

Statutory Exclusions from Bargaining Units

Web-based Training Course



Provided by

Federal Labor Relations Authority Office of General Counsel

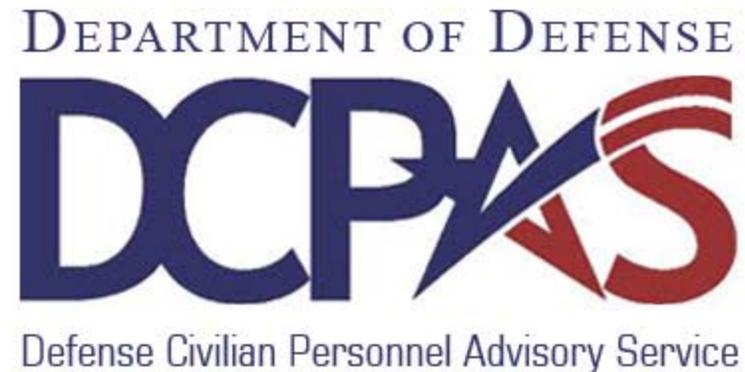
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Statutory Exclusions from Bargaining Units

This course was produced through an interagency agreement between the Department of Defense (DoD) Defense Civilian Personnel Advisory Service (DCPAS), Labor and Employee Relations Division (LERD), under which LERD provided all technical support and production facilities. The Federal Labor Relations Authority (FLRA) Office of General Counsel (OGC) is solely responsible for the substantive content and gratefully acknowledges the DoD for its support of this project.

This course is intended for federal managers, union representatives, and employees who are supporting and interacting with changing organizations. This course tells you how to 1) identify those positions that are excluded from bargaining units and 2) identify those duties performed by employees that exclude them from bargaining units. This course supplements the Impact of Reorganizations on Bargaining Units WBT course also provided by the FLRA.



Lesson 1. How to Use This Course

The Statutory Exclusions from Bargaining Units Web-based training (WBT) describes various positions, such as supervisor, management official, etc., as defined in Section 7112(b) of the Federal Service Labor-Management Relations Statute (the Statute), which must be excluded from bargaining units.

This course teaches you how to identify the duties that exclude employees from bargaining units. Using practice exercises, you will classify different position duties and descriptions and determine whether various positions are excluded from bargaining units.

After completing this course, you will be able to:

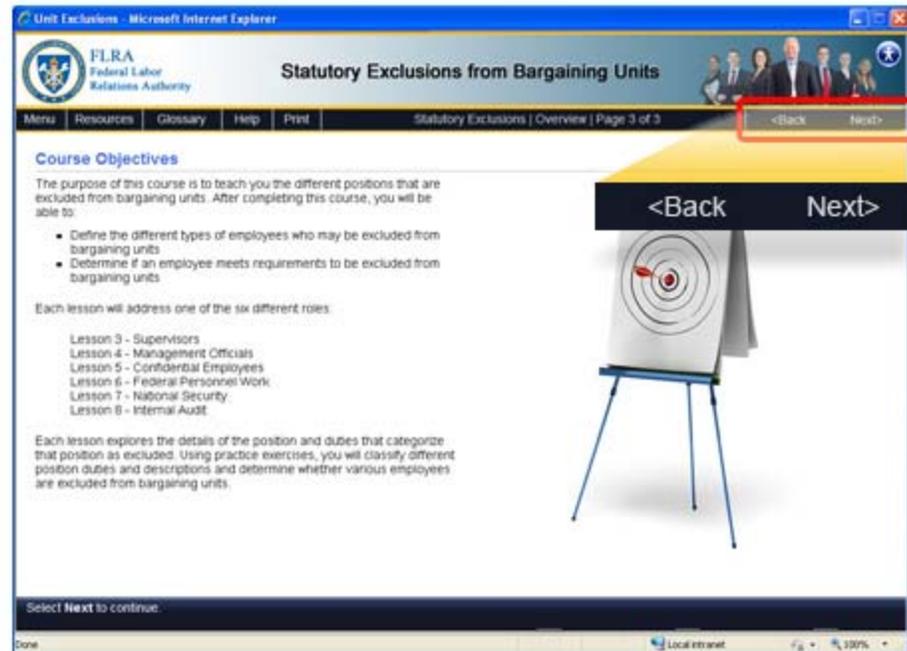
- Define the different types of employees who may be excluded from bargaining units
- Determine if a position meets requirements to be excluded from bargaining units

Each lesson will address one of six different roles and explore the details of the position and duties that categorize that position as excluded.



Navigation

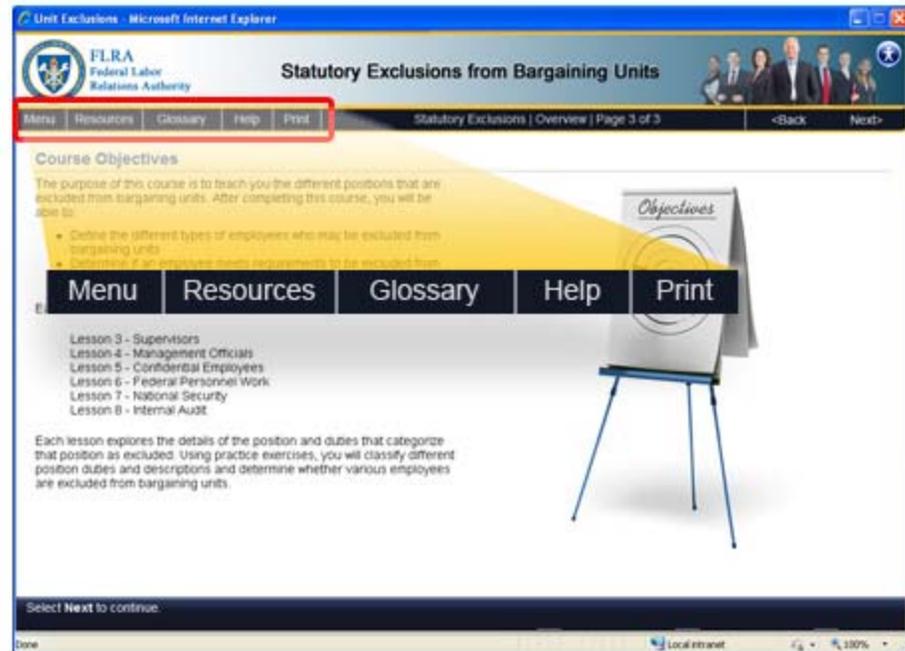
You can navigate sequentially by using the **Next** and **Back** buttons. Using this option, you can start at the beginning of the course with foundational instructional content and continue through increasingly advanced examples and exercises to the end of the course. Or, you can use the course menu to go directly to the lesson or topic of your choice.



Menu Bar

The menu bar is in the upper left of the screen and provides access to course resources controls for the course. It includes the following buttons:

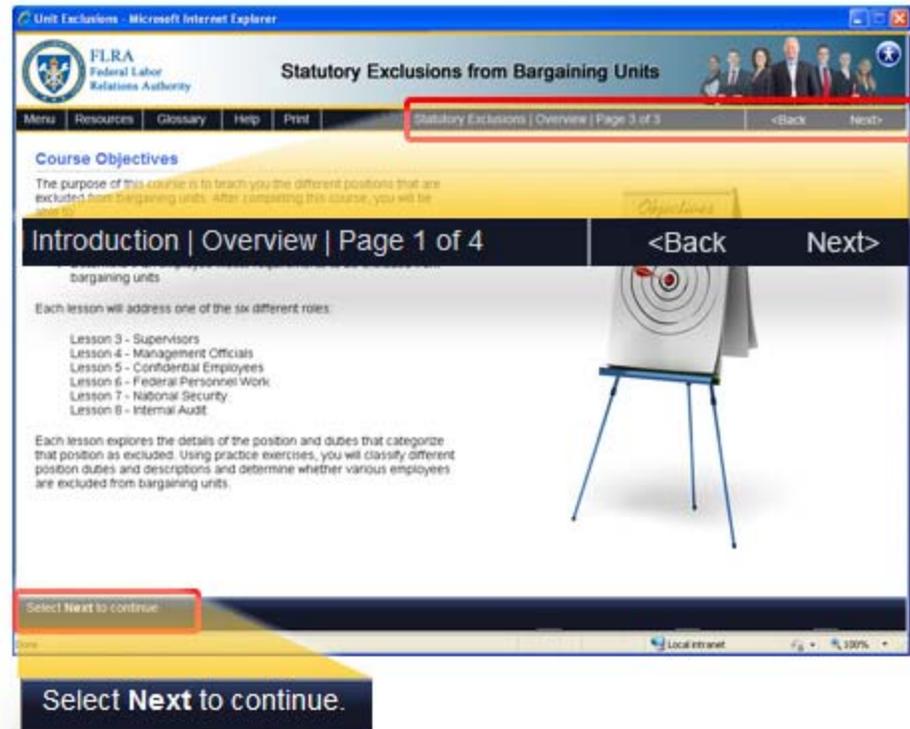
- **Menu:** Opens a menu page that provides links to the first page of each lesson. Selecting a lesson title will expand the lesson and display the lesson topics.
- **Resources:** Opens a page that provides links to supplemental documents and other resources that provide more information on the subjects taught in this course.
- **Glossary:** The glossary button opens a page that contains the terms used in this course and their definitions.
- **Help:** The Help button opens a page that provides detailed information on technical requirements for running the course, course organization, course navigation, and accessibility options.
- **Print:** The Print button opens a printable PDF version of the course. You can print or save the file for later reference.



Navigation Controls

The navigation bar also provides controls that help you move through the course.

- Breadcrumb trail - helps you identify your current location in the course. It indicates the mode, topic, and current page number.
- Navigation buttons - include Back and Next buttons which allow you to move from one page to the next.
- Screen prompt – displays at the bottom of the screen and provides instructions for the current screen.



Accessibility

A blue accessibility option button displays in the upper right corner of the course header. Clicking this button displays a page with detailed information regarding accessibility features. The table below shows the key commands that are available for keyboard accessibility.

Keyboard Shortcut	Command
Menu	ALT + M
Resources	ALT + R
Glossary	ALT + G
Help	ALT + H
Print	ALT + P
Back	ALT + B
Next	ALT + N
Accessibility Help	ALT + A

Completion Requirements

A Certificate of Completion is available at the end of the course.
No evaluation is required to complete the course.



End of Lesson

This lesson told you how to navigate through the course.

To continue to the next lesson, select **Next**, or select **Menu** to go to the lesson of your choice.



Lesson 2. Statutory Exclusions

Section 7112(b) of the Federal Service Labor-Management Relations Statute (the Statute) excludes certain positions from bargaining units. This training session focuses on the most-encountered exclusions:

- Supervisors
- Management Officials
- Confidential Employees
- Employees Engaged in Federal Personnel Work (other than in a purely clerical capacity)
- Employees Performing National Security Work
- Employees Engaged in Internal Audit Functions



General Principles

Two general principles govern determinations that a position is excluded from a bargaining unit under the Statute.

- Determinations are based on the employee's actual duties, rather than on duties that may exist in the future. [See: U.S. Department of Interior, Bureau of Reclamation, Yuma Projects Office, Yuma, AZ, 37 FLRA 239, 245 (1990)]
- Only the Authority is empowered to determine if a position is excluded under the Statute. Arbitrators lack authority to make these determinations. [See: Social Security Administration, Office of Disability Adjudication and Review, National Hearing Center, (SSA,ODAR) 66 FLRA 193 (2011)]



End of Lesson

This lesson provided an overview of statutory exclusions.

To continue to the next lesson, select **Next**, or select **Menu** to choose a different lesson.



Lesson 3. Supervisors

Section 7112(b)(1) states that supervisors must be excluded from bargaining units. Section 7103(a)(10) defines supervisors as:

Employees who have the authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline or remove employees or to adjust their grievances.

These are referred to as the "indicia of supervisory authority."



Indicia of Supervisory Authority

Those who exercise these authorities, or effectively recommend such actions, are supervisors. To be a supervisor, the person must use independent judgment when exercising these authorities; the person cannot exercise these authorities in a routine manner. [See Social Security Administration, 60 FLRA 590 (2005)]

How many of the indicia must a person exercise to be considered a supervisor?

- One is enough.

How many employees does the individual need to supervise?

- One employee is enough. The individual need to be supervising employees, as defined by the Statute.

Does the position need to be classified as a supervisor or have supervisor in its title?

- No. The determination is based on the actual duties, regardless of title.

Can a "lead" be a supervisor?

- Yes, if the person performs supervisory duties.



Secondary Supervisory Indicia

In cases where the evidence does not conclusively establish that an individual possesses supervisory authority within the meaning of the Statute, you can consider secondary indicia of supervisory status. [See: U.S. Department of the Interior, Bureau of Indian Affairs, Navajo Area Office, Gallup, NM, 45 FLRA 646, 654-655 (1992)]

Secondary indicia include attending management meetings, attending supervisory training sessions, and approving employees' leave requests. But, leave approval alone is not enough to demonstrate supervisory status. [See: Veterans Administration, Medical Center, Allen Park, MI, 34 FLRA 423, 426 (1990)]



Supervisory Firefighters and Nurses

Under Section 7103(a)(10) of the Statute, firefighters and nurses must spend a preponderance of employment time exercising supervisory authority to be excluded from bargaining units. Preponderance means a majority of time, or over 50%.

Firefighters customarily work a 24-hour shift. For them, employment time is not the work day or the 24-hour shift. Determination of what constitutes employment time for firefighters depends on the evidence. Employment time focuses on the time spent in work activities. For example, time spent sleeping is excluded from work time. [See: U.S. Department of the Army, Parks Reserve Training Center, Dublin, CA, 61 FLRA 537 (2006)]



Supervisors - Scenario 1



For more information, see: [Social Security Administration, 60 FLRA 590 \(2005\)](#).



The Union filed a petition to clarify the bargaining unit status of a Social Insurance Specialist who is also called a Program Expert.

The Program Expert is assigned to the Program Quality Branch. Management says that the Program Expert is a supervisor, and the Union disagrees.

The Branch Chief evaluates the performance of the Program Expert and the other team members.

The Program Expert is responsible for conducting various special studies and oversees a team of 6 employees.

Evaluate Work Factors

Decide whether each factor below indicates the Program Expert is a supervisor. The Program Expert...

Factor	Choice
1. <input type="checkbox"/> works on the special studies.	A. Yes
2. <input type="checkbox"/> functions as a lead to the six team members. They ask the Program Expert's advice when completing their work on the special studies.	B. No
3. <input type="checkbox"/> has assigned work to the six team members, based on individual employees' expertise, or for developmental opportunities.	
4. <input type="checkbox"/> assigned easier cases to the less-experienced employees.	
5. <input type="checkbox"/> ensures that each employee had the opportunity to work a certain type of case that the Program Expert felt was more challenging.	
6. <input type="checkbox"/> shifts work assignments from one employee to another to balance the workload.	
7. <input type="checkbox"/> reviews flexi-place assignments. If he sees a problem, he tells the Branch Chief.	
8. <input type="checkbox"/> provides the Branch Chief with input regarding employee performance and recommends employees for awards. Management has approved the Program Expert's employee award recommendations.	

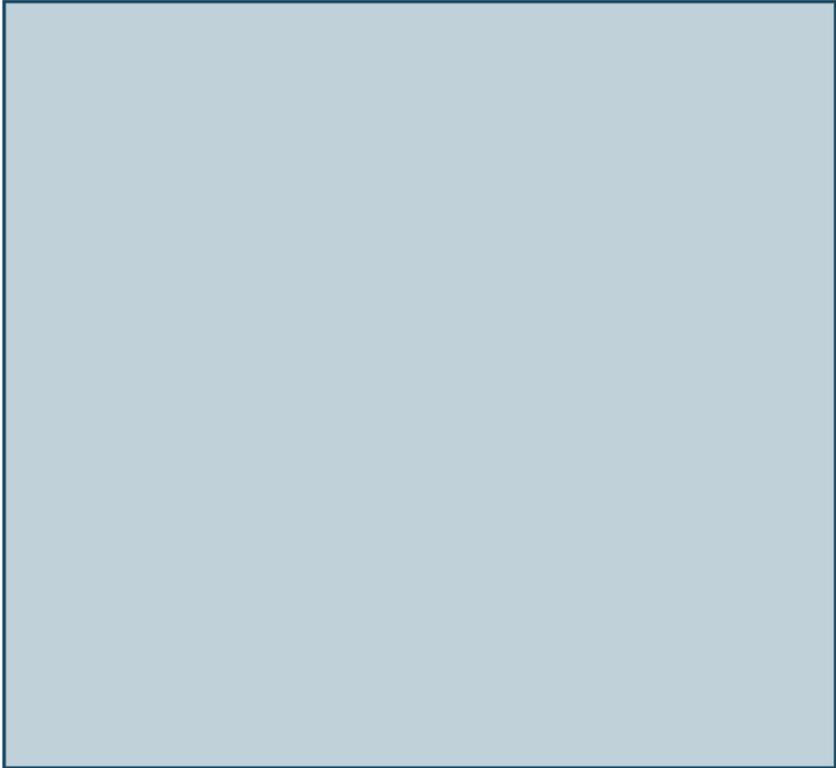
Answers: 1=B, 2=B, 3=A, 4=A, 5=A, 6=A, 7=B, 8=A

Determination

1. Is the Program Analyst a supervisor under section 7103(a)(10) of the Statute?

- Yes
- No

Submit



Yes. The Program Expert consistently exercised independent judgment when assigning work, one of the indicia of supervisory authority. The Program Expert's recommendations for awards have been followed. Thus, the Program Expert effectively recommended employees for awards. Granting of awards is another indicia of supervisory authority.

For more information, see Social Security Administration, 60 FLRA 590 (2005).

Answer: Yes

Supervisors - Scenario 2

Physicist

At issue is the position of Physicist (Optics).

Is this employee a supervisor?



Physicist (Optics)

- part of a three-person team
- performs certain duties as the team lead

For more information, see: [U.S. Department of the Army, 36 FLRA 587, 596 \(1990\)](#).



At issue is the position of Physicist (Optics).

The physicist is part of a three-person team and performs certain duties as the team lead.

Is this employee a supervisor under the Statute?

Evaluate Work Factors

Decide whether each factor below indicates the Physicist is a supervisor.

Factor	
1.	<input type="checkbox"/> About 95% of the time, the Physicist knows to whom he will assign the work when he receives it. Each team member specializes in certain work.
2.	<input type="checkbox"/> The Physicist has never changed any work assignment once he made it.
3.	<input type="checkbox"/> The Physicist reviews the work of the other team members. He has only occasionally asked them to revise their work.
4.	<input type="checkbox"/> The Physicist assigns work to himself and the other team members, but does so in a routine manner.
5.	<input type="checkbox"/> The Physicist decides who will do the work based on the type of project or system for which the team is responsible.

Choice
A. Yes
B. No

Answers: 1-5 = B

Determination

1. Is the Physicist a supervisor under section 7103(a)(10) of the Statute?

- Yes
 No

Submit



No. He does not consistently exercise independent judgment when assigning or reassigning work. He does not consistently exercise independent judgment when reviewing the other team members' work. Rather, his work in assigning and reviewing cases is routine in nature. He does not exercise any of the indicia of supervisory authority. The position of Physicist (Optics) is in the bargaining unit.

For more information, see: U.S. Department of the Army, Army Aviation Systems Command and Army Troop Support Command, St. Louis, Missouri, 36 FLRA 587, 596 (1990).

Answer: No

Supervisors - Scenario 3

Station Chiefs

Firefighters schedule:

- 144 hours / pay period
- 24-hour shifts
- day off every other week

Each shift begins with roll call.

During roll call:

- oncoming crew receives vehicle assignments and updates
- trucks are checked out to crews

OCTOBER 2012

M	T	W	T	F	S	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

senior firefighter

Station Chief:

- Accompanies fire fighters
- Serves as safety officer
- Becomes accountability officer:
 - Informs other agencies
 - Directs crew

crew

For more information, see: [U.S. Department of the Air Force, Offutt Air Force Base, Nebraska, 66 FLRA 616 \(2012\)](#).



At issue is the supervisory status of Station Chiefs of a Federal Fire Department.

Station Chiefs oversee the day-to-day operations of the Station, such as:

- vehicle maintenance
- training
- equipment inspections
- mentoring

In this activity, they apply existing regulations and Fire Department policies; they do not have authority to deviate from these policies. They prepare daily schedules for firefighters and, with the Assistant Chief, create a three-month rotational schedule. When preparing firefighters' schedules, the Station Chiefs take into consideration the experience levels, training needs and performance of firefighters. Several crews of firefighters work during a shift; each crew has its own Crew Chief. Crew Chiefs provide firefighters with administrative and operational supervision.

Firefighters work 144 hours per pay period on 24-hour shifts, with a day off every other week.

On an average day, each shift begins with roll call. During roll call, oncoming firefighters receive information about vehicle assignments and other updates, and trucks are checked out to crews. Roll call is conducted by the Assistant Chief or Station Chief. After roll call, firefighters perform daily station maintenance. Crew Chiefs serve as team leaders during this period. They also conduct daily training for their crews.

On average and on each shift, firefighters respond to emergency calls 475 times per year. On such calls, the senior firefighter is the commanding officer while the remaining crew works to resolve the situation. Crew Chiefs may act as the commanding officer, if no other senior firefighter is present. Once a senior firefighter, usually the Assistant Chief, arrives the Assistant Chief becomes the commanding officer.

The Station Chief on duty accompanies the firefighters and may serve as a safety officer until a senior firefighter arrives. After the senior firefighter arrives, the Station Chief becomes an accountability officer. In this capacity, the Station Chief helps the senior firefighter inform other agencies about the situation, and the Station Chief directs the crew, carrying out the senior firefighter's instructions.

Evaluate Work Factors

Decide whether each factor below indicates Station Chiefs are supervisors. Station Chiefs...

Factor	Choice
1. <input type="checkbox"/> oversee day-to-day administrative matters. In this activity, they enforce existing policies and regulations.	A. Yes
2. <input type="checkbox"/> may or may not participate in roll call.	B. No
3. <input type="checkbox"/> prepare daily schedules for firefighters, assigning firefighters to positions, taking into consideration the experience levels, training needs and performance of firefighters. This takes 30 minutes per day, or about 90 hours per year.	
4. <input type="checkbox"/> prepare annual performance appraisals for Crew Chiefs and serve as the approving official for firefighter evaluations, and recommend awards for both groups of employees. They spend about 30 hours per year in this activity.	
5. <input type="checkbox"/> respond to emergency calls and perform supervisory functions only until the senior firefighter arrives. On average, this is about 5 minutes per call, or 20 hours per year.	
6. <input type="checkbox"/> have minimal authority to grant unscheduled leave requests. Spend little time approving leave requests.	
7. <input type="checkbox"/> must request overtime authorization from higher officials.	
8. <input type="checkbox"/> spend little time resolving worker compensation matters.	
9. <input type="checkbox"/> have served on only a few hiring boards. For each Station Chief, this happens maybe one time per year.	

Answers: 1=B, 2=B, 3=A, 4=A, 5=A, 6=B, 7=B, 8=B, 9=A

Determination

1. Do Station Chiefs spend a preponderance (or majority) of employment time exercising supervisory authority? Yes No

2. Are Station Chiefs supervisors under section 7103(a)(10) of the Statute? Yes No

Submit



No. Station Chiefs do exercise supervisory duties, but they do not spend a preponderance of their employment time exercising these authorities. They spend a little more than 140 hours per year exercising supervisory authorities.

For more information, see: U.S. Department of the Air Force, Offutt Air Force Base, Nebraska, 66 FLRA 616 (2012).

Answers: 1-2 = No

End of Lesson

This lesson described the supervisor exclusion.

To continue to the next lesson, select **Next**, or select **Menu** to choose a different lesson.



Lesson 4. Management Officials

Section 7112(b)(1) excludes management officials from bargaining units. Section 7103(a)(11) of the Statute defines a management official as:

One whose duties and responsibilities require or authorize the individual to formulate, determine or influence the policies of the agency.

A management official is one who creates, establishes, or prescribes general principles, plans, or courses of action for an agency; decides such matters; or brings about or obtains, as a result, the adoption of general principles, plans, or courses of action for an agency. [See: U.S. Department of the Navy, Automatic Data Processing Selection Office, 7 FLRA 172 (1981)]



Are Advisors Management Officials?

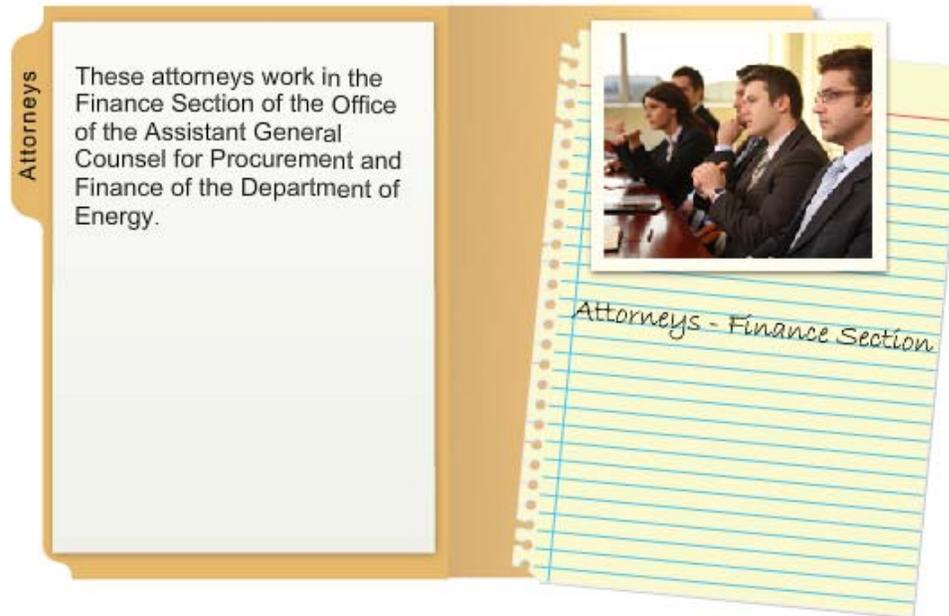
Are those who advise decision-makers management officials?

Subject matter experts or others whose expertise policy makers rely upon when determining policy are not management officials. However, subject matter experts are management officials if they have the ability to bind the agency or commit agency funds, and thereby determine agency policy or a course of action.

[See: USDA, Federal Crop Insurance Corporation, Washington Regional Office, 46 FLRA 1457 (1993)]



Management Officials - Scenario 1



For more information, see: [U.S. Department of Energy, Headquarters, Washington, DC, 40 FLRA 264 \(1991\)](#).



These attorneys work in the Finance Section of the Office of the Assistant General Counsel for Procurement and Finance of the Department of Energy.

Evaluate Work Factors

Decide whether each factor below indicates the attorneys are management officials. The attorneys...

Factor	Choice
1. <input type="checkbox"/> review written products for legal sufficiency.	A. Yes
2. <input type="checkbox"/> serve as legal advisors on task forces with Agency representatives.	B. No
3. <input type="checkbox"/> provide legal advice to the General Counsel and Agency officials on finance matters.	
4. <input type="checkbox"/> provide recommendations on Agency finance programs and activities.	
5. <input type="checkbox"/> have wide discretion to act for the General Counsel and the Agency, making independent decisions regarding energy matters. These decisions are not subject to higher-level review.	
6. <input type="checkbox"/> have full signatory authority to bind the Agency. For example, one Attorney made decisions on behalf of the Agency regarding the foreclosure of a multi-million dollar barge terminal facility, and made decisions concerning the disposal of various alternative fuel plants.	
7. <input type="checkbox"/> make decisions concerning financial closings, involving the sale of assets and disposal of property, and negotiated bankruptcy-type settlement agreements. These decisions are final.	
8. <input type="checkbox"/> have authority to override the action of program offices by withholding concurrence on a program matter.	

Answers: 1-4 = B, 5-8 = A

Determination

1. Are these Attorneys management officials under section 7103(a)(11) of the Statute?

- Yes
- No

Submit

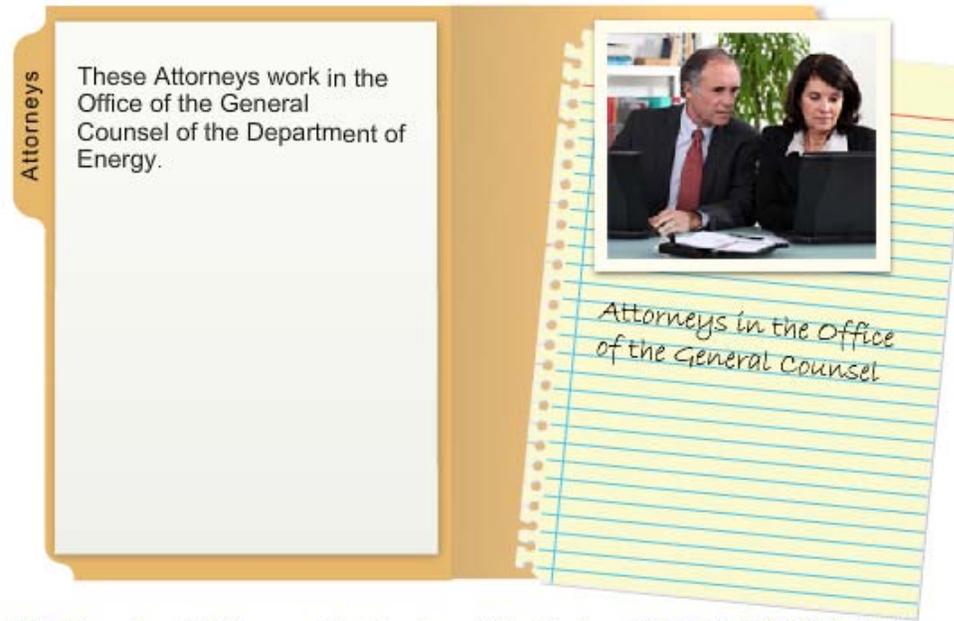


Yes. The Attorneys of the Finance Section effectively influence, or determine, courses of action for the Agency. They have wide discretion to act for the General Counsel and the Agency, making independent and un-reviewed decisions regarding energy matters. They have full signatory authority to bind the Agency. In doing so, they are setting a course of action for the Agency.

For more information, see: U.S. Department of Energy, Headquarters, Washington, DC, 40 FLRA 264 (1991).

Answer: Yes

Management Officials - Scenario 2



For more information, see: [U.S. Department of Energy, Headquarters, Washington, DC, 40 FLRA 264 \(1991\)](#).



These attorneys work in the office of the General Counsel of the Department of Energy.

Evaluate Work Factors

Decide whether each factor below indicates the attorneys are management officials. The attorneys...

Factor	Choice
1. <input type="checkbox"/> provide legal advice on energy-related matters. They offer legal advice to those who promulgate Agency policy.	A. Yes B. No
2. <input type="checkbox"/> participate in litigation on behalf of the Agency.	
3. <input type="checkbox"/> serve on various committees and panels, offering legal advice or technical expertise, but the committees and panels do not formulate Agency policy.	
4. <input type="checkbox"/> draft regulations and other documents in accordance with direction given to them.	
5. <input type="checkbox"/> negotiate interagency and settlement agreements and Agency contracts relating to patents and copyrights. When doing so, they follow the Agency's policy objectives. Attorneys who negotiate patent waivers do so within guidelines and statutory constraints.	

Answers: 1-5 = B

Determination

1. Are these Attorneys management officials under section 7103(a)(11) of the Statute?

- Yes
- No

Submit



No. The Attorneys are highly-trained experts who provide legal advice and assistance within their area of knowledge and who represent the Agency in various activities. They render legal advice to the Agency officials who promulgate policy and engage in litigation activities for the Agency. When serving on panels or committees, they act as resource-persons, providing technical expertise. They do not formulate or effectively influence Agency policy.

When drafting regulations and other documents, they utilize their technical expertise, but do not establish Agency policies. When negotiating agreements and contracts, they implement Agency policy objectives, and do not make policy.
For more information, see: U.S. Department of Energy, Headquarters, Washington, DC, 40 FLRA 264 (1991).

Answer: No

End of Lesson

This lesson described the exclusion for management officials.

To continue to the next lesson, select **Next**, or select **Menu** to choose a different lesson.



Lesson 5. Confidential Employees

Section 7112(b)(2) of the Statute excludes confidential employees from bargaining units. Section 7103(a)(13) of the Statute defines a confidential employee as:

...one who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.

This is called the labor-nexus test.



What Is the Labor-Nexus Test?

The labor-nexus test is a two-part test. An employee is a confidential when:

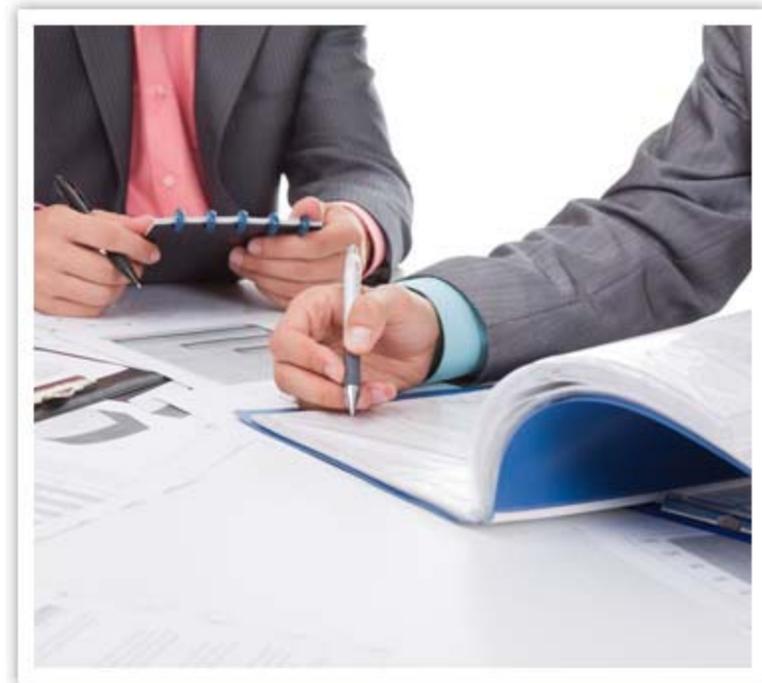
1. There is evidence of a confidential working relationship between the employee and the employee's supervisor or manager.
2. The supervisor or manager is significantly involved in labor-management relations.

[See: U.S. Department of Interior, Bureau of Reclamation Yuma Projects Office, Yuma, AZ, 37 FLRA 239, 244 (1990)]

Both conditions must be present for an employee to be a confidential and excluded from a bargaining unit.

The intent is to exclude from bargaining units those employees who, in the regular course of their work, witness or participate in management's deliberations or learn of management's decisions relating to labor-management relations before the Union does.

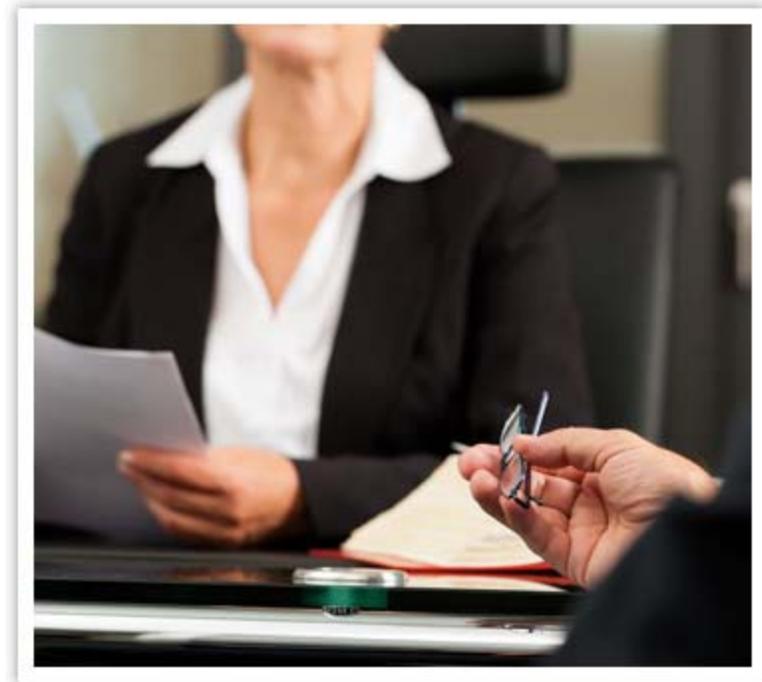
For example, employees who were note-takers at private management meetings were confidential employees, because at these meetings managers discussed whether and how management would resolve grievances. These employees had a confidential working relationship with managers, who were significantly involved in labor-management relations.



Labor-Management Relations

The supervisor or manager must be involved in labor-management relations. Examples of labor-management relations include:

- Developing negotiating positions and proposals
- Preparing arbitrations case for hearings
- Handling unfair labor practice cases
- Preparing management responses to grievances or proposed disciplinary actions



Confidential Capacity

The evidence must show that the employee serves in a confidential capacity to the supervisor or manager when that person is performing labor-management relations work.

Let's take the example of a manager who is a Step 2 official in the negotiated grievance procedure. The manager discusses his decision with his assistant and asks her to draft the Step 2 reply for his review. The assistant is a confidential to the manager who is performing labor-relations work.

Let's look at a different situation. Another manager is also a Step 2 official in the negotiated grievance process. But, she drafts her own reply to the grievance, without any involvement from her assistant. This Step 2 official emails her decision to the Union. In this situation, the assistant is not working in a confidential capacity to the Step 2 official because the Step 2 official performs labor-management relations work.



Confidential Employees

Some employees do not meet the labor-nexus test, but are confidential employees under the Statute. In the normal performance of their duties, these employees obtain advance information concerning management's position on labor-relations issues.

For example, attorneys who represented management in arbitration hearings were confidential employees.

For more information, see: U.S. Department of Labor, Office of the Solicitor, Arlington Field Office, 37 FLRA 1371, 1383 (1990).



Confidential Information

Some employees may, in the regular course of their work, see personal information regarding other employees.

For example, they may see employees' health information or learn of a change in marital status. These employees are not confidential under section 7112(b)(2).

For more information, see: Social Security Administration, 56 FLRA 1015, 1018 (2000).



Confidential Employees - Scenario 1

Benefits Assistants

Management took the position that the Benefits Assistants, who work in the Human Resources Office, are confidential employees and they should be excluded from the bargaining unit.

Assistant Chief of HRE Office

Benefits Assistants:

- work in a confidential capacity to the Assistant Chief of the Human Resources Office

For more information, see: [U.S. Department of Veterans Affairs, No. California Health Care System, 66 FLRA 522 \(2012\)](#).



Management took the position that the Benefit Assistants, who work in the Human Resources Office, are confidential employees and they should be excluded from the bargaining unit.

According to management, the Benefit Assistants work in a confidential capacity to the Assistant Chief of the Human Resources Office, who is significantly involved in labor-management relations.

Evaluate Work Factors – Assistant Chief of Human Resources

Decide whether each factor below indicates the Assistant Chief of Human Resources is significantly engaged in labor-management relations. The Assistant Chief...

Factor	
1.	<input type="checkbox"/> is responsible for overseeing employee and labor relations functions for the facility.
2.	<input type="checkbox"/> develops personnel policies and directives, some of which impact bargaining unit employees.
3.	<input type="checkbox"/> provides advice and counsel to supervisors in grievances, disciplinary problems, and performance evaluations.
4.	<input type="checkbox"/> negotiated directly with the Union on a number of labor-management issues, such as changes in working conditions.

Choice
A. Yes
B. No

Answers: 1-4 = A

Evaluate Work Factors – Benefits Assistants

Decide whether each factor below indicates that Benefit Assistants work in a confidential capacity to the Assistant Chief of Human Resources. Benefit Assistants...

Factor	Choice
1. <input type="checkbox"/> do not attend management meetings at which labor-management issues are discussed.	A. Yes
2. <input type="checkbox"/> are not privy to management's formulation of its decisions in contract negotiations, grievances, disciplinary actions or unfair labor practices.	B. No
3. <input type="checkbox"/> are not used as a sounding-board by the Assistant Chief of the Human Resources Office, when she considers labor-management issues.	
4. <input type="checkbox"/> enter post-decisional personnel actions into the Activity's personnel system. Some of these personnel actions, such as a suspension or demotion, are of a highly-private nature.	

Answers: 1-4 = B

Determination

- 1. Does the Assistant Chief of the Human Resources Office formulate or effectuate management policies in the field of labor-management relations?
 Yes
 No

- 2. Do the Benefit Assistants act in a confidential capacity with respect to the Assistant Chief of the Human Resources Office, as she formulates or effectuates management policies in the field of labor-management relations?
 Yes
 No

Submit



The Assistant Chief of the Human Resources Office formulates or effectuates management policies in the field of labor-management relations and therefore qualify as confidential employees under section 7103(a)(13) of the Statute.

However, the Benefits Assistants are not confidential employees. They do not serve in a confidential capacity to the Assistant Chief of the Human Resources Office, who is significantly involved in labor-management relations.

For more information, see: U.S. Department of Veterans Affairs, Northern California Health Care System, Martinez, CA, 66 FLRA 522 (2012).

Answers: 1=Yes, 2=No

Confidential Employees - Scenario 2

PETITION

Filed by: The Union

To clarify the bargaining unit status of the position of Secretary, GS-6/7 (Operations Maintenance).

Operations and Maintenance Superintendent

Secretary, GS-6/7

- Serves in a confidential capacity to her supervisor

For more information, see: [U.S. Department of the Interior, Bureau of Reclamation, 37 FLRA 239 \(1990\)](#).



The Union filed a petition to clarify the bargaining unit status of the position of Secretary, GS-6/7 (Operations Maintenance).

Management states that the Secretary should be excluded from the unit, because the Secretary serves in a confidential capacity to her supervisor, the Operations and Maintenance Superintendent. The Union disagrees.

Evaluate Work Factors - Operations and Maintenance Superintendent

Decide whether each factor below indicates the Operations and Maintenance Superintendent is significantly engaged in labor-management relations. The Superintendent...

Factor	Choice
1. <input type="checkbox"/> participated in meetings to establish management's position on labor-management issues.	A. Yes
2. <input type="checkbox"/> established management's position on contract language and employee pay rates. In this Activity, employee pay rates are negotiable.	B. No
3. <input type="checkbox"/> has authority to take disciplinary actions.	
4. <input type="checkbox"/> effectuated promotions and transfers.	
5. <input type="checkbox"/> issued performance evaluations and gave awards.	

Answers: 1-5 = A

Evaluate Work Factors - Secretary

Decide whether each factor below indicates the Secretary is a confidential employee. The Secretary...

Factors	Choice
1. <input type="checkbox"/> attended management caucuses where management established its bargaining position on pay raises.	A. Yes
2. <input type="checkbox"/> typed position descriptions, awards, promotions, rehiring actions, and performance appraisals of Division Chiefs and Office Heads, who are supervisors or managers.	B. No
3. <input type="checkbox"/> typed documentation on disciplinary actions and investigations of bargaining unit employees, but had no input into the decision itself.	
4. <input type="checkbox"/> compiled wage comparisons used in establishing management's position on wage offers, but had not been asked to comment on the data.	
5. <input type="checkbox"/> maintained the Operations and Maintenance Superintendent's labor relations files.	
6. <input type="checkbox"/> has not typed any adverse actions, disciplinary actions, reprimands, or responses to grievances or other labor-relations correspondence.	
7. <input type="checkbox"/> acted as a sounding board to the Operations and Maintenance Superintendent when they discussed management's bargaining proposals.	
8. <input type="checkbox"/> had not attended or typed notes of meetings where management formulated contract proposals for the new contract.	

9. handled the Operations and Maintenance Superintendent's confidential mail, but it is unclear if any labor-management relations documents are sent by mail.
10. attended staff meetings with the Operations and Maintenance Superintendent and Division Chiefs, where labor relations and Union activities are discussed.

Answers: 1=A, 2=B, 3=A, 4=A, 5=A, 6=B, 7=A, 8=B, 9=B, 10=A

Determination

- 1. Does the Operations and Maintenance Superintendent formulate or effectuate management policies in the field of labor-management relations?
 Yes
 No

- 2. Does the Secretary act in a confidential capacity with respect to the Operations and Maintenance Superintendent when he formulates or effectuates management policies in the field of labor-management relations?
 Yes
 No

Submit



The Operations and Maintenance Superintendent formulates or effectuates management policies in the field of labor-management relations. The Secretary serves in a confidential capacity to the Operations and Maintenance Superintendent who is significantly involved in labor-management relations. Both are excluded from the bargaining unit under section 7112(b)(2) of the Statute.

For more information, see: U.S. Department of the Interior, Bureau of Reclamation, Yuma Projects Office, Yuma, AZ, 37 FLRA 239 (1990)

Answers: 1-2 = Yes

End of Lesson

This lesson described the exclusion for confidential employees.

To continue to the next lesson, select **Next**, or select **Menu** to choose a different lesson.



Lesson 6. Federal Personnel Work

Section 7112(b)(3) of the Statute excludes, from bargaining units, employees who are engaged in Federal personnel work in other than a purely clerical capacity. The employee's work must directly relate to the personnel operations of the employee's agency. And, the employee must be performing personnel work for employees, as defined by Section 7103(a)(2) of the Statute.

To be excluded from the unit, the employee must exercise independent judgment and discretion in his or her work.

For more information, see Social Security Administration, 56 FLRA 1015, 1018 (2000)



Examples of Employees Who Were Excluded

Examples of those who were excluded because they were engaged in Federal personnel work in other than a purely clerical capacity include:

- Analysts who conduct Commercial Activity or A-76 studies, analyzing workload and determining the organization's staffing. They exercised independent judgment. [See: U.S. Department of the Army, Headquarters, 101st Airborne Division, Fort Campbell, KY, 36 FLRA 598, 603-604 (1990)]
- Personnel Assistant who had signature authority to grant back pay to employees, based on her finding errors, which caused employees to lose salary. [See: EPA, 14 FLRA 25 (1984)]



Examples of Employees Who Were Not Excluded

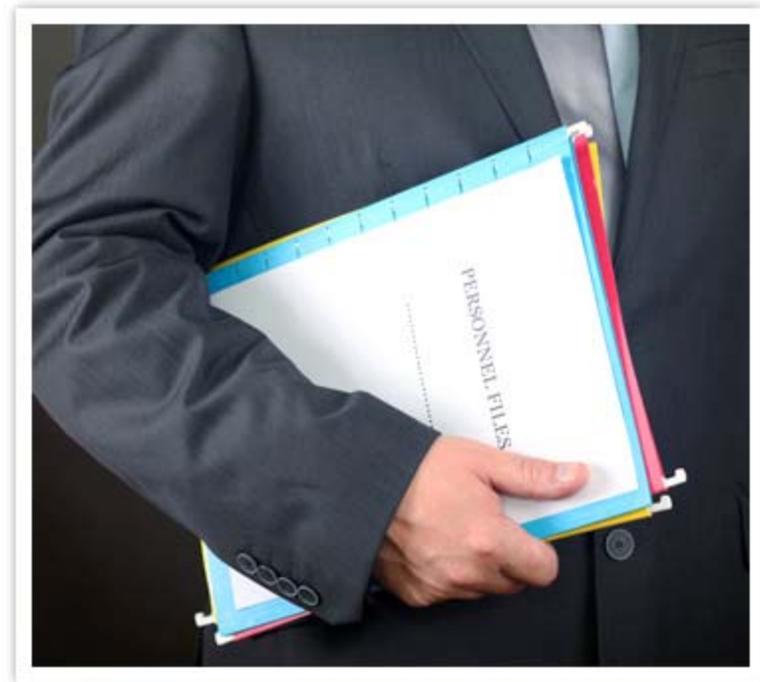
Examples of employees who were engaged in Federal personnel work but were not excluded from a bargaining unit include:

- Assistant who handled time and attendance and tracked use of official time by stewards, because the employee's duties were routine and did not require independent judgment. [See: FDIC, SF, 49 FLRA 1598 (1994)]
- HR employees' personnel work was routine. They processed actions according to established guidelines; employees were not exercising independent judgment. [See: USDA, Forest Service, Albuquerque Service Center, Human Capital Management, Albuquerque, NM, 64 FLRA 239 (2009)]
- Employees engaged in recruiting or processing duties for military personnel, since military are not employees under the Statute. [See: U.S. Army District Recruiting Command-Philadelphia, 12 FLRA 409(1983)]



Private Information

Mere access to personnel or private information about employees does not justify exclusion from a bargaining unit under the Federal personnel work exclusion. [See: U.S. Department of the Treasury, IRS, Washington, DC, 36 FLRA 138 (1990)]



Federal Personnel Work - Scenario 1

Mgmt Analysts

The Management Analysts in Job Numbers A0060 and 11730 work for the Department of the Army, Headquarters, 101st Airborne Division, Fort Campbell, Kentucky.



Management Claims:
Management Analysts are engaged in Federal personnel work under section 7112(b)(3) of the Statute.

For more information, see: [U.S. Department of the Army, Headquarters, 101st Airborne Division, 36 FLRA 598 \(1990\)](#).



The Management Analysts in Job Numbers A0060 and 11730 work for the Department of the Army, Headquarters, 101st Airborne Division, Fort Campbell, Kentucky. The 101st Airborne Division says that the Management Analysts are engaged in Federal personnel work under section 7112(b)(3) of the Statute.

Evaluate Work Factors

Decide whether each of the factors below indicates the management analysts are engaged in Federal personnel work. Management Analysts...

Factor	Choice
1. <input type="checkbox"/> provide management consulting services on all aspects of improving management operations for the installation.	A. Yes B. No
2. <input type="checkbox"/> write work and quality assurance plans.	
3. <input type="checkbox"/> conduct management studies, which focus on missions, organization, functions, work processes, methods and procedures and contain recommendations to resolve management problems or improve the efficiency or economy of operations. Their studies have a direct impact on the personnel or staffing of the particular organization being studied.	
4. <input type="checkbox"/> conduct Commercial Activity (A-76) studies that are designed to permit the Activity to be competitive with private industry and determine whether the Activity's work is contracted-out.	
5. <input type="checkbox"/> develop the Government's "Most Efficient Organization," analyzing work load and the existing organizational structure to determine the most efficient organization for the Government.	
6. <input type="checkbox"/> conduct a cost comparison between the Government's "Most Efficient Organization" and the potential contract to do the same work.	
7. <input type="checkbox"/> consider changes in paperwork or workflow, the restructuring of the organization, the redesigning of jobs, changes in the layout of facilities and equipment, and the elimination or addition of personnel positions.	

8. administer the Productivity Capital Investment Program, which is designed to improve the Activity's efficiency through the purchase of, or investment in, equipment for facilities, which sometimes resulted in the reduction of personnel positions.
9. conducted a study, recommending the need to expand a facility or change the number of personnel or method of operation.

Answers: 1-2 = B, 3-9 = A

Determination

1. Are Management Analysts engaged in Federal personnel work in other than a purely clerical capacity?

- Yes
- No

Submit



Yes. The Management Analysts exercise independent judgment determining the Activity's organizational structure, staffing, method of operations and capital investments. Their work directly affects personnel. They're engaged in personnel work in other than a purely clerical capacity. They are excluded from being in the bargaining unit under section 7112(b)(3) of the Statute.

For more information, see: U.S. Department of the Army, Headquarters, 101st Airborne Division, Fort Campbell, KY, 36 FLRA 598 (1990).

Answer: Yes

Federal Personnel Work - Scenario 2

HR employees

The employees in dispute work in a Human Resources Office of a Veterans Administration (VA) facility.

Union's position:
The Pre-Employment Assistants are eligible to be in the bargaining unit.

VA's position:
The Pre-Employment Assistants should be excluded from the unit under section 7112(b)(3) of the Statute.



Are the Pre-Employment Assistants engaged in Federal personnel work in other than a purely clerical capacity?

For more information, see: [U.S. Department of Veterans Affairs, No. California Health Care System, 66 FLRA 522 \(2012\)](#).



The employees in dispute work in a Human Resources Office of a Veterans Administration (VA) facility. The union takes the position that the Pre-Employment Assistants are eligible to be in the bargaining unit. The VA disagrees and says that the Pre-Employment Assistants are engaged in Federal personnel work in other than a purely clerical capacity and they should be excluded from the unit under section 7112(b)(3) of the Statute.

Evaluate Work Factors

Decide whether each factor below indicates the pre-employment Assistants are engaged in Federal personnel work. The Assistants...

Factor	Choice
1. <input type="checkbox"/> verify proper credentialing, licensure, education and other qualifications. They rely completely on VA regulations and guidance to determine if employees meet requirements.	A. Yes B. No
2. <input type="checkbox"/> confer with HR Specialists if an issue arises that might affect an employee's suitability for employment. The HR Specialists decide what to do.	
3. <input type="checkbox"/> do not verify that all new-employee information is entered into VA's credentialing system. Service Chiefs do this and Service Chiefs make the decision to hire an employee.	
4. <input type="checkbox"/> ensure that all employees have proper identification as identified by the VA. If an employee is unable to obtain an identification card, someone else addresses the issue.	

Answers: 1-4 = B

Determination

1. Are Pre-Employment Assistants engaged in Federal personnel work in other than a purely clerical capacity?

- Yes
- No

Submit



No. Their duties are mostly clerical in nature and do not require them to consistently exercise independent judgment. Verification of proper credentialing, licensure, education and other qualifications is governed by VA regulation and guidance. The employees do not exercise independent judgment and discretion in their activities. The Pre-Employment Assistants are in the bargaining unit.

For more information, see: U.S. Department of Veterans Affairs, Northern California Health Care System, Martinez, CA, 66 FLRA 522 (2012)

Answer: No

End of Lesson

This lesson described the exclusion for employees performing federal personnel work.

To continue to the next lesson, select **Next**, or select **Menu** to choose a different lesson.



Lesson 7. National Security

Section 7112(b)(6) of the Statute excludes from bargaining units:

Employees engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security.

This is called the national security exclusion.



Exclusion Questions

When a party alleges that section 7112(b)(6) excludes an employee from being in a bargaining unit, the Authority asks three questions, all of which must be answered affirmatively in order for the employee to be excluded.

1. Is the employee engaged in intelligence, counterintelligence, investigative, or security work?
2. Does the employee's work involve national security?
3. Does the work that the employee performs directly affect national security?

Each of these questions will be considered in detail in the following pages.



Question 1. Is the Employee Engaged in Security Work?

The first question is whether the employee is engaged in intelligence, counterintelligence, investigative, or security work. The Statute does not define intelligence or counterintelligence work. The Authority uses dictionary definitions. [See: U.S. Nuclear Regulatory Commission, 66 FLRA 311 (2011)] The Authority has not found that an employee performs intelligence or counterintelligence work.

In two cases, the parties agreed that the employees performed investigative work. [See: NRC, 66 FLRA at 315-17; OPM, 5 FLRA 238 (1981)]



What Is Security Work?

The Authority defines security work as a task, duty, function, or activity related to securing, guarding, protecting, or preserving something. It includes the design, analysis, or monitoring of security systems and procedures. [See: U.S. Department of Energy, Oak Ridge Operations, Oak Ridge, TN, 4 FLRA 644 (1980) (Oak Ridge)]

It also includes work that involves the regular use of, or access to, classified information. [See: U.S. DOJ, 52 FLRA 1093, 1102-03 (1997)]

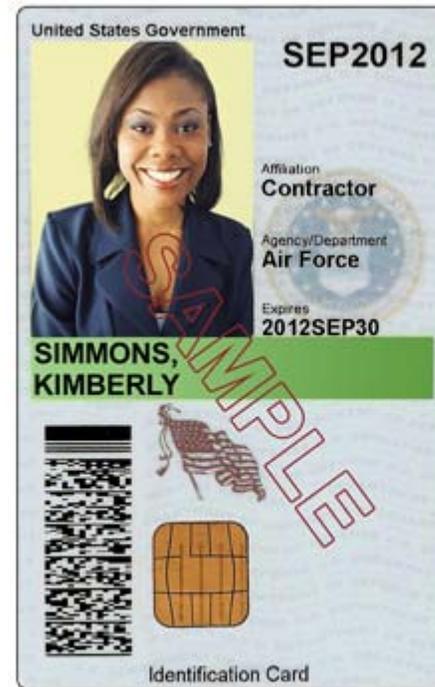
Security work includes regular use of, or access to, certain non-classified information, the Nuclear Regulatory Commission's "safeguards" information. Safeguards information includes the security plans of nuclear facilities. [See: NRC, 66 FLRA at 318-21]



Security Clearance

To be excluded, an employee doesn't need to have a security clearance or be in a position designated as sensitive. But having a security clearance is a significant factor in determining whether an employee performs security work. The focus is on the type and nature of the work performed.

For more information, see: Social Security Administration, Baltimore, MD, 59 FLRA 137 (2003).



Question 2. Does the Employee's Work Involve National Security?

The second question is whether the employee's work involves the national security. The Authority has held that the term "national security" includes:

...those sensitive activities of the government that are directly related to the protection and preservation of the military, economic, and productive strength of the United States.

National security includes the security of the government in domestic and foreign affairs, against or from espionage, sabotage, subversion, foreign aggression, and any other illegal acts which adversely affect the national defense. [See: Oak Ridge, 4 FLRA at 655-56]

It includes protecting the nation's critical infrastructure, as well as defending the nation from sabotage, foreign aggression, and any other illegal acts which adversely affect the national defense. [See: Social Security Administration, Baltimore, MD, 59 FLRA at 144]



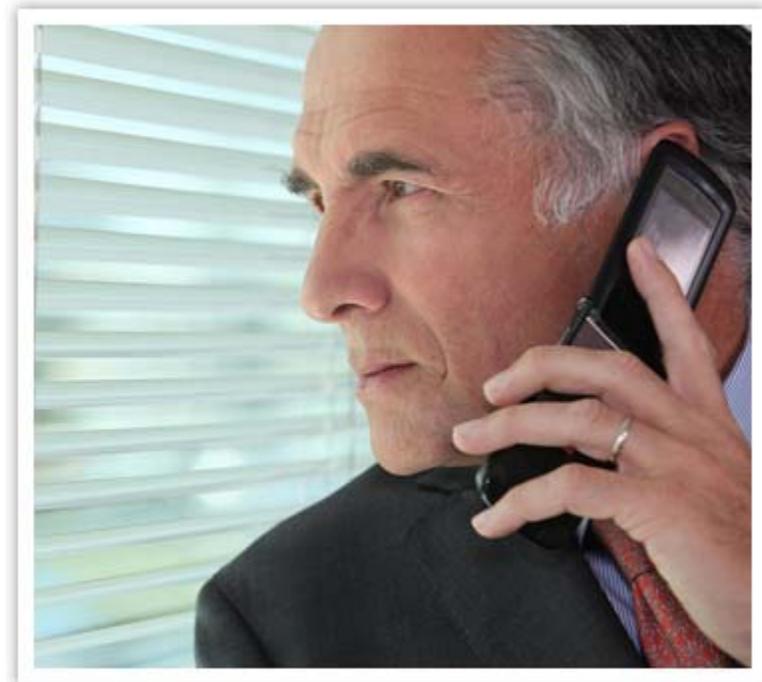
Question 3. Does the Employee's Work Directly Affect National Security?

The third question is whether the employee's work directly affects national security. Directly affects means that there is a straight bearing or unbroken connection that produces a material influence or alteration. Any bearing on national security must be straight, any connection must be unbroken, and any influence or alteration must be material. [See: U.S. Department of Energy, Oak Ridge Operations, Oak Ridge, TN, 4 FLRA 644, 655 (1980)]

Merely having some relation to national security is not sufficient. [See: U.S. Department of Treasury, 65 FLRA 687 (2011)]

The direct effect on national security is determined by the work performed by employees, not the importance of the Activity's mission to national security.

The Authority has determined that a narrow application of this requirement is necessary to fully effectuate Congress's determination that collective bargaining by Federal employees serves the public interest. [See: U.S. Department of Treasury, 65 FLRA 687 (2011)]



When the Directly Affects Test Is Met

The directly affects test has been met when:

- The employee is responsible for the physical security of facilities or designs the security systems for those facilities, and the security systems protect the economic strength of the United States. [See: U.S. Department of the Treasury, IRS, 62 FLRA 298, 303 (2007)]
- The employee regularly used or accessed classified information. Given the nature of classified information, there were no intervening steps between the employee's failure to prevent unauthorized disclosure of the information and the potential effect on national security. [See: U.S. Department of the Air Force, Davis-Monthan Air Force Base, AZ, 62 FLRA 332, 335 (2008)]



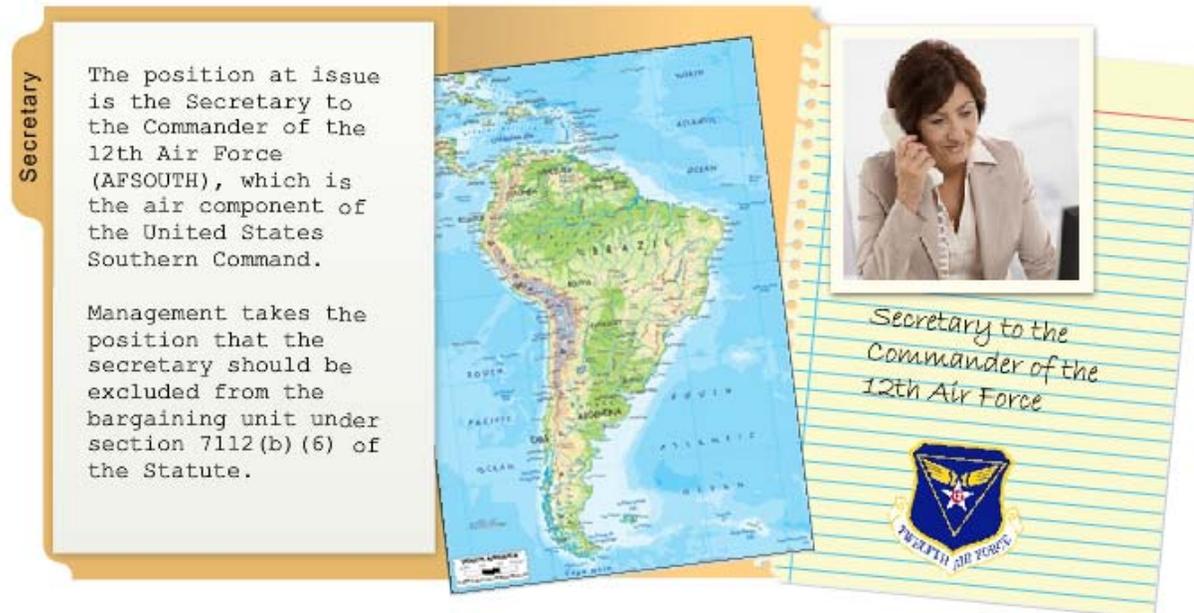
When the Directly Affects Test Is Not Met

The directly affects test is not met when:

- Intervening steps sever, or otherwise limit, an employee's potential effect on national security. [See: USDA, Food Safety & Inspection Service, 61 FLRA 397, 402-03 (2005)]
- The employee's discretion is limited, such as where the employee carries out duties in accordance with established procedures, and the employee has little opportunity for making choices. [See: U.S. Department of the Air Force, Tyndall Air Force Base, 65 FLRA 610 (2011)]



National Security - Scenario 1



For more information, see: [U.S. Department of the Air Force, Davis-Monthan Air Force Base, AZ, 62 FLRA 332 \(2008\)](#).



The position at issue is the Secretary to the Commander of the 12th Air Force (AFSOUTH), which is the air component of the United States Southern Command.

United States Southern Command's area of responsibilities includes 32 countries in Central and South America. AFSOUTH conducts air space and information operations in support of the United States Southern Command and other agencies conducting a global war on terrorism, counter-narcoterrorism, force protection, and humanitarian assistance. Management takes the position that the Secretary to the Commander of the 12th Air Force should be excluded from the bargaining unit under section 7112(b)(6) of the Statute.

Evaluate Work Factors

Decide whether the factors below indicate the Secretary to the Commander is engaged in national security work. The Secretary...

Factor	Choice
1. <input type="checkbox"/> is primarily responsible for reviewing unclassified correspondence requiring the Commander's signature.	A. Yes B. No
2. <input type="checkbox"/> schedules and maintains the Commander's calendar, answering phones and screening visitors.	
3. <input type="checkbox"/> views classified data on a weekly basis, and this may include information on troop deployments.	
4. <input type="checkbox"/> checks for typographical and formatting errors when she reviews classified information.	
5. <input type="checkbox"/> answers classified phones in the Commander or Vice Commander's absence.	
6. <input type="checkbox"/> accesses her own SIPRNET account approximately six to seven times per year with regard to travel itineraries. The SIPRNET is a classified system, containing classified, national security information, such as troop strength, troop movements, etc.	
7. <input type="checkbox"/> has a secret security clearance.	

Answers: 1=B, 2=B, 3-6 = A, 7=B

Determination

1. Is the Secretary engaged in security work that directly affects national security?

- Yes
 No

Submit



Yes. The Secretary is engaged in security work --- She has regular use of, and access to, classified information.

Her work with classified information directly affects national security. The classified information she accesses relates to the nation's military strength. Her duties directly affect national security. There are no intervening steps between the Secretary's failure to prevent unauthorized disclosure of the classified information that she uses or accesses on a regular basis and the potential effect on national security.

For more information, see: U.S. Department of the Air Force, Davis-Monthan Air Force Base, AZ, 62 FLRA 332 (2008).

Answer: Yes

National Security - Scenario 2

Police Officers

Tyndall Air Force Base (AFB) employs 15 police officers.

Tyndall AFB position:
The police officers should be excluded from the bargaining unit under section 7112(b)(6) of the Statute.

The Union disagreed, and filed a petition.



Tyndall Air Force Base police officers are responsible for several security functions at the Base.

For more information, see: [U.S. Department of the Air Force, Tyndall Air Force Base, FL, 65 FLRA 610 \(2011\)](#).



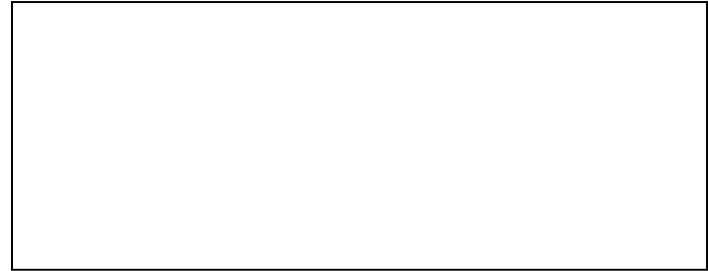
Tyndall Air Force Base employs 15 Police Officers. They are responsible for several security functions at the Base. Tyndall Air Force Base says that the Police Officers should be excluded from the bargaining unit under section 7112(b)(6) of the Statute. The Union disagreed and filed a petition.

Evaluate Work Factors

The police officers are engaged in security work. Decide whether the factors below indicate their work directly affects national security.

Factor	Choice
1. <input type="checkbox"/> are not involved, at all, with diffusing or detonating suspected bombs. Military personnel or others handle such matters.	
2. <input type="checkbox"/> work at Tyndall AFB. The base's mission is to support the combat functions of the Air Force by providing training maintenance personnel and managers who provide combat assistance.	
3. <input type="checkbox"/> attend a briefing about security issues at the beginning of each shift. The information they receive is not typically classified; it is information that is available to the public.	
4. <input type="checkbox"/> are stationed at the front gate and are responsible for checking identification and passes of visitors who enter through the front gate.	
5. <input type="checkbox"/> visually inspect commercial vehicles on weekends. They inspect other types of vehicles only when instructed to do so by management, as part of its random anti-terrorist measures.	
6. <input type="checkbox"/> must respond to alarms that are activated at any of the Air Force Base's facility buildings, which are critical buildings or buildings that contain classified information.	
7. <input type="checkbox"/> respond to alarms at facility buildings, on average, twice a shift.	
8. <input type="checkbox"/> proceed to a facility building (when responding to an alarm) and wait for a building custodian to arrive. The Police Officer and building custodian walk through the building to determine the cause of the alarm.	

9. have never seen unsecured, classified information when responding to facility building alarms.
10. respond to incidents involving suspicious packages or bomb threats, along with military police. The Police Officers and military police cordon off and evacuate the area. The Air Force Base's Fire Chief or another official determines the course of action.



Answers: 1-10 = B

Determination

1. Are the Police Officers excluded from the unit under section 7116(b)(6)?

- Yes
- No

Submit



No. The Police officers are engaged in security work. They patrol the Base, monitor the front gates, respond to suspicious packages and bomb threats, respond to alarms, and provide security for the Base. But, their work does not directly affect the national security. They do not have access to, or regular use of, classified information.

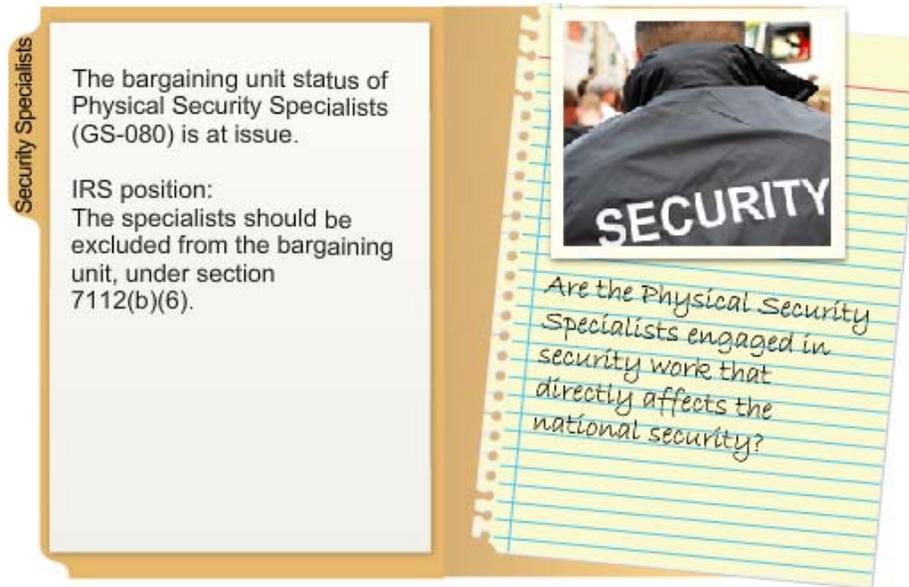
Management argued that any security work performed on the Base necessarily affected national security, because of the Base's mission. But, the Authority bases its decisions on the actual work performed by the employees.

Management argued that their work directly affected the national security because they respond to suspicious packages and bomb threats. But, the Authority concluded that the Police Officers' role in these areas was limited, because they do not decide how to deal with the disposal of suspicious packages, and they do not dispose of the packages, which is the actual threat at issue.

For more information, see: U.S. Department of the Air Force, Tyndall Air Force Base, FL, 65 FLRA 610 (2011).

Answer: No

National Security - Scenario 3



For more information, see: [U.S. Department of the Treasury, IRS, 62 FLRA 298 \(2007\)](#).



The bargaining unit status of Physical Security Specialists (GS-080) is at issue. The IRS takes the position that the Specialists should be excluded from the bargaining unit, under section 7112(b)(6). IRS says that these employees are engaged in security work that directly affects the national security.

Evaluate Work Factors – Security Work

Decide whether the factors below indicate the Specialists are engaged in security work. Physical Security Specialists...

Factor	Choice
1. <input type="checkbox"/> do not have regular use of, or access to, classified information in the course of their work.	A. Yes
2. <input type="checkbox"/> design security systems for new and existing office space.	B. No
3. <input type="checkbox"/> conduct risk assessments (determining if there are security flaws at a facility or office) and ensure that security vulnerabilities are minimized, if not corrected.	
4. <input type="checkbox"/> review the number and types of locks on doors and the alarm systems in place; ensure that Office Emergency Plans and Business Resumption Plans are correct; and inspect facilities for security weaknesses.	
5. <input type="checkbox"/> perform these compliance reviews, document changes to be made, and ensure that they are made.	
6. <input type="checkbox"/> receive incident reports whenever there is a security situation and utilize these reports to monitor continuing problems and determine whether security at the location should be enhanced.	
7. <input type="checkbox"/> direct the work of contractors, who install, maintain, and repair security systems.	
8. <input type="checkbox"/> are not required to hold a security clearance.	

9. handle other access issues. When the IRS Headquarters building in Washington, D.C. was flooded and over 2,000 IRS employees were displaced, Specialists were required to issue and monitor access cards for each of the buildings to which the displaced employees were assigned.

Answers: 1=B, 2=A, 3=A, 4=A, 5=A, 6=A, 7=A, 8=B,9=A

Evaluate Work Factors – IRS’ Work

Decide whether the background factors below pertain to national security.

Factor	Choice
1. <input type="checkbox"/> IRS collects over \$2 trillion in tax revenue each year, which represents approximately 82% of the revenue used for the operation of the Federal Government.	A. Yes
2. <input type="checkbox"/> These IRS buildings include three computing centers that house the IRS master computer files, 10 campuses where tax returns are processed, and over 400 taxpayer assistance centers.	B. No
3. <input type="checkbox"/> During the peak of tax-processing season, it is not uncommon for a campus to have deposits of over \$1 million.	
4. <input type="checkbox"/> IRS offices are located in Federal buildings and privately-owned space.	
5. <input type="checkbox"/> Agency facilities contain currency, sensitive taxpayer information, grand jury information, weapons and surveillance equipment, and banking and reporting transactions.	

Answers: 1=A, 2=A, 3=A, 4=B, 5=A

Evaluate Work Factors – Security Specialists

Decide whether the factors below show that the Physical Security Specialists' work directly affects national security.

Factor	Choice
1. <input type="checkbox"/> The Specialists are responsible for the physical security and emergency preparedness for IRS' 745 buildings, nationwide.	A. Yes
2. <input type="checkbox"/> The Specialists' security risk assessments ensure that security vulnerabilities at all facilities are minimized, if not corrected.	B. No
3. <input type="checkbox"/> During Hurricane Katrina, Specialists worked with the Department of Homeland Security to use cameras attached to the top of an IRS facility in New Orleans to assess building conditions and make determinations on how to maintain operations.	
4. <input type="checkbox"/> The specialists participated in the building assessment following Hurricane Rita to determine whether IRS buildings in Texas were secure.	
5. <input type="checkbox"/> Specialists do not regularly use or access classified information.	

Answers: 1-4 = A, 5 = B

Determination

- 1. Are these Specialists engaged in security work? Yes No
- 2. Does the Specialists' work directly affect national security? Yes No
- 3. Are the Specialists excluded from the bargaining unit under Section 7112(b)(6) of the Statute? Yes No

Submit



The Specialists are engaged in security work. Their work is designed to protect IRS employees and processes and property, such as IRS' computer systems. They grant and restrict access to IRS facilities; participate in the design, installation and implementation of security measures; direct the work of contractors who design and install security systems. There is direct connection between Specialists' work and the ability of IRS to operate securely.

"National security" includes protection of the economic and productive strength of the United States. IRS is essential for the economic and productive strength of the Nation. Any disruption in the IRS' ability to collect taxes, which allows for the funding of governmental operations, would greatly impair the Nation's economic strength.

Result

The Specialists are excluded from the bargaining unit under 7112(b)(6) of the Statute. The Specialists are responsible for designing, analyzing and monitoring security systems for the security of, and access to, IRS facilities and databases, which directly relate to the national security of the Nation.

For more information, see: U.S. Department of the Treasury, IRS, 62 FLRA 298 (2007).

Answers: 1-3 = Yes

End of Lesson

This lesson described the national security exclusion.

To continue to the next lesson, select **Next**, or select **Menu** to choose a different lesson.



Lesson 8. Investigative or Internal Audit

Section 7112(b)(7) of the Statute excludes, from bargaining units, employees who are primarily engaged in investigations or audits of agency employees.

This is a three-part standard, meaning that all three elements must be present to exclude a position under section 7112(b)(7). [See U.S. Department of Justice, Federal Bureau of Prisons, Federal Correction Institute, Seagoville, TX, 65 FLRA 239, 240-241 (2010)]



Three-Part Standard

The standard is met if you can answer yes to the following questions:

1. Are the employees primarily engaged in investigation or audit functions?
2. Are they investigating or auditing agency employees whose duties directly affect the internal security of the agency?
3. Are the investigative or audit functions undertaken to ensure that the duties are discharged honestly and with integrity?

The three-part standard focuses on the amount of time spent in investigative or audit work and the nature of the work.



Part 1: Primarily Engaged in Investigation or Audit

Part 1 of the standard asks if the employees are primarily engaged in investigation or audit functions.

Primarily means a majority of their time – over 50%.

An employee who performs staff investigations between 35% and 40% of the time is not "primarily engaged" in investigation or audit functions. [See: U.S. Department of Justice, Federal Bureau of Prisons, U.S. Penitentiary, McCreary, Pine Knot, KY, 63 FLRA 153 (2009)]



Part 2: Duties Directly Affect the Internal Security of the Agency

The second question asks if the employees are investigating or auditing agency employees whose duties directly affect the internal security of the agency.

This includes those who:

- Audit agency programs or contracts where audits may uncover the failure of employees to comply with programs or may uncover employee fraud, waste, or abuse.
- Investigate a specific unit employee. [See: Small Business Administration, 34 FLRA 392, 400 - 402 (1990)]



Part 3: Ensure that Duties are Discharged Honestly

The third part asks if the investigative or audit functions are undertaken to ensure that the duties are discharged honestly and with integrity.

This includes investigations of fraud, waste, and abuse.

At a prison, it included investigations of employees to see if they had violated civil rights of inmates, a possible failure to discharge duties honestly and with integrity. [See: U.S. Department of Justice, Federal Bureau of Prisons, U.S. Penitentiary, Marion, IL, 55 FLRA 1243 (2000)]



Internal Audits - Scenario 1

Auditors

At issue are Auditors of the Office of Inspector General.

Management's position:
The auditors should be excluded under section 7112(b)(7) of the Statute.

The Union disagrees.

Are the auditors primarily engaged in internal audit activities which affect the internal security of the Agency?

For more information, see: [U.S. Small Business Administration, 34 FLRA 392 \(1990\)](#).



At issue are Auditors of the Office of Inspector General. Management says that they should be excluded under section 7112(b)(7) of the Statute, because they are primarily engaged in internal audit activities which affect the internal security of the Agency. The Union disagrees.

Evaluate Work Factors

Decide whether the factors below indicate the auditors are primarily engaged in internal audit activities which affect the internal security of the Agency.

Factor	Choice
1. <input type="checkbox"/> Work for the Office of Inspector General, and the mission of that office is to determine whether the Agency is properly performing its mission.	A. Yes B. No
2. <input type="checkbox"/> Work for the Office of Inspector General, which audits Agency programs, contracts, operations, and program participants.	
3. <input type="checkbox"/> Perform audits of Agency programs, which have the potential of uncovering employee fraud, misuse of funds, or malfeasance.	
4. <input type="checkbox"/> Perform audit functions related to matters external to Agency employees, but these audits may result in investigation of Agency employees.	
5. <input type="checkbox"/> The Auditors perform these audit functions all of the time.	

Answers: 1-2 = B, 3-5 = A

Determination

1. Should the Auditors be excluded from the bargaining unit under section 7112(b)(7) of the Statute?

- Yes
- No

Submit



Yes. They are primarily engaged in audit or investigation functions which directly affect the internal security of the Agency.

For more information, see: U.S. Small Business Administration, 34 FLRA 392 (1990).

Answer: Yes

Internal Audits - Scenario 2

SIS Tech

The Agency is a correctional institution. The bargaining-unit status of a Special Investigative Support (SIS) Technician is at issue.

Agency's position:
The SIS Technician should be excluded from the bargaining unit under section 7112(b)(7) of the Statute.

The Union disagrees.

Is the SIS Technician primarily engaged in internal audit activities which affect the internal security of the Agency?

For more information, see: [U.S. Department of Justice, Federal Bureau of Prisons, 65 FLRA 239 \(2010\)](#).



The Agency is a Correctional Institution. The bargaining-unit status of a Special Investigative Support (SIS) Technician is at issue. The Agency says that the SIS Technician should be excluded from the bargaining unit under section 7112(b)(7) of the Statute because the SIS Technician is primarily engaged in internal audit activities which affect the internal security of the Agency. The Union disagrees.

Evaluate Work Factors

Decide whether the factors below indicate the SIS Technician is primarily engaged in internal audit activities which affect the internal security of the Agency.

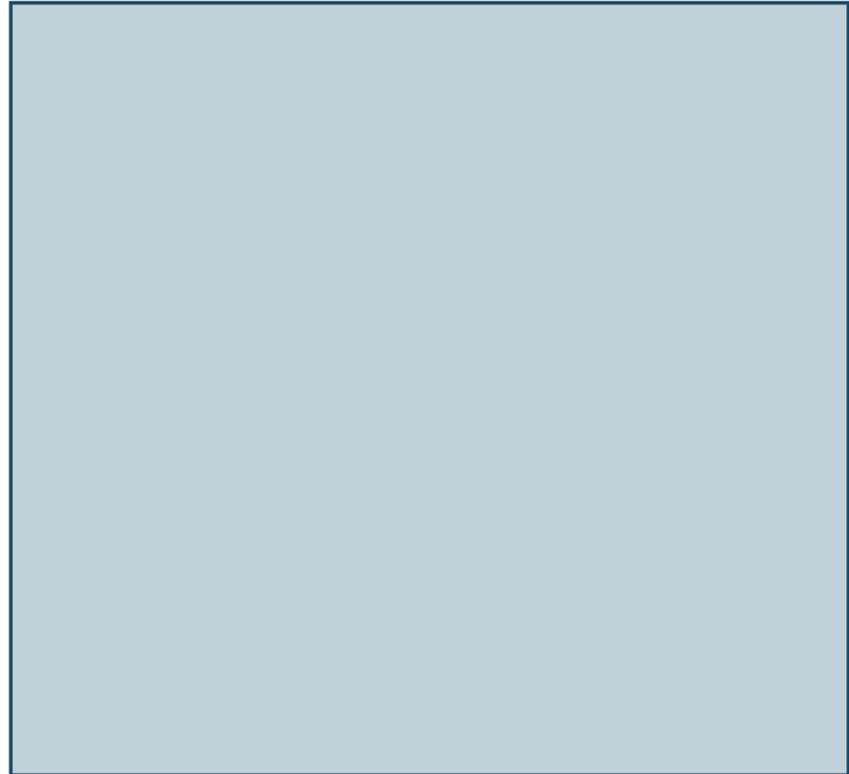
Factor	Choice
1. <input type="checkbox"/> Spends about 90% or 95% of his time conducting investigations.	A. Yes
2. <input type="checkbox"/> Clearly spends about 5% of his time performing work that is not investigatory.	B. No
3. <input type="checkbox"/> Spends about 30% to 40% of his time conducting investigations of Agency staff members.	
4. <input type="checkbox"/> Spends the remainder of his time conducting investigations of prison inmates.	
5. <input type="checkbox"/> The correctional institution asserts that investigation of prison inmates may lead to investigation of Agency staff.	

Answers: 1-5 = B

Determination

1. Does the Technician spend a majority of his or her time engaged in audit or investigation functions which directly affect the internal security of the agency? Yes No
2. Is the Technician primarily engaged in audit or investigation functions which directly affect the internal security of the agency? Yes No
3. Should the SIS Technician be excluded from the bargaining unit under section 7112(b)(7) of the Statute? Yes No

Submit



The answer to all questions is no. The SIS Technician is not primarily engaged in audit or investigation functions which directly affect the internal security of the Agency.

The Authority rejected the assertion of the Correctional Institution that the investigation of prison inmates may lead to staff investigations. In the area of investigations, only the time spent investigating employees is considered. This is distinguishable from auditing Agency programs, because the audits of programs have the potential for uncovering employee fraud, misuse of funds or malfeasance.

For more information, see: U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Seagoville, TX, 65 FLRA 239 (2010).

Answers: 1-3 = No

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This lesson described the exclusion for employees primarily engaged in investigations or audits of agency employees.

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