70 FLRA No. 6

INTERNATIONAL FEDERATION
OF PROFESSIONAL
AND TECHNICAL ENGINEERS
LOCAL 4
(Union)

and

UNITED STATES
DEPARTMENT OF THE NAVY
PORTSMOUTH NAVAL SHIPYARD
PORTSMOUTH, NEW HAMPSHIRE
(Agency)

0-MC-0027

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DECISION

October 20, 2016

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Before the Authority: Carol Waller Pope, Chairman, and Ernest DuBester and Patrick Pizzella, Members

I. Statement of the Case

During bargaining over several issues related to the relocation of bargaining-unit employees, the parties reached impasse, and the Union requested the assistance of the Federal Service Impasses Panel (the Panel). The Panel directed the parties to participate in mediation-arbitration with the Chair of the Panel (the arbitrator). The arbitrator issued a decision in *Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire*,[1] resolving the parties' impasse over the remaining issues related to the relocation (the Panel's decision).[2] The Union has filed a motion, with the Authority, asking the Authority to stay the Panel's decision.

The main question before us is whether we should grant the Union's motion to stay the Panel's decision. Because the Union has not demonstrated that a stay is warranted under the circumstances of this case, the answer is no.

II. Background and Panel's Decision

The parties were unable to reach an agreement over the relocation of approximately 100 bargaining-unit employees from three divisions of the Agency. During bargaining, the Agency relocated the employees at issue. As a result, the Union filed three unfair-labor-practice (ULP) charges with the Federal Labor Relations Authority (FLRA), with regard to each respective division of employees, alleging that the Agency violated the statutory duty to bargain in good faith by unilaterally relocating the employees before the completion of negotiations.

Bargaining continued and, ultimately, the parties reached impasse on several issues related to the relocation. The Union filed three requests for assistance with the Panel. The Panel consolidated the requests and, after an investigation, determined that the dispute should be resolved through mediation-arbitration. The Panel advised the parties that if they could not reach a settlement during mediation, a binding decision would be issued to resolve any remaining issues. Because the parties were unable to reach a full agreement during mediation, the Panel, through the arbitrator, issued a binding decision imposing contract terms on the parties with regard to the remaining issues. Specifically, as relevant here, the Panel ordered the parties to adopt the Agency's proposal with regard to the floorplan and cubicle design at the new facility.

The Union filed a motion requesting that the Authority stay the Panel's decision, and the Authority granted the Agency leave to file an opposition to the Union's motion. The parties also filed supplemental submissions, which we discuss below.

[1] 15 FSIP 114, 16 FSIP 5, & 16 FSIP 17 (2016).

[2] *See, e.g., Def. Logistics Agency v. FLRA*, 882 F.2d 104, 106 (4th Cir. 1989) (noting that a Panel-designee's decision should be treated as a decision of the full Panel (citing *DOD Dependents Sch., Alexandria, Va. v. FLRA*, 852 F.2d 779, 783-84 (4th Cir. 1988))); *see also U.S. DOJ & INS*, 37 FLRA 1346, 1358-59 (1990).

III. Preliminary Matter: We will consider some portions of the parties' supplemental submissions, but decline to consider others.

The Union filed four supplemental submissions and the Agency filed three supplemental submissions. The Authority's Regulations do not provide for the filing of supplemental submissions, but § 2429.26 of the Regulations provides that the Authority may, in its discretion, grant leave to file "other documents" as it deems appropriate.[3] Generally, a party must request leave to file a supplemental submission,[4] as well as explain why the Authority should consider the submission.[5] Where a party seeks to raise issues that it could have addressed, or did address, in a previous submission, the Authority ordinarily denies requests to file supplemental submissions concerning those issues.[6] The Authority also has denied a party's request to file a supplemental submission to "respond to a party-opponent's alleged mischaracterization" of the requesting party's position or a misstatement of law.[7]

A. Union's First and Second Supplemental Submissions

The Union failed to request leave to file its first supplemental submission. Consequently, we will not consider this submission.[8] [9]

As for its second submission, the Union requested leave to file, and did file, a response to the Agency's opposition.[10] This submission includes a Union-filed grievance alleging that the Agency violated the False Statements Accountability Act of 1996[11] when it attempted to implement the Panel's decision.[12] The Union does not explain how this grievance is relevant to the standards used by the Authority to determine whether a stay of a Panel decision is warranted. Therefore, we decline to consider this portion of the Union's submission.[13] Moreover, consistent with the principles set forth above, we do not consider the portions of this submission that raise new arguments that the

[3] 5 C.F.R. § 2429.26; *see also AFGE, Local 3652*, 68 FLRA 394, 396 (2015) (*Local 3652*).

[4] *E.g.*, *AFGE, Local 3571*, 67 FLRA 178, 179 (2014) (*Local 3571*) (citing *AFGE, Local 522*, 66 FLRA 560, 560 n.1 (2012); *AFGE, Council 215*, 66 FLRA 137, 137 n.1 (2011)); *see also U.S. DHS, U.S. CBP*, 68 FLRA 1015, 1018 (2015) (Member Pizzella dissenting) (noting that the Authority may consider submissions filed without permission if those submissions address jurisdictional issues).

[5] *Local 3652*, 68 FLRA at 396 (citing *U.S. Dep't of Transp., FAA*, 66 FLRA 441, 444 (2012)).

[6] *U.S. Dep't of HUD*, 69 FLRA 213, 218 (2016) (Member Pizzella dissenting) (citations omitted); *see also Local 3652*, 68 FLRA at 396 (citing *U.S. DHS, U.S. CBP*, 68 FLRA 184, 185 (2015) (*CBP*)).

[7] *Local 3652*, 68 FLRA at 396 (quoting *CBP*, 68 FLRA at 185).

[8] *See, e.g.*, *Local 3571*, 67 FLRA at 179.

[9] Member Pizzella notes that, unlike the majority, he would consider the Union's first supplemental submission. This is an unusual set of circumstances that bring the parties before us and the Authority would be well served in having the benefit of all relevant information. But, as he has noted before, "I do not believe that the Authority should go out its way to catch parties in technical trapfalls and summarily dismiss otherwise meritorious arguments." *U.S. Dep't of the Treasury, IRS*, 68 FLRA 1027, 1037 (2015) (*IRS*) (Dissenting Opinion of Member Pizzella) (quoting *SSA, Office of Disability Adjudication & Review, Region VI, New Orleans, La.*, 67 FLRA 597, 607 (2014) (Dissenting Opinion of Member Pizzella) (citing *U.S. Dep't of the Air Force, Space & Missile Sys. Ctr., L.A. Air Force Base, El Segundo, Cal.*, 67 FLRA 566, 573 (2014) (Dissenting Opinion of Member Pizzella); *AFGE, Local 2198*, 67 FLRA 498, 500 (2014) (Concurring Opinion of Member Pizzella))).

In this respect, Member Pizzella believes that the majority applies § 2429.26 far too narrowly. Section 2429.26 merely states that the Authority "may in their discretion grant leave to file other documents." That language does not presuppose a requirement to file a *separate* or advance document that asks permission to file a supplemental submission. It seems to Member Pizzella that the filing of a supplemental submission itself sufficiently indicates that the party is requesting that the Authority consider its submission. At that point, the Authority has the discretion to consider, or not consider, the document. But, the document should not be ignored simply because the filing party failed to use the magic words "we request leave to file" or "mother may I?" *IRS*, 68 FLRA at 1037.

[10] Union's Second Supp. Submission at 1.

[11] 18 U.S.C. § 1001.

[12] Union's Second Supp. Submission, Attach., Grievance at 1; Union's Second Supp. Submission at 3.

[13] *See Bremerton Metal Trades Council*, 64 FLRA 103, 104 (2009) (*Bremerton*) (moving party must sufficiently explain why the Authority should accept its supplemental submission (citations omitted)).

Union could have made in its motion[14] and allege that the Agency mischaracterized the Union's arguments.[15]

However, the Union's second supplemental submission also contains information concerning the status of an Occupational Safety and Health Administration (OSHA) complaint that the Union filed with the Department of Labor;[16] an Americans with Disabilities Act (ADA) complaint that the Union filed with the Department of Justice (DOJ);[17] and three Union-filed ULP charges[18] – all of which the Union relies on, in its motion, to contend that a stay of the Panel's decision is warranted.[19] The Authority has exercised its discretion to consider a supplemental submission to the extent that the submission narrows, or clarifies, an issue before the Authority for resolution.[20] Because the status of these complaints and ULP charges clarifies some of the issues before the Authority, we consider these portions of the Union's submission.[21]

B. Agency's First and Second Supplemental Submissions

As noted above, the Agency also filed supplemental submissions. In its first submission, the Agency requested leave to file, and did file, a response to the Union's second supplemental submission.[22] We do not consider the portions of the Agency's submission that address the portions of the Union's second supplemental submission that we have declined to consider.[23] However, we will consider the portions of the Agency's submission that further clarify the status of the Union's OSHA and ADA complaints, and ULP charges.[24]

As for the Agency's second supplemental submission,[25] the Agency requested leave to file, and did file, information regarding the FLRA's dismissal of one of the ULP charges filed by the Union.[26] Because this information clarifies the status of one of the ULP charges that the Union relies on to make its argument before the Authority,[27] we consider this submission.[28]

[14] Union's Second Supp. Submission at 3-4 (arguing that: "there are in fact numerous unusual circumstances to justify the request to stay the [Panel's] decision[]"; a stay would "advance[] the purpose of the [Federal Service Labor-Management Relations] Statute" (the Statute); and this case does not present "a 'run of the mill' negotiation impasse").

[15] *Id.* at 3 (claiming, "contrary to the Agency['s] position," that the "request for a stay is [not] an appeal of the [Panel's] decision").

[16] *Id.* at 2.

[17] *Id.*

[18] *Id.* at 1 (referring to Case Nos. BN-CA-15-0461, BN-CA-16-0020, and BN-CA-16-0316).

[19] Mot. at 2.

[20] *See, e.g., U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Jesup, Ga.*, 69 FLRA 197, 199 (2016) (*DOJ*) (citing *U.S. Dep't of the Treasury, IRS, Wash., D.C.*, 66 FLRA 712, 714 (2012) (*Treasury*); *U.S. DOD, Def. Logistics Agency, Def. Supply Ctr. Columbus, Columbus, Ohio*, 60 FLRA 974, 975-76 (2005)).

[21] *See Treasury*, 66 FLRA at 714 (considering a party's supplemental submission containing an arbitrator's supplemental award that "clarified" the arbitrator's earlier award and "affect[ed] the Authority's resolution" of some of the exceptions); *see also DOJ*, 69 FLRA at 200 (considering a party's supplemental submission that affected the party's exceptions and narrowed the issue before the Authority).

[22] Agency's First Supp. Submission at 1.

[23] *See Local 3652*, 68 FLRA at 396-97 (where the Authority declines to consider a document, the Authority also declines to consider a subsequent response to that document (citing *Broad. Bd. of Governors*, 66 FLRA 380, 384 (2011))).

[24] *See, e.g., Treasury*, 66 FLRA at 714.

[25] Agency's Second Supp. Submission.

[26] *Id.* at 3 (Case No. BN-CA-16-0316); Agency's Second Supp. Submission, Enclosure, Dismissal Letter at 1.

[27] *See* Mot. at 2.

[28] *See, e.g., Treasury*, 66 FLRA at 714.

C. Union's Third Supplemental Submission

The Union requested leave to file, and did file, a response to the Agency's first supplemental submission.[29] Regarding the portions of the Union's submission that concern the status of two of the Union's ULP charges,[30] we consider these portions to the extent that they clarify the issues before us.[31] But, regarding the remainder of the submission, we decline to consider any arguments or information that the Union already raised[32] – or could have raised[33] – in its motion or earlier submissions,[34] or any information that the Union does not explain the legal relevance of.[35]

D. Agency's Third Supplemental Submission

The Agency requested leave to file, and did file, a response to the Union's third supplemental submission.[36] We do not consider the parts of the submission that the Agency already raised[37] – or could have raised[38] – in its opposition or earlier supplemental submissions.[39] And we decline to consider the portions of the Agency's third supplemental submission that respond to the portions of the Union's third supplemental submission that we have declined to consider.[40] However, consistent with the above,[41] we consider the part of this submission that concerns the status of one of the Union's ULP charges.[42]

E. Union's Fourth Supplemental Submission

The Union requested leave to file, and did file, a fourth supplemental submission.[43] The Union's submission includes information regarding two Union-filed grievances.[44] One of the grievances alleges that the floorplan violates OSHA regulations (the OSHA grievance);[45] the other grievance alleges that the Agency – in violation of the parties' collective-bargaining agreement and the Federal Service Labor-Management Relations Statute (the Statute) – is attempting to implement a cubicle design that is different than the design contained in the floorplan adopted by the Panel (the cubicle grievance).[46] Because the Union explains how this grievance is relevant to the standards used by the Authority to determine whether a stay of a Panel decision is warranted, and these grievances clarify some of the issues before the Authority, we consider these portions of the Union's submission.[47] For the same reason, we consider the portion of this submission that relates to the status of one of the Union's previously filed ULP charges.[48] But we decline to consider the portions of the submission that recite arguments that the Union already raised[49] and respond to the portions of the Agency's third supplemental submission that we have declined to consider.[50]

[29] Union's Third Supp. Submission.
[30] *Id.* at 1, 2, 5 (Case Nos. BN-CA-15-0461 and BN-CA-16-0316).
[31] *See, e.g.*, *Treasury*, 66 FLRA at 714.
[32] Union's Third Supp. Submission at 1-5 (stating that it filed an appeal to the FLRA's dismissal of the charge in BN-CA-16-0020 and that the charge is "inextricably linked" to the Panel's decision; claiming that BN-CA-15-0461 is "inextricably linked" to the Panel's decision; arguing that the Panel's decision, if implemented, will violate OSHA regulations and the ADA, as well as create safety hazards; and contending that the Authority should maintain the status quo).
[33] *Id.* (contending that the FLRA's issuance of a complaint in BN-CA-15-0461 constitutes "unusual circumstances"; discussing the results of the OSHA inspection; providing the underlying factual circumstances that led to the grievance, reporting that the parties met in unsuccessful attempts to settle the grievance, and alleging that the Agency's implementation of a particular floor plan will violate the Statute; contending that the Agency committed fraud in attempting to implement the Panel's decision, which allegedly constitutes "unusual circumstances"; arguing that the outcome of the grievance is "inextricably linked" to the Panel's decision; making allegations with regard to workstations in a different building; arguing that a stay would further the intent of the Statute).
[34] *See DOJ*, 69 FLRA at 200 (declining to consider any arguments, in a supplemental submission, that the party "raised, or could have raised, in its exceptions").
[35] Union's Third Supp. Submission, Attach., Implementation Letter.
[36] Agency's Third Supp. Submission.
[37] *Id.* at 2-5 (providing background information on BN-CA-15-0461; discussing the results of the OSHA inspection; repeating its OSHA and ADA arguments); *id.*, Enclosure 1.
[38] Agency's Third Supp. Submission, Enclosure 2, Floorplan.
[39] *See DOJ*, 69 FLRA at 200.
[40] *See supra* notes 32 & 33.
[41] *See, e.g.*, *Treasury*, 66 FLRA at 714.
[42] Agency's Third Supp. Submission at 2, 4 (noting that the appeal of BN-CA-16-0316 is pending).
[43] Union's Fourth Supp. Submission.
[44] *Id.* at 1-2.
[45] *Id.* at 1; Union's Fourth Supp. Submission, Attach. 2, Grievance (Grievance 2).
[46] Union's Fourth Supp. Submission at 1-2; Union's Fourth Supp. Submission, Attach. 1, Grievance (Grievance 1).
[47] *See, e.g.*, *Treasury*, 66 FLRA at 714.
[48] Union's Fourth Supp. Submission at 2.
[49] *Id.* at 1 (claiming that the Panel-imposed floorplan violates OSHA regulations).
[50] *Id.* at 2 (discussing why the Agency allegedly changed the floorplan).

IV. Analysis and Conclusion: The Union has not demonstrated that a stay of the Panel's decision is warranted.

Relying on two grievances,[51] three ULP charges,[52] and the complaints that it filed with OSHA and the DOJ,[53] the Union alleges that the circumstances of this case warrant a stay of the Panel's decision.[54]

Section 7119(c)(1) of the Statute[55] establishes the Panel as an independent entity within the FLRA and commits to the Panel the broad authority to make decisions to resolve negotiation impasses.[56] While decisions of the Panel are not directly reviewable by the Authority or the courts,[57] the Authority is empowered to stay Panel decisions in very narrow circumstances.[58]

The Authority has found, only once,[59] that a stay of a Panel order was warranted.[60] In *NTEU* (*NTEU I*), an agency requested that the Authority stay a Panel order directing the parties to submit their issues at impasse to interest arbitration.[61] The disputed proposals concerned bargaining-unit employees' wages and money-related fringe benefits,[62] and the parties had been actively litigating the negotiability of those issues for several years.[63] At the time of the agency's request to stay the Panel's order, two of the Authority's negotiability decisions – involving the same parties and "substantively identical proposals" – were pending before the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit).[64]

The Authority found that the Panel's order – directing the parties to submit the proposals to interest arbitration – was not appropriate.[65] In this regard, the Authority noted that, under *Commander, Carswell Air Force Base, Texas* (*Carswell*),[66] the Panel has the authority to resolve duty-to-bargain issues arising at impasse by applying existing and well-settled Authority precedent.[67] Because the Authority's precedent concerning the negotiability of wages and money-related benefits was pending before the D.C. Circuit, the Authority found that it could not be considered well settled.[68]

Applying the guidance that administrative "tribunals may properly stay their own orders when they have ruled on an admittedly difficult legal question and when the equities of the case suggest that the status quo should be maintained,"[69] the Authority determined that it would be inconsistent with the effective administration of the Statute to require the parties to engage in interest arbitration while the negotiability of "substantively identical" proposals was being litigated before the D.C. Circuit.[70] Accordingly, the Authority stayed the Panel's order until the D.C. Circuit ruled on the related negotiability cases.[71]

Since *NTEU I*, the Authority has applied its power to stay Panel decisions "narrowly."[72] For instance, in *NTEU* (*NTEU II*), the Authority denied a union's request to stay a Panel decision that resolved several issues arising from an impasse that parties had reached during ground-rules negotiations.[73] Specifically, the Authority, relying on *NTEU I*, found that the union did not demonstrate that the Panel's decision was "both . . . [in]appropriate under *Carswell* and . . . intertwined with difficult legal issues pending judicial resolution."[74] The Authority also addressed the "equities of th[e] case," and held that the union failed to show "how a stay would advance the purposes of the Statute and respect the statutory framework for review of Panel orders."[75]

Here, the Union claims that the "result[s]" of the OSHA grievance and the cubicle grievance are "inextricably linked" to the Panel's decision.[76] With regard to the OSHA grievance, the Union asks that the Authority stay the Panel's decision until the grievance resolves whether the Panel-adopted floorplan "is compliant with OSHA regulations."[77]

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[51] *Id.* at 1-2.
[52] Mot. at 2 (referring to Case Nos. BN-CA-15-0461, BN-CA-16-0020, and BN-CA-16-0316).
[53] *Id.*
[54] *Id.* at 3.
[55] 5 U.S.C. § 7119(c)(1).
[56] *NTEU*, 63 FLRA 183, 187 (2009) (*NTEU II*) (citing *Council of Prison Locals v. Brewer*, 735 F.2d 1497, 1499 (D.C. Cir. 1984)).
[57] *E.g.*, *id.* (citing *Brewer*, 735 F.2d at 1499-1500).
[58] *E.g.*, *NTEU*, 32 FLRA 1131, 1136-40 (1988) (*NTEU I*).
[59] *NTEU II*, 63 FLRA at 187 (noting that the Authority has "only [once] . . . granted a request for a stay of a Panel proceeding" (citing *NTEU I*, 32 FLRA at 1132, 1139)).
[60] *See NTEU I*, 32 FLRA at 1140.
[61] *Id.* at 1131.
[62] *Id.* at 1131-32.
[63] *Id.* at 1138.
[64] *Id.* at 1138-39.
[65] *Id.* at 1137-38.
[66] 31 FLRA 620 (1988).
[67] *NTEU I*, 32 FLRA at 1137 (citing *Carswell*, 31 FLRA at 623).
[68] *Id.* at 1137-38.
[69] *Id.* at 1138 (quoting *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 844-45 (D.C. Cir. 1977)).
[70] *Id.* at 1139.
[71] *Id.* at 1140.
[72] *NTEU II*, 63 FLRA at 187.
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] Union's Fourth Supp. Submission at 1.
[77] *Id.*

However, both parties acknowledge that the Union's complaint before OSHA cannot be resolved until the floorplan is constructed.[78] And, with respect to the OSHA grievance, the Union does not contend that an arbitrator would have any greater authority than OSHA to determine whether the currently unconstructed floorplan violates OSHA regulations. As for the cubicle grievance, the Union alleges that the grievance's "outcome . . . will determine [whether] the Agency is [attempting to] install[] a cubicle [design] . . . that is different" from what the Panel ordered.[79] However, the Union does not explain how such an outcome could have any effect on the Panel order. As for its three ULP charges – which are at various stages of case processing[80] – the Union alleges that those charges are "inextricably linked" to the Panel's decision.[81] But it offers no further explanation with regard to that allegation. Because the Union does not allege that the Panel's decision is inappropriate under *Carswell*, and fails to demonstrate that there are any "difficult legal issues" pending judicial resolution similar to the circumstances present in *NTEU I*,[82] we find that the Union provides no basis on which to grant the requested stay.

As for the equities of the case, the Union's arguments fail to show that a stay would advance the purposes of the Statute and respect the statutory framework for the review of Panel orders. The Union argues that "justice . . . requires"[83] the Authority to maintain the status quo "until the . . . [Union's] OSHA and ADA complaints have been resolved."[84] However, as mentioned above, both parties acknowledge that the OSHA and ADA complaints *cannot* be resolved until the floorplan is constructed at the new facility.[85] Thus, granting the stay would actually *delay* the Union's opportunity to vindicate its health and safety concerns before OSHA and the DOJ[86] – as well as delay the construction of the floorplan and the implementation of the other contract terms imposed by the Panel, to which the Union does not object. Although the OSHA and ADA complaints, as the Union notes,[87] could result in the reconfiguration of the floorplan, the Union provides no evidence – such as cost comparisons, cost projections, or other factual support[88] – to demonstrate what the cost of reconfiguring the floorplan would be. Therefore, the Union has not established that the "additional costs . . . [to] the [g]overnment"[89] would warrant granting the stay. For these reasons, we find that the Union has failed to show that the equities of this case warrant maintaining the status quo.[90]

[78] Union's Second Supp. Submission at 2 (the DOJ informed the Union that it could not investigate the floorplan because the floorplan "has not [yet] been constructed," and an OSHA inspector informed the parties it could not make a determination as to whether the "*future* office arrangement . . . ordered by the [Panel]" violated OSHA regulations); Agency's First Supp. Submission at 5-6; Union's Fourth Supp. Submission at 1.

[79] Union's Fourth Supp. Submission at 2.

[80] Union's Second Supp. Submission at 1 (stating that the FLRA dismissed the charge in BN-CA-16-0020, but the Union filed an appeal of that dismissal); Agency's Second Supp. Submission at 2 (noting that the FLRA dismissed the charge in BN-CA-16-0316); Agency's Third Supp. Submission at 2 (stating that a "decision is pending" on the Union's appeal of BN-CA-16-0316); Union's Third Supp. Submission at 1 (noting that the Union filed an appeal to the FLRA's "unilateral[] impos[ition of] a settlement agreement" in BN-CA-15-0461).

[81] Mot. at 2 (quoting *NTEU I*, 32 FLRA at 1138).

[82] *See NTEU II*, 63 FLRA at 184-85, 187; *see also NTEU I*, 32 FLRA at 1138 (granting request to stay, in part, because the pending issues were, according to the D.C. Circuit, "admittedly difficult" (citation omitted)).

[83] Mot. at 3.

[84] *Id.* at 2.

[85] Union's Second Supp. Submission at 2 (the DOJ informed the Union that it could not investigate the floorplan because the floorplan "has not [yet] been constructed," and an OSHA inspector informed the parties it could not make a determination as to whether the "*future* office arrangement . . . ordered by the [Panel]" violated OSHA regulations); Agency's First Supp. Submission at 5-6.

[86] *See NTEU II*, 63 FLRA at 187 (noting, with regard to the equities, that denying the party's request to stay would not "deprive the [u]nion of meaningful and adequate means of vindicating its position" (citing *NATCA, AFL-CIO v. Fed. Serv. Impasses Panel*, 437 F.3d 1256, 1264-65 (D.C. Cir. 2006))).

[87] Mot. at 2.

[88] While Member Pizzella agrees "that the Union has not demonstrated that a stay of the Panel's decision is warranted," he does so for different reasons and believes that the majority applies the Authority's discretion to stay Panel decision far more narrowly than is warranted or how the Authority enumerated that power in *NTEU I*. 32 FLRA 1131 (1988). As the Authority held in that case, the Authority is "less restricted" than a federal court in staying an administrative determination. *Id.* at 1136. Thus, the Authority recognized in *NTEU I* that in determining whether to stay a Panel decision that the "equities of the case," "the special requirements and needs of the Government," and the "effective" administration of the Statute should all be considered. *Id.* at 1137, 1139 (citing 5 U.S.C. § 7101(b)).

On this point, Member Pizzella notes that the Union, in its Request to Stay, argues that the result of a "favorable decision" in any of the pending ULP, OSHA, or ADA complaints would result in "additional costs . . . to reconfigure the floor plan which would not be in the best interest of the Government." Mot. at 2 Member Pizzella agrees with the Union that avoidance of costs could support a request to stay but, unfortunately the Union fails to provide any support for its argument with actual facts or cost projections. Accordingly, Member Pizzella agrees "that the Union has not demonstrated that a stay . . . is warranted" under these circumstances. But Member Pizzella does not agree with the majority's implied suggestion that a "cost comparison" is required and, in effect, is the only evidence that would support a claim that "additional costs" will be incurred and warrant granting a stay.

[89] Mot. at 2.

[90] *See NTEU II*, 63 FLRA at 187.

Based on the foregoing, we find – consistent with the Authority's narrow application of *NTEU I*[91] – that the Union has not demonstrated that a stay of the Panel's decision is warranted.

V. Decision

We deny the Union's motion requesting that the Authority stay the Panel's decision.

[91] *Id.*