66 FLRA No. 121

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 723
(Union)

and

UNITED STATES
DEPARTMENT OF THE INTERIOR
U.S. GEOLOGICAL SURVEY
GREAT LAKES SCIENCE CENTER
ANN ARBOR, MICHIGAN
(Agency)

0-NG-3125

_____

DECISION AND ORDER
ON NEGOTIABILITY ISSUES

May 8, 2012

_____

Before the Authority: Carol Waller Pope, Chairman, and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This matter is before the Authority on a negotiability appeal filed by the Union under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute (the Statute), and concerns the negotiability of three proposals.[1] The Agency filed a statement of position (SOP), the Union filed a response, and the Agency filed a reply.

For the reasons that follow, we find that the proposals are outside the duty to bargain, and dismiss the Union's petition for review (petition).

II. Background

The Union represents scientists and technicians (scientific personnel) who conduct research aboard Agency vessels. *See* Record of Post-Petition Conference (Record) at 2. The Agency sought to implement Vessel Operating Procedure 1.6 (the policy), a "medical clearance program" that would establish the "minimum medical fitness" for employees in safety-sensitive positions aboard Agency vessels. SOP at 3. *See also* Record at 2. Under the policy, such employees would be subject to medical and physical exams, as well as random drug and alcohol testing. *See* SOP at 3; Record at 2. The Agency determined that scientific personnel help operate Agency vessels, *see* Record at 2, and that they, like crewmembers, hold safety-sensitive positions, *see* SOP at 3; Reply at 8-9, 11. Accordingly, the Agency decided that it would apply the policy to scientific personnel. *See* Record at 2; *see also* Reply at 9, 11; SOP at 3. The Agency notified the Union of this decision, *see* Record at 2, and in response, the Union submitted the proposals at issue here.

III. Proposals 4, 5, and 6[2]

A. Wording[3]

Proposal 4

> The following terms, which will apply to the implementation of the [policy], are defined to mean as identified below:
>
> *Waivers* — temporary relief (up to 12 months) from a specific requirement prescribed in [the policy].
> *Exception* — permanent relief from a specific requirement prescribed in [the policy].
> *Crewmembers* — Defined as [employees] whose primary duties involve vessel operation and maintenance are defined as vessel crew. Captains (also referred to as marine operation and equipment specialists, or ship operators), Engineers (also referred to as marine machinery repairers), and Mates will be considered the vessel crew.
> *Scientific personnel* — Defined as those [u]nit [e]mployees whose primary duties involve scientific research and survey work. Thus, scientists and technicians represent scientific personnel. Even though scientific personnel may perform some vessel crew type duties, scientists and

[1] There were five proposals in the petition for review, but only three are still in dispute. *See* Petition for Review at 2; Record of Post-Petition Conference at 1.

[2] As all three proposals present similar legal issues, we address them together.

[3] We note that in its petition, and in a subsequent filing, the Union failed to submit the exact wording of its proposals. *See* Aug. 24, 2011 Notice and Order to Show Cause at 1-2; Sept. 16, 2011 Order to Show Cause at 2. The Union submitted the exact wording of the proposals in a subsequent filing. *See* Union's Sept. 29, 2011 Response to Order to Show Cause at 1-3.

> technicians are still considered scientific personnel. Under [46 C.F.R. § 16.105[4]], scientific personnel are not classified as vessel crewmembers.

Union's Sept. 29, 2011 Response to Order to Show Cause at 1.

> Proposal 5
>
> The present-day/current policy for medical and physical standards of the [Agency employees] working aboard [Agency] large vessels shall be retained and continued. Under this current policy, all vessel crew members holding a merchant mariner credential are required to undergo a physical examination and certification every five years in order to renew their credential. This physical examination for renewal of the merchant mariner credential, conducted under the auspices of the U.S. Coast Guard, is both necessary and sufficient for safe operation of the large vessel. The physical examination shall be documented on Coast Guard Form CG-719K (Attached as part of this Counter-Proposal). As stated on the Form, the U.S. Coast Guard requires a physical examination and certification be completed to ensure that mariners are of sound health, have no physical limitations that would hinder or prevent performance of duties, and are free of any medical conditions that pose a risk of sudden incapacitation, which would affect operating or working on vessels.
>
> The Coast Guard approved physical examination is comprehensive with regard to both a medical evaluation and physical ability evaluation. The medical evaluation will include checks on eyesight, color vision, hearing, and other medical criteria. The physical ability evaluation will include checks on: (1) the ability for routine movement on slippery, uneven, and unstable surfaces, (2) the ability for routine access between levels on a vessel, (3) the ability for routine movement between spaces and compartments on a vessel, (4) the ability to open and close watertight doors, (5) the ability to handle ship's stores, (6) the ability for general vessel maintenance, (7) the ability to perform emergency response procedures, (8) the ability to stand routine watch, (9) the ability to react to audible alarms and instructions, (10) the ability to make verbal report or call attention to suspicious or emergency conditions, (11) the ability to participate in firefighting activities, and (12) the ability to abandon ship.
>
> The physical examination required to renew a merchant marine credential is both necessary and more than sufficient to ensure safe operation of large vessels.

Id. at 2.

> Proposal 6
>
> For scientific personnel, no physical examinations shall be required to work on [Agency] large vessels. For any scientific personnel with disabilities, [Agency] management will make reasonable accommodations for these scientific personnel to work on the [Agency] large vessels. Current position descriptions for technicians working aboard [Agency] large vessels will be retained. In order to perform their scientific duties aboard the large vessels, these technicians need to be able to lift 25 pounds and should not be prone to sea sickness.

Id. at 2-3.

[4] Title 46, § 16.105 of the Code of Federal Regulations states, in pertinent part:

> Crewmember means an individual who is:
> (1) Onboard a vessel acting under the authority of a credential issued under this subchapter, whether or not the individual is a member of the vessel's crew; or
> (2) Engaged or employed onboard a vessel owned in the United States that is required by law or regulation to engage, employ, or be operated by an individual holding a credential issued under this subchapter, except for the following:
> . . . .
> Scientific personnel on an oceanographic research vessel[.]

B. Meaning

The parties agree that: (1) Proposal 4 would define as crewmembers only employees whose primary duties involve vessel operations; (2) Proposal 5 would maintain the status quo with regard to medical testing; and (3) Proposal 6 would require the Agency to make reasonable accommodations that are not required by law for scientific personnel with disabilities. *See* Record at 2. In addition, the parties agree that all three proposals would prevent the Agency from applying the policy to scientific personnel, thus barring the Agency from subjecting scientific personnel to medical and physical exams and to random drug and alcohol testing. *See id.*; Petition at 7, 9, 12; Response at 21, 25, 27, 30; 35-36, 40-41. *See also* SOP at 4, 10, 15-16, 19; Reply at 5, 7, 11.

C. Positions of the Parties

1. Agency

The Agency contends that Proposals 4, 5, and 6 affect management's right to determine its internal security practices under § 7106(a)(1) of the Statute. Specifically, the Agency argues that the proposals would prevent the Agency from applying the policy to scientific personnel, and thus prevent the Agency from ensuring that scientific personnel are fit and perform their safety-sensitive work in a drug-free manner. *See* SOP at 3-4, 14, 18-19; *see also* Reply at 5, 7, 9, 11. In addition, the Agency claims that: (1) Proposals 4, 5, and 6 affect management's right to take whatever actions may be necessary to carry out the Agency's mission during emergencies, *see* SOP at 9, 15, 20; (2) Proposals 4 and 6 affect management's rights to assign work and determine the personnel by which Agency operations shall be conducted, *see id.* at 8-9, 19; and (3) Proposal 4 affects management's rights to direct employees and to determine the Agency's organization and number of employees, *see id.* at 8.

Further, the Agency contends that the proposals are not negotiable under § 7106(b) of the Statute. With regard to § 7106(b)(2), the Agency argues that Proposal 4 is not a procedure because it directly interferes with management's right to assign work, Reply at 3, and argues that there is no basis for finding that Proposals 5 and 6 are procedures, *see id.* at 7, 11.

With regard to § 7106(b)(3), the Agency argues that Proposals 4, 5, and 6 are neither arrangements, SOP at 9, 14, 20, nor appropriate, Reply at 3-4, 7, 11, but instead interfere with management rights to an excessive degree, *see* SOP at 8-9, 13-15, 19-20. With regard to internal security, the Agency asserts that, by barring the Agency from subjecting scientific personnel to medical and physical exams and random drug and alcohol testing, the proposals would preclude the Agency from "determining employee fitness for duty," *id.* at 14, and "ensuring that [these personnel] are physically and medically fit and drug and alcohol free," *id.* at 16. The Agency argues that, as a result, the risk of danger to employees, *see id.* at 3, 13, 19, vessel operations, *see id.* at 7, 13, 18, and the public, *see id.* at 10, 13, 15, 20, would increase. More specifically, the Agency contends that if scientific personnel are unfit or using drugs or alcohol, then they may be unable to safely: (1) "work[] on the back deck, assist[] in operating machinery, act[] as a lookout, [engage in] line handling, assist[] with emergency procedures such as firefighting, man overboard, and flooding," *id.* at 18; *see also id.* at 13; (2) control, operate, or monitor the vessel's "'propulsion and steering systems; electric power generators[;] bulge, ballast, fire and cargo pumps[;] deck machinery including winches, windlasses, and lifting equipment[;] lifesaving equipment and appliance[;], firefighting systems and equipment,'" *id.* at 3 (citing 46 C.F.R. § 16.105)[5]; and (3) "engage in . . . lifesaving operations" during emergencies, *id.* at 5; *see also id.* at 9-10, 15, 20. While acknowledging that scientific personnel might not perform "crewmember duties and safety functions" regularly, the Agency asserts that the frequency of such performance is irrelevant because scientific personnel could be needed to perform those functions at any time. *Id.* at 4; *see also id.* at 13, 18-19. Further, the Agency contends that drug and alcohol use have been problems in the past, asserting that: (1) there was a "recent incident of a [c]ontract worker under the influence of alcohol on a vessel," and (2) there have been "various unofficially reported incidents over the years of employees suspected of being under the influence of alcohol or prescription medications." Reply at 5.

With regard to § 7106(b)(1), the Agency asserts that Proposal 4 would "effectively prevent the Agency from assigning any crewmember duties to scientific personnel." *Id.* at 3. Therefore, the Agency argues, Proposal 4 is not electively negotiable. *Id.*

In addition, the Agency contends that Proposals 4, 5, and 6 are contrary to the policy, an Agency regulation for which the Agency asserts there is a compelling need. *See id.* at 5, 9, 13. Also, the Agency

[5] Title 46, § 16.105 of the Code of Federal Regulations states, in pertinent part, that operation of a vessel includes: "Controlling, operating, monitoring, maintaining, or testing: the vessel's propulsion and steering systems; electric power generators; bilge, ballast, fire, and cargo pumps; deck machinery including winches, windlasses, and lifting equipment; lifesaving equipment and appliances; firefighting systems and equipment; and navigation and communication equipment."

argues that: (1) Proposal 4 is contrary to 46 C.F.R. § 16.105, SOP at 7; (2) Proposal 5 is contrary to Executive Order 12,564,[6] SOP at 12, and (3) Proposal 6 is contrary to 29 C.F.R. § 1630.1 *et seq.*,[7] SOP at 18.

2. Union

The Union argues that Proposals 4, 5, and 6 do not affect management's right to determine internal security practices because there is "no valid link, no reasonable connection, between implementation of [the policy] and the Agency's ability to safeguard its personnel, physical property, or operations from internal or external risks." Response at 24; *see also id.* at 33, 44. Moreover, the Union contends that Proposal 4 does not affect management's right to determine internal security because that proposal "seeks only to define waivers, exceptions, crewmembers, and scientific personnel," *id.* at 14, and because that proposal's "definition of waivers and exceptions does not mean that an employee . . . can simply waive those medical requirements that he/she does not meet," *id.* at 11. At the same time, the Union acknowledges that Proposal 4 would preclude the Agency from subjecting scientific personnel to medical and physical exams, as well as random drug and alcohol testing. *See id.* at 12.

The Union also argues that Proposals 4, 5, and 6 do not affect any of the other management rights cited by the Agency, *see id.* at 14, 21, 27, 30, 37-38, 40-41, and that, with regard to management rights under § 7106(a)(2) of the Statute, the proposals enforce applicable laws, specifically: title 46, chapter 21, *id.* at 17, 20; and title 46, chapters 10-11 and 15-16 of the Code of Federal Regulations, *id.* at 17-20, with specific reference to 46 C.F.R. § 16.105, *id.* at 19. *See also id.* at 28-29, 38-39. Also, with regard to Proposal 4, the Union cites title 46, chapters 71, 73, 75, 77, 81, 83, 85, 87, 89, 91, and 93 of the United States Code. *Id.* at 19.

In addition, the Union asserts that Proposals 4, 5, and 6 are procedures under § 7106(b)(2) of the Statute because "[the policy] will have [a] significant impact on . . . scientific personnel. *Id.* at 29; *see also id.* at 20, 40. With regard to Proposals 5 and 6, the Union also asserts that "[w]ho is impacted by the implementation of [the policy] will be determined by procedures agreed upon." *Id.* at 29. *See also id*. at 40.

Further, the Union claims that Proposals 4, 5, and 6 are appropriate arrangements under § 7106(b)(3) of the Statute. As an initial matter, with regard to Proposals 4 and 5, the Union claims that the Authority no longer applies the "'excessive interference' test," and that the proposals are negotiable because they do not abrogate management rights. *Id.* at 12 (citing *U.S. Envtl. Prot. Agency*, 65 FLRA 113 (2010) (Member Beck concurring) (*EPA*)). *See also id.* at 26. Alternatively, the Union contends that Proposals 4, 5, and 6 do not excessively interfere with management rights. *See id.* at 11, 14-17, 26-28, 37-38. In this connection, the Union asserts that the proposals would benefit scientific personnel by relieving them from: (1) performing crewmember duties; (2) being disciplined for performing crewmember duties poorly; (3) undergoing medical and physical exams; and (4) undergoing random drug and alcohol testing. *See id.* at 21, 30, 40-41. In addition, the Union argues that the proposals would not burden the exercise of management's rights. Specifically, the Union contends that the proposals would not impair safety, asserting that the Agency's vessels have operated for decades without a "single accident stemming from a medical limitation, physical limitation, or drug abuse on the part of the regularly employed vessel crew or scientific personnel." *Id.* at 24. *See also id.* at 33, 43-44. As for storm-related emergencies, the Union asserts that "[w]eather is constantly monitored . . . and the vessels do not venture out of harbors unless weather is suitable for working." *Id.* at 16. *See also id.* at 28, 38.

The Union also maintains that the proposals will not have the negative effects alleged by the Agency because scientific personnel are "required to perform very limited duties related to performance of the mission," Record at 2, and "do not perform crewmember duties," Response at 32; *see also id.* at 8-9, 26. In this regard, the Union asserts that duties such as "working on the back deck, assisting in operating machinery, acting as a lookout, line handling, [and] assisting with emergency procedures such as firefighting, man overboard, and flooding," SOP at 13, are "not crewmember duties," are "not arduous and hazardous," and are "done . . . under the close supervision of the crewmembers," Response at 32-33; *see also id.* at 43. And the Union claims that scientific personnel do not perform some of the duties cited by the Agency, such as controlling, operating, or monitoring the vessel's "'propulsion and steering systems; electric power generators; bilge, ballast, fire, and cargo pumps; deck machinery including winches, windlasses, and lifting equipment; lifesaving equipment and appliances; firefighting systems and equipment.'" *Id.* at 9 (quoting 46 C.F.R. § 16.105). The Union acknowledges that, during emergencies, scientific

[6] Executive Order 12,564 provides, in pertinent part, that the head of each Executive agency shall establish a program to test for the use of illegal drugs by employees in sensitive positions. Exec. Order No. 12,564, § 3(a), 51 Fed. Reg. 32,889, *reprinted in* 5 U.S.C. § 7301 note.

[7] The purpose of 29 C.F.R. § 1630.1 *et seq.* is to implement title I of the Americans with Disabilities Act (ADA), as amended by the ADA Amendments Act of 2008, 42 U.S.C. § 12101, *et seq.*, requiring equal employment opportunities for individuals with disabilities. 29 C.F.R. § 1630.1.

personnel "may be required to assist . . . in fire-fighting and ship evacuation," but asserts that "[a]ssisting in th[o]se duties does not make [scientific personnel] crewmembers." *Id.* at 16. *See also id.* at 28, 38.

Also, the Union argues, for two reasons, that Proposal 4 is negotiable at the election of the Agency under § 7106(b)(1). First, the Union asserts that the proposal "seeks to define two types of employees[:] . . . crewmembers and scientific personnel," and argues that the Agency "could negotiate the proper mix of employees and the duties that each group performs." *Id.* at 20. Second, the Union asserts that "[s]ince this [p]roposal could also affect the way the Agency accomplishes [its] mission, [the Agency] could elect to negotiate over the methods and means of performing work." *Id.*

In response to the Agency's claim that the proposals are contrary to the policy, the Union asserts that, by assigning scientific personnel to do the work of crewmembers, the policy is contrary to: 5 U.S.C. § 2301(b)(5),[8] *id.* at 22; 46 U.S.C. § 2101(31),[9] *id.* at 31, 39, 41; and 46 C.F.R. § 16.105, *id.* at 21-22, 31, 41.

Finally, the Union argues that: (1) there is no compelling need for the policy, *id.* at 11, 15, 22, 27, 31, 36-37, 42; (2) Proposal 4 is not contrary to 46 C.F.R. § 16.105, *id.* at 12; (3) Executive Order 12,564 is not a government-wide regulation and not a basis for finding Proposal 5 nonnegotiable, *id.* at 26; (4) the Agency has not identified a government-wide regulation with which Proposal 6 conflicts, *id.* at 37; and (5) the Agency does not explain why Proposal 6 is inconsistent with 29 C.F.R. § 1630.1 *et seq.*

D. Analysis and Conclusions

The Union disputes the Agency's claim that the proposals affect management's rights, argues that the proposals are within the duty to bargain under § 7106(b)(2) and (3), and are also electively negotiable under § 7106(b)(1). In these circumstances, the Authority will first address the proposal's claimed effect. *See, e.g., NAGE, Local R1-109*, 54 FLRA 521, 527 (1998). *See also AFGE, HUD Council of Locals 222, Local 2910*, 54 FLRA 171, 178 (1998). If the proposal affects a management right, the Authority will then consider whether the proposal is negotiable under § 7106(b)(2) or (b)(3), and then, if necessary, whether the proposal is electively negotiable under § 7106(b)(1). *See, e.g., NAGE, Local R1-109*, 54 FLRA at 527.

1. The proposals affect management's right to determine internal security practices.

Management's right to determine internal security practices includes the authority to determine the policies and practices that are part of an agency's plan to secure or safeguard its personnel, physical property, or operations against internal and external risks. *E.g., AFGE, Local 1547*, 63 FLRA 174, 175-76 (2009). Where an agency shows a link or reasonable connection between its security objective and a policy or practice designed to implement that objective, a proposal that conflicts with the policy or practice affects this management right. *Id.* at 176.

The Authority has stated that it is "well established that the implementation of a drug testing program constitutes an exercise of management's right to determine its internal security practices." *Int'l Fed'n of Prof'l & Technical Eng'rs, Local 89*, 48 FLRA 516, 519 (1993) (Member Armendariz concurring) (*IFPTE, Local 89*). *See also, e.g., NTEU*, 43 FLRA 1279, 1302 (1992); *AFGE, AFL-CIO, Local 446*, 43 FLRA 836, 852, 906-07 (1991) (Member Talkin dissenting); *AFGE, AFL-CIO, Nat'l Border Patrol Council & Nat'l Immigration & Naturalization Serv. Council*, 42 FLRA 599, 626 (1991). The Authority also has stated that "[d]rug testing is linked to management's right to determine its internal security practices because it contributes to the objective of protecting the [a]gency's personnel, property, and operations from the threat of employee use of illegal drugs." *IFPTE, Local 89*, 48 FLRA at 519. *See also, e.g., AFSCME, Local 3097*, 42 FLRA 412, 424 (1991). Further, the Authority has found that a proposal similar to Proposals 4, 5, and 6 — which would have limited the types of positions the agency could subject to random drug testing — affected management's right to determine internal security practices. *See id.* at 443.

Here, the Agency argues that applying the policy to scientific personnel will enable the Agency to ensure that scientific personnel are medically and physically fit, and not under the influence of drugs or alcohol, when assisting in the operation of Agency vessels. *See* SOP at 3-4, 14, 18-19. The Agency contends that, as a result, the policy will decrease the risk of danger to employees, vessel operations, and the public. *See id.* at 3-4, 7, 9, 13-14, 18-19. Based on these arguments, and consistent with the precedent set forth above, we find that the Agency has demonstrated a link between its

[8] Title 5, § 2301(b)(5) of the United States Code states, in pertinent part, that the federal workforce should be used "efficiently and effectively.

[9] Title 46, § 2101(31) of the United States Code defines scientific personnel as "individuals on board an oceanographic research vessel only to engage in scientific research, or to instruct or receive instruction in oceanography or limnology."

safety-related objectives and the policy. Further, because Proposals 4, 5, and 6 would bar the Agency from applying the policy to scientific personnel, we find that the proposals conflict with the policy, and therefore affect management's right to determine internal security practices.

In so finding, we acknowledge the Union's claim that the policy is contrary to 5 U.S.C. § 2301(b)(5), 46 U.S.C. § 2101(31), and 46 C.F.R. § 16.105. *See* Response at 21-22, 29, 31, 39, 41. However, negotiability proceedings under § 7117 of the Statute are not the appropriate vehicle to challenge the legality of the policy. *See AFSCME, Local 2830*, 60 FLRA 124, 127 n.* (2004). Accordingly, the Union's arguments do not provide a basis for finding the proposals within the duty to bargain.

2. The Union's claim, that the proposals enforce applicable laws, does not support a finding that the proposals are within the duty to bargain.

The Union claims that the proposals enforce applicable laws. But management rights under § 7106(a)(1) of the Statute — including management's right to determine internal security practices — are not limited by applicable laws. *See, e.g., U.S. Dep't of Transp., FAA*, 58 FLRA 175, 178 (2002). As such, the Union's claim does not provide a basis for finding that the proposals are within the duty to bargain.

3. The proposals are not negotiable under § 7106(b) of the Statute.

i. Section 7106(b)(2)

The Union asserts that the proposals are procedures under § 7106(b)(2) of the Statute because "[the policy] will have [a] significant impact on . . . scientific personnel," and that "[w]ho is impacted by the implementation of [the policy] will be determined by procedures agreed upon." Response at 29. *See also id.* at 20, 40.

Under § 2424.25(c)(1)(ii) of the Authority's Regulations, an exclusive representative must set forth its arguments and authorities supporting any assertion that its proposals constitute an exception to management rights, including "[w]hether and why the proposal[s] . . . constitute[] . . . negotiable procedure[s] as set forth in . . . [§] 7106(b)(2)." When a union fails to support such a claim, the Authority rejects it as a bare assertion. *See, e.g., NLRB Union*, 62 FLRA 397, 403 (2008). Here, the Union claims that the proposals are procedures, but presents no argument or authority to support that claim. *See* Response at 20, 29, 40. Consistent with the above-cited regulation and precedent, we reject the Union's claim regarding § 7106(b)(2) as a bare assertion.

ii. Section 7106(b)(3)

When considering whether a proposal is within the duty to bargain under § 7106(b)(3), the Authority applies the analysis set forth in *National Association of Government Employees, Local R14-87*, 21 FLRA 24 (1986) (*KANG*). Under this analysis, the Authority first determines whether the proposal is intended to be an arrangement for employees adversely affected by the exercise of a management right. *Id.* at 31; *see also U.S. Dep't of the Treasury, Office of the Chief Counsel, IRS v. FLRA*, 960 F.2d 1068, 1073 (D.C. Cir. 1992). To establish that a proposal is an arrangement, a union must identify the effects or reasonably foreseeable effects on employees that flow from the exercise of management's rights and how those effects are adverse. *See KANG*, 21 FLRA at 31. The claimed arrangement must also be sufficiently tailored to compensate employees suffering adverse effects attributable to the exercise of management's rights. *See AFGE, Nat'l Council of Field Labor Locals*, 58 FLRA 616, 617-18 (2003) (citing *NAGE, Local R1-100*, 39 FLRA 762, 766 (1991)). If the proposal is determined to be an arrangement, then the Authority determines whether it is appropriate, or whether it is inappropriate because it excessively interferes with the relevant management right(s).[10] *See KANG*, 21 FLRA at 31-33. In doing so, the Authority weighs the benefits afforded to employees against the intrusion on the exercise of management's rights. *Id.*

Even assuming that the proposals are arrangements, we find, for reasons set forth below, that they are not appropriate because they excessively interfere with management's right to determine internal security practices. *Cf. Int'l Fed'n of Prof'l & Technical Eng'rs, Local 1*, 49 FLRA 225, 244 (1994) (Member Talkin dissenting as to other matters) (assuming an arrangement).

[10] The Union asserts that the Authority "no longer applies the 'excessive interference' test." Response at 12 (citing *EPA*, 65 FLRA 113). While the Authority does not apply an excessive-interference test when reviewing exceptions to arbitration awards, *see EPA*, 65 FLRA at 116-18, or in negotiability cases involving an agency head's disapproval of an agreed-upon contract provision, *see NTEU*, 65 FLRA 509, 511-15 (2011) (Member Beck dissenting), *pet. for review dismissed sub nom. U.S. Dep't of the Treasury, Bureau of the Pub. Debt, Wash., D.C. v. FLRA*, 670 F.3d 1315 (2012), the Authority continues to apply this test when considering whether a bargaining proposal is within the duty to bargain under § 7106(b)(3), *see, e.g., NATCA*, 66 FLRA 213, 216 (2011). Accordingly, we apply it here.

The Union argues that the proposals would benefit scientific personnel by relieving them from: (1) performing crewmember duties; (2) being disciplined for performing crewmember duties poorly; (3) undergoing medical and physical exams; and (4) undergoing random drug and alcohol testing. *See* Response at 21, 30, 40-41. But by precluding the Agency from subjecting scientific personnel to medical and physical exams, and random drug and alcohol testing, the proposals would prevent the Agency from ensuring that scientific personnel are fit, and drug and alcohol free, to safely contribute to vessel operations and help during emergencies. *See* Record at 2; Petition at 7, 9, 12; Response at 21, 30, 40-41; SOP at 7-8, 13, 16, 18. As such, the proposals would impose a heavy burden on the exercise of management's right to determine internal security practices. In this regard, the Authority repeatedly has found proposals that barred or significantly limited random drug testing excessively interfered with management's right to determine internal security practices. *See NAGE, Fed. Union of Scientists & Eng'rs, Local R1-144*, 42 FLRA 730, 741-43 (1991); *AFSCME, Local 3097*, 42 FLRA at 423-25, 443-44; *Int'l Fed'n of Prof'l & Technical Eng'rs, Local 128*, 39 FLRA 1500, 1525-27 (1991); *AFGE Locals*, 38 FLRA at 1079, 1083-84; *NFFE, Local 1437*, 31 FLRA 101, 107-09 (1988); *AFGE, Local 2185*, 31 FLRA 45, 47-49 (1988); *AFGE, AFL-CIO, Local 1759*, 31 FLRA 21, 23-24 (1988); *NAGE, Local R14-9*, 30 FLRA 1083, 1084-87 (1988); *NFFE, Local 15*, 30 FLRA 1046, 1057-58 (1988), *remanded as to other matters sub nom. Dep't of the Army, U.S. Army Armament, Munitions & Chem. Command, Rock Island, Ill. v. FLRA*, No. 88-1239 (D.C. Cir. May 25, 1988), *decision on remand*, 33 FLRA 436 (1988), *rev'd in part and remanded as to other matters sub nom. Dep't of the Army, U.S. Army Aberdeen Proving Ground Installation Support Activity v. FLRA*, 890 F.2d 467 (D.C. Cir. 1989), *decision on remand*, 35 FLRA 936 (1990)).

Weighing the benefits that the proposals would provide against the burdens they would impose, and consistent with the above-cited precedent, we find that the proposals excessively interfere with management's right to determine internal security practices, and are not appropriate arrangements under § 7106(b)(3).

iii. Section 7106(b)(1)

The Union claims that Proposal 4 is negotiable under § 7106(b)(1) of the Statute.[11] *See* Response at 20. Under § 2424.25(c)(1)(i) of the Authority's Regulations, an exclusive representative must set forth its arguments and authorities supporting any assertion that its proposals constitute an exception to management rights, including "[w]hether and why the proposal[s] . . . constitute[] a matter negotiable at the election of the agency under . . . [§] 7106(b)(1)."

a. Types of Employees

The Union argues that Proposal 4 pertains to the "types" of employees. Response at 20. As relevant here, § 7106(b)(1) provides that an agency may elect to negotiate on the "numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty." In determining whether a proposal is within the scope of § 7106(b)(1), the Authority assesses whether the proposal concerns: (1) the numbers, types, and grades; (2) of employees or positions; (3) assigned to any organizational subdivision, work project, or tour of duty. *E.g.*, *NAGE, Local R5-184*, 51 FLRA 386, 394 (1995). In this connection, the phrase "numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty" in § 7106(b)(1) applies to the establishment of agency staffing patterns, or the allocation of staff, for the purpose of an agency's organization and the accomplishment of its work. *E.g.*, *AFGE, Local 1546*, 58 FLRA 368, 369-70 (2003). The Authority interprets "types" as referring to distinguishable classes, kinds, groups, or categories of employees or positions that are relevant to the establishment of staffing patterns. *NAGE, Local R5-184*, 52 FLRA 1024, 1031 (1997) (Member Armendariz dissenting). Because the Union claims that Proposal 4 concerns the "types" of employees within the meaning of § 7106(b)(1), the Union "bears the burden of establishing a relationship between the claimed type and staffing patterns." *Id.* at 1031. *Accord* 5 C.F.R. § 2424.25(c)(1)(i).

The Union asserts that Proposal 4 "seeks to define two types of employees[:] . . . crewmembers and scientific personnel," and argues that the Agency "could negotiate the proper mix of employees and the duties that each group performs." Response at 20. Although the Union asserts that the proposal concerns "types" of "employees," it does not assert that, or explain how, the proposal relates to any "organizational subdivision, work project, or tour of duty," *see NAGE, Local R5-184*, 51 FLRA at 394, and does not establish a relationship between the claimed type and staffing patterns, even though the Union has the burden to do so, *see NAGE, Local R5-184*, 52 FLRA at 1031. *See also Ass'n of Civilian Technicians, Evergreen Chapter*, 55 FLRA 591, 593-94 (1999) (*ACT*). *Accord* 5 C.F.R. § 2424.25(c)(1)(i). As such, the Union has not demonstrated that Proposal 4 concerns the types of

[11] We note that the Union does not make this claim with regard to Proposals 5 and 6.

employees assigned to any organizational subdivision, work project, or tour of duty under § 7106(b)(1).

b. Methods and Means of Performing Work

The Union also argues that the Agency could "elect to negotiate over the methods and means of performing work." Response at 20. In determining whether a proposal concerns the methods or means of performing work under § 7106(b)(1), the Authority has construed "method" to refer to the way in which an agency performs its work, and has construed "means" to refer to any instrumentality, including an agent, tool, device, measure, plan, or policy used by an agency for the accomplishment or furtherance of the performance of its work. *E.g.*, *ACT*, 55 FLRA at 593.

If the proposal concerns a method or a means, then the Authority employs a two-part test to determine whether the proposal affects the management right. *E.g.*, *NTEU, Chapter 83*, 64 FLRA 723, 725 (2010). In this connection, it must be shown that: (1) there is a direct and integral relationship between the method or means the agency has chosen and the accomplishment of the agency's mission; and (2) the proposal would directly interfere with the mission-related purpose for which the method or means was adopted. *E.g.*, *Prof'l Airways Sys. Specialists*, 56 FLRA 798, 803 (2000). Where a party fails to support its claim that a proposal concerns a method or means of performing work, the Authority rejects the claim as a bare assertion. *See, e.g.*, *AFGE, Nat'l Council of Field Labor Locals, Local 2139*, 57 FLRA 292, 295 n.7 (2001) (Member Wasserman dissenting) (*Local 2139*). *Accord* 5 C.F.R. § 2424.25(c)(1)(i).

Here, the Union's only assertion regarding methods and means is that "[s]ince this [p]roposal could also affect the way the Agency accomplishes [its] mission, [the Agency] could elect to negotiate over the methods and means of performing work." Response at 20. The Union does not: (1) explain how the proposal involves a method or a means; (2) demonstrate a direct and integral relationship between a method or means and the accomplishment of the Agency's mission; or (3) demonstrate that the proposal would directly interfere with the mission-related purpose for which a method or means was adopted. *See id.* Accordingly, we reject the Union's claim as a bare assertion. *See Local 2139*, 57 FLRA at 295 n.7.

Based on the foregoing, we find that Proposal 4 is not electively negotiable under § 7106(b)(1).

IV. Order

The petition for review is dismissed.[12]

[12] Therefore, we find it unnecessary to address the Agency's remaining arguments, or the Union's responses to them.