

CASE DIGEST: *U.S. Dep't of the Treasury, IRS*, 71 FLRA 192 (2019) (Member DuBester dissenting)

This case concerned a Union-filed grievance alleging that the Agency, pursuant to a cost-shifting provision in the parties' collective-bargaining agreement, was liable for all of the costs for a particular factfinding recommendation. Before the Arbitrator, the Agency filed a motion to dismiss, arguing that the dispute did not constitute a "grievance" under the Federal Service Labor-Management Relations Statute (the Statute). The Arbitrator denied the motion. In an interlocutory exception, the Agency argued to the Authority that the dispute was not a "grievance." The Authority granted interlocutory review because the exception, if meritorious, would obviate the need for further arbitral proceedings. The Authority found that the dispute concerned "the effect or interpretation, or claim of breach, of a collective[-]bargaining agreement" – specifically, the cost-shifting provision – so it was a "grievance" under § 7103(a)(9)(C)(i) of the Statute. Therefore, the Authority denied the exception.

Member DuBester dissented, stating that he would have adhered to previous precedent that required a party to demonstrate a "plausible jurisdictional defect" as a matter of law in order to warrant interlocutory review. Applying that standard, he would have dismissed, without prejudice, the Agency's interlocutory exception.

*This case digest is a summary of a decision issued by the Federal Labor Relations Authority, with a short description of the issues and facts of the case. Descriptions contained in this case digest are for informational purposes only, do not constitute legal precedent, and are not intended to be a substitute for the opinion of the Authority.