activity's employees. Therefore, the Union contends that the SIS Techs should not be excluded from the bargaining unit, pursuant to 5 U.S.C.7112(b)(7) of the Statute.

### III. FINDINGS OF FACT<sup>1</sup>

The Federal Bureau of Prisons was established in 1930 and its mission statement is:

It is the mission of the Federal Bureau of Prisons to protect society by confining offenders in the controlled environments of prisons and community based facilities that are safe, humane, cost efficient and appropriately secure, that provides work and other self-improvement opportunities to assist offenders in becoming law abiding citizens.

The Federal Bureau of Prisons consists of 117 institutions, 6 regional offices, a Central Office (headquarters), 2 staff training Centers and 22 community corrections offices. The Activity is located in the Judicial District of Western Texas. The Activity houses low-security male inmates, and the Activity also has a satellite camp located adjacent to the Correctional Institution that houses minimum security inmates.

The Activity's SIS office is responsible for conducting local investigations within the Activity. In overseeing the SIS investigations, Lieutenant Robert Rangel supervises Ginger Soza and Johnny Ramirez. Rangel has been the SIS Lieutenant (supervisor) since October 2011. As a Lieutenant for the SIS, Rangel assigns both Soza and Ramirez portions of the staff and inmate investigations as part of their duties.

#### SIS Technician Ginger Soza

Soza's duties include completing urine analysis forms (but not conducting the urinalysis testing), monitoring inmate phone calls, emails, and letters, and drafting threat assessments regarding inmates. In this regard, she participates in the Activity's program to prevent criminal activity by ensuring that a minimum 15% of all phone calls are monitored on a monthly basis. She has also conducted Executive Briefings to update the Warden for him to use to report to the Regional Director. Moreover, she has dealt with local, State and Federal Governments including the United States Attorney's office and United States Marshals Service. Soza has taken bus and medical support trips involving inmates, enters information in the Activity's data base, TRUIINTEL, as well as resetting passwords for employees. She also monitors security threat groups (gangs or possibly an ex-law enforcement officer). In addition, Soza discusses with the inmates their concerns and posts photos in the SIS office of potential security threats and high profile inmates. Soza conducts trainings for the other employees within the Activity. In this regard, she developed a slide presentation for a law enforcement meeting and trained the staff to operate the X-ray machine, metal detector, and ION machine used at the entrance of the facility. Soza also attends trainings such as law enforcement training and criminal discovery training. She has participated in canine searches for contraband, searches ("shakedowns") of inmates' cells, and deals with confidential informers. Soza researches and prepares

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<sup>1</sup> Consistent with the Authority's determination in *Dep't of Hous. & Urban Dev., Wash., D.C.*, 35 FLRA 1249, 1256-1257 (1990), the eligibility determinations herein are based on testimony and other evidence establishing what an employee's actual specific duties were at the time of the hearing, rather than on speculation regarding what those duties might be in the future. While a position description may be useful in making a unit determination, it is not controlling.

presentations that are to be presented in front of disciplinary officers, regarding inmate discipline, and participates in investigations involving inmates in protective custody.

Soza has gathered information for the Federal Bureau of Investigation's Office of Inspector General and the Federal Bureau of Investigation, as well as taken affidavits from both the staff and inmates. Soza has retrieved disciplinary records from the Activity's Human Resource Department in order to send that information to the Office of Internal Affairs to close out cases. Soza has participated in investigations involving smuggling contraband; the misuse of government credit cards; absent without leave cases, including auditing time and attendance records; insubordination; possession of a cell phone; and theft. Soza has audited staff investigative files to ensure investigations were done properly by the investigator.

Sosa testified that she spends from forty to fifty percent of her duty time conducting staff investigations. Her supervisor, Rengal, testified that Soza spends fifty percent of her duty time conducting staff investigations.

#### **SIS Technician Johnny Ramirez**

Ramirez's duties involve conducting inmate interviews, monitoring their mail, email, and phone calls, and he acts as a translator for the Activity. Ramirez also monitors cell phone records in order to cross reference them using the Activity's TRUINTEL system. Ramirez is also a member of the "Intelligence Response Team" in the central region. In this respect, if an incident happens at another institution, the Regional Director will activate certain SIS Lieutenants and Technicians in order to audit that other institution. Ramirez has never conducted interviews with staff, but has interviewed inmates. However, he has reviewed staff cases and taken notes during staff interviews. Ramirez is the squad leader for the "Disturbance Control" squad. Ramirez conducts trainings for the Activity's staff regarding gangs located in the Institution and types affidavits taken from inmates and staff.

Moreover, Ramirez deals with confidential informants in order to discover whether contraband has been introduced into the Institution or to determine whether an inmate was assaulted or raped by another inmate. Ramirez initiated the Activity's canine program to search for contraband within Institution, and conducts trainings for the Activity's staff regarding the canine searches. In this regard, he works with the Travis County Sheriff's Office, whose dogs are used to conduct the searches. Ramirez has also participates in investigations involving absent without leave; travel fraud; and attendance fraud, by reviewing the roster program. Ramirez also participated in the training of the use of the screening process to enter the facility. Ramirez types affidavit for inmates and staff.

Ramirez testified that he spends ten to fifteen percent of his duty time conducting staff investigations. His supervisor, Rengal, testified that Ramirez spends forty-five percent of his duty time conducting staff investigations.

#### IV. ANALYSIS

**Whether, pursuant to 5 U.S.C. 7112(b)(7), the position of SIS Technician GS-0303-08, currently occupied by Ginger Soza and Johnny Ramirez should be excluded from the bargaining unit for which AFGE is the exclusive representative, because the SIS Technicians are primarily engaged in investigative functions relating to individuals employed by the Activity whose duties directly affect the internal security of the Activity and the SIS Technicians' duties are undertaken to ensure that those employees' duties are discharged honestly and with integrity?**

Section 7112(b)(7) of the Statute excludes from a bargaining unit any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity. 5 U.S.C 7112(b)(7).

Section 7112(b)(7) of the Statute clearly excludes from bargaining units employees engaged in audit or investigative work whose functions are undertaken to ensure that the duties of the individual employees being audited or investigated are discharged "honestly and with integrity." This exclusion is not limited to employees who perform investigations relating to "fraud, waste and abuse."<sup>2</sup>

In *U.S. Dep't of Justice, Fed. Bureau of Prisons, U.S. Penitentiary, McCreary, Pine Knot, Ky.*, 63 FLRA 153 (2009) (*BOP Pine Knot*), the Authority analyzed an assertion that the investigation of inmates had the potential of becoming an investigation into staff misconduct because such an investigation inherently involves a review of whether staff could have prevented the incident and whether staff misconduct contributed to the incident and, thereby, increased the percentage of investigations related to staff. A similar assertion has been made by the Activity in this case. The Authority noted in *BOP Pine Knot*, however, that Authority precedent demonstrates that the "potential for uncovering employee fraud, misuse of funds, or malfeasance" has been considered only in cases involving audits or investigations of agency programs or employees.<sup>3</sup> In *U.S. Dep't of Justice, Fed. Bureau of Prisons Fed. Corr. Instit., Seagoville, Tex.*, 65 FLRA 239 (2010) (*FCI Seagoville*) the Authority held that the Regional Director did not err when he applied the above principal when he did not consider the potential for uncovering staff misconduct during the course of an inmate investigation.<sup>4</sup>

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<sup>2</sup> *U.S. Dep't of Justice, Fed. Bureau of Prisons, U.S. Penitentiary, Marion, Ill.*, 55 FLRA 1243 (2000). (The Authority instructed the Regional Director to "consider whether the Legal Assistant's investigations of allegations that employees have used excessive force or have violated the civil rights of inmates constitute investigation of whether such employees have performed their duties honestly and with integrity.")

<sup>3</sup> Citing, *U.S. Dep't of Labor, Office of the Inspector Gen., Region I, Boston, Mass.*, 834, 835-836 ("potential considered where auditors perform audits of agency "programs and the employees who run these programs) *SBA*, 34 FLRA at 402-402 ("potential" considered where auditors performed audits of agency "programs, contracts, operations and program participants)

<sup>4</sup> *Id.*

In *FCI Seagoville*, the Activity argued that, even assuming that the RD correctly found that up to forty-five percent of the SIS's duties consist of staff investigations, the "position should still be excluded . . . because it satisfies the 'preponderance' standard."<sup>5</sup> In *McCreary*, the Authority held that, where the RD found that when "only ten to twenty percent of SIS Technicians' time involves investigations of staff members, his conclusion that SIS Technicians' duties did not meet the "primarily engaged requirement" of Section 7112(b)(7) "comport[ed] squarely with the 'preponderance' interpretation of 'primarily engaged' adopted in *AFGE Local 3529*, 57 FLRA 633, 637-38 (2001)."<sup>6</sup> Although the Authority has not defined what percentage of an employee's duties constitutes a "preponderance" in this context, the Authority has interpreted "preponderance" to mean "a majority" in the context of interpreting the term as it appears in Section 7103(a)(10) of the Statute.<sup>7</sup> The Authority found that there is no basis on which to define "preponderance" differently, in the context of Section 7112(b)(7), than it is defined in the context of Section 7103(a)(10).<sup>8</sup> Consistent with the definition of "preponderance" as "a majority,"<sup>9</sup> I find that forty to fifty percent does not constitute a preponderance of the SIS Technician's duties.

Moreover, the Authority found that there was no basis for holding that the Regional Director erred when there is testimony assigning multiple percentages for the amount of time a SIS technician spends on staff and inmate investigations when the Regional Director relies on the most credible testimony regarding percentages rather than all the statements made by the witnesses.<sup>9</sup>

In this case, the evidence demonstrates that Soza and Ramirez do not perform a preponderance of their duties conducting investigations of staff. In respect to Soza's duties, the record evidence does not demonstrate that a preponderance of her duties involved the investigation of staff. The testimony supported a finding that forty to fifty percent of Soza's duties involve the investigation of staff. Thus, Soza is not "primarily engaged" in staff investigations. Rather under the most generous estimate, half her duties involve staff investigations which do not constitute a majority.

In regard to Ramirez's duties, the record evidence also does not demonstrate a preponderance of his duties involve the investigation of staff. Ramirez's testimony supported a finding that ten to fifteen percent of his duties involve the investigation of staff. Even using Rangel's estimate, at most, staff investigations constitute forty-five percent of Ramirez's duties which does not constitute a majority.

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<sup>5</sup> *FCI Seagoville* at 241.

<sup>6</sup> *McCreary* at 156.

<sup>7</sup> Section 7103(a)(10) of the Statute states, in pertinent part: "[T]he term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising such authority)." 5 U.S.C. 7103(a)(10). See U.S. Dep't of the Army, Parks Reserve Training Ctr., Dublin, Cal., 61 FLRA 537, 541 (2006) (citing Veterans Admin. Med. Ctr., Fayetteville, N.C., 8 FLRA 651, 660 (1982)).

<sup>8</sup> *FCI Seagoville* at 241 (The RD found that, at most, forty-five percent of the SIS Technician's duties involved staff investigations, and the Authority found no factual error.)

<sup>9</sup> *FCI Seagoville, Tex.*, at 240.

Accordingly, the SIS Technicians, GS-0303-08, at the Activity are not primarily engaged in investigation or audit functions relating to the work of individuals employed by the Activity whose duties directly affect the internal security of the Activity and the SIS Technicians duties and are not excluded from the bargaining unit pursuant to Section 7112(b)(7) of the Statute.

## **V. CONCLUSION**

Based on the above, I conclude that the position of Special Investigative Support Technician, GS-0303-08, is not excluded from the consolidated bargaining unit of professional and non-professional employees represented by the Union pursuant to Section 5 U.S.C. 7112(b)(7) of the Statute and that the position, which is currently occupied by Ginger Soza and Johnny Ramirez, should be included in the unit.

## **VI. ORDER**

The parties are hereby advised that, pursuant to Section 2422.32 of the Authority's Rules and Regulations, absent the timely filing of an application for review of this Decision and Order with the Authority, or one filed and denied, or if the Authority does not undertake the review of this action within sixty (60) days after the filing of the application for review, I will issue an appropriate Clarification of Unit certification ordering that the unit be clarified consistent with my findings, above.

If you want to file for review of this decision you may do so with the Office of Case Intake and Publication at the following address and fax number:

Chief  
Office of Case Intake and Publication  
Federal Labor Relations Authority  
Docket Room, Suite 201  
1400 K Street, NW.  
Washington, D.C. 20424-0001  
(202) 482-6657

You may also file the application through the Authority's efilings system on the Authority's website at [www.FLRA.gov](http://www.FLRA.gov).

The reasons to object to a decision are limited and are set out at section 2422.31 of the Authority's Regulations. The application for review must be sufficient for the Authority to rule on the application without looking at the record. The application must specify the matters and rulings to which exception is taken, include a summary of evidence relating to any issue raised

in the application, and make specific references to page citations in the transcript if a hearing was held. An application may not raise any issue or rely on any facts not timely presented to the Hearing Officer or Regional Director.

You have a deadline to file an application for review and must file the petition no later than November 27, 2012. This means that if you mail the application, you must postmark it by November 27, 2012. If you deliver, fax, or efile the application, you must also do that by the same date. The time limit may not be extended or waived. The petition for review must be served on the Regional Director and all other parties, and must include a statement of service with the Authority.



James E. Petrucci  
Regional Director  
Dallas Region  
Federal Labor Relations Authority  
525 S. Griffin Street, Suite 926, LB 107  
Dallas, Texas 75202-5093

Dated: September 28, 2012



**CERTIFICATE OF SERVICE**  
**Case No. DA-RP-12-0002**

I hereby certify that on September 28, 2012, I served the foregoing **Decision and Order** upon the interested parties in this action by placing a true copy, postage prepaid, in the United States Post Office Mailbox at Dallas, Texas, addressed as follows:

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Agency Representative  
United States Department of Justice  
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