Bargaining Unit Code: A small code with a big impact

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Agenda

- **Objective:** To provide an overview of the process used to determine the Bargaining Unit Status (BUS) Code

- **Agenda**
  - Definition/Purpose
  - BUS code Review
  - Exclusions
  - Analysis
  - Questions
What is the Bargaining Unit Status Code?

• A Bargaining Unit Status (BUS) Code identifies an employee’s inclusion or exclusion from any bargaining unit
  • Defined by the Federal Labor Relations Authority (FLRA)

• Each bargaining unit has a unique numerical identifier known as the BUS code
  • Typically, a four digit number and recorded on the position description (OF-8, cover sheet) and in box #37 of the SF-50 of the employee
BUS Code Defined

• Positions included in the union are assigned a particular four digit code
  • Example: The consolidated National Treasury Employees Union (NTEU) code is 3591

• If a position is excluded under one of the statutory exclusions (to be discussed below) the assigned BUS code is 8888

• Positions Not Excluded By Statute, but still outside of the Bargaining Unit will be assigned a BUS code of 7777
  • Most common assignments to this BUS code are for professional employees (not covered by CBA), or those not included in the FLRA definition of the BU, such as Temporary / Term / Part-time / Intermittent / When Actually Employed (WAE) Positions, Interns
  • If no union represents employees in an OpDiv or Staff Div. then its typically referred to as employees eligible, but not represented - 7777
BU Coverage/Unit Certification

• Must review the Collective Bargaining Agreement or the Certificate of Representation to know who is actually covered in a particular unit

• Examples:
  • Consolidated NTEU CBA covers professional employees and non professional employees in FDA, ACF, ACL, CDC, HRSA, IHS, OS, OMHA, and SAMHSA.

  • AFGE local 2923: covers all nonprofessional Employees of the National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, and Bethesda, Maryland
BUS Code: Starting Point

• The Federal Labor Management Relations Statute (codified at 5 U.S.C. Chapter 71) presumes all employees are included in a bargaining unit.

• The only way to not be included in a bargaining unit is to be EXCLUDED by one of the statutory exclusions defined at 5 U.S.C. § 7112.
  • Who will not be in the bargaining unit?
BU Exclusions - 5 U.S.C. 7112 (b)

• A unit is determined to be not appropriate if it includes—
  (1) except as provided under section 7135(a)(2) of this title, any management official or supervisor;
  (2) a confidential employee;
  (3) an employee engaged in personnel work in other than a purely clerical capacity;
  (4) an employee engaged in administering the provisions of this chapter;
  (5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;
  (6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or
  (7) 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.
Primary Exclusions

• Management officials or supervisors; unique units containing management officials or supervisors allowed under 5 U.S.C. §7135
• Confidential employees
• Employees engaged in Federal personnel work
• Employees engaged in national security work

Question: what are the duties of this employee?
Not in the BU: Management Official

Management Official” is defined as:

An individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency
Not in the BU: Management Official

• Consider whether or not the person is an official who can:
  • create, establish or prescribe general principles, plans or courses of action;
  • decide upon or settle upon general principles, plans or courses of action; or
  • bring about or obtain a result as to the adoption of general plans, principles or courses of action
“Supervisor” is defined as:

- One who can hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees.
- One who can adjust employee grievances or effectively recommend such action.
Not in the BU: Supervisor

“Supervisor” (continued):

• For a unit with firefighters or nurses, "supervisor" includes only those individuals who spend most of their employment time exercising the right to hire, direct, assign, promote, transfer, suspend, reward, etc.
Not in the BU: Confidential Employee

“Confidential employee” is defined as:

• An employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations
  • Labor-nexus test: An employee is a confidential when – There is evidence of a confidential working relationship between an employee and the employee’s supervisor or other official AND
  • the supervisor or other official is significantly involved in labor-management relations
Not in the BU: Personnel Work

Excludes an employee engaged in personnel work in other than a purely clerical capacity
- Employee’s work must directly relate to personnel operations of the agency
- Work must be more than clerical in nature
- Employee must exercise independent judgment and discretion in personnel duties

Question: What are the employee’s duties?
Not in the BU: Personnel Work

- Example of positions that may be excluded:
  - Management Analyst conducted contracting-out studies
  - Employee Development Specialist developed and implemented region-wide training program

- Examples of positions may not be excluded (included):
  - Employee Development Specialist made recommendations regarding training, scheduled it
  - Legal Assistant maintained case files, prepared documents
Not in the BU: Labor Relations Administration

5 U.S.C. § 7112(b)(4) an employee engaged in administering the provisions of this chapter

- Labor and Employee Relations Assistant
- Certain HR Specialist
  - Labor and Employee Relations Specialist
  - Labor Relations Specialist
  - Employee Relations Specialist
- Program Manager for Labor/Employee Relations
Not in the BU: Professional Employee

- Check the Collective Bargaining Agreement. Some professionals may be in the bargaining unit.
  - For example: NTEU includes all professional and nonprofessional general schedule and wage grade employees

- Generally, professional employees are those employees whose work requires advance knowledge of a type that is usually acquired in an institution of higher learning. 5 U.S.C. § 7103(a)(15).

- Professional jobs also require the consistent exercise of discretion and judgment in its performance
Not in the BU: Professional Employee

• In practice, the OPM Qualifications Handbook will give you a good idea of who is considered a “professional” among the GS series.

Examples:
  • Attorney Advisors
  • Nurse
  • Microbiologist
  • Chemist
Not in the BU: National Security Work

• Any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security

• Three aspects
  • Security work
  • Directly affects
  • National security
Not in the BU: National Security Work

• Security Work: guarding, shielding, protecting, preserving
  • Design, analysis, monitoring of security systems, procedures
  • Regular use of, or access to, classified information
  • Security clearance is a factor, but not dispositive

• Directly affects: straight bearing or unbroken connection that produces a material influence on, or alteration to, national security
  • No intervening steps between the employees’ duties and the potential effects on national security
Not in the BU: National Security Work

- National Security - Sensitive activities of the government
  - Directly related to the protection and preservation of the military, economic and productive strength of the U.S.
  - Includes security of the Government from sabotage, subversion, foreign aggression and any other illegal acts which adversely affect the national defense
Not in the BU: Investigative/Audit Function

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.

- OIG
- *** Other auditors may be in the union***
BUS Code Determination Process

• Use the following items for your determination:
  • FLRA definition of BU
    • Remember all are in, unless excluded
  • Position Description
    • Are helpful and strong evidence of duties, but sometime contain outdated information; check with the supervisor/employee
  • Direct Evidence
    • Discussion with the supervisor about specific duties
    • Performance Plan

• Assess against each Exclusion and determine if applicable
  • May be excluded under more than one exclusion
Impact of BUS Code Determinations

• Determines which employees will be represented by the Union
  • **Duty of Fair Representation** - Under 5 USC 7114(a)(1), a union is responsible for representing the interests of all employees in the unit it represents, without discrimination and without regard to union membership.
  • Management/LER use these codes to determine employee rights in accordance with the CBA

• Union Membership
  • Being in a bargaining unit position is **not** the same as being a union member.
  • Employee who are represented by the union can elect to participate in the union and pay union dues

• Challenges from the union/management
  • When there are concerns about the BUS code, WRD will receive challenges from the union or management
Important Notes to Consider

• BUS code determinations are made on a position – not the employee

• BUS code determinations are based on current duties, not future duties

• Series, Grade, Title do not factor into BUS code determinations
Key Takeaways

• Presumes *all employees are included in a bargaining unit* (codified at 5 U.S.C. Chapter 71)

• Recognize the exclusions
  • The only way to *not be included* in a bargaining unit is to be *EXCLUDED* by one of the statutory exclusions defined at 5 U.S.C. § 7112

• Focus on the position and the duties

• Contact the experts as questions arise
Resources

• For additional information please visit:
  • www.FRLA.gov
    • Decisions
    • Representation Resources
  • Collective Bargaining Agreement
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