70 FLRA No. 10

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
(Agency)

and

NATIONAL TREASURY
EMPLOYEES UNION
(Union)

0-AR-5189

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DECISION

November 4, 2016

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Before the Authority: Carol Waller Pope, Chairman, and Ernest DuBester and Patrick Pizzella, Members
(Member Pizzella dissenting)

I. Statement of the Case

Arbitrator Marsha C. Kelliher found that the Agency violated 5 U.S.C. § 6101[1] when it altered maintenance workers' (the grievants') established work schedules with less than one week's notice. Under § 6101, as relevant here, an agency must assign employees their work schedules not less than one week in advance, except when the agency head determines that scheduling on shorter notice is necessary to avoid seriously handicapping the agency's ability to carry out its functions or to prevent a substantial cost increase.[2] As remedies, the Arbitrator awarded the grievants backpay, and directed the Agency to recredit the grievants any sick or annual leave used because of the Agency's violation. There are three substantive questions before us.

The first question is whether the Arbitrator's award is based on nonfacts. In this regard, the Agency's nonfact arguments: do not identify factual findings that are clearly erroneous; disagree with the Arbitrator's evaluation of the evidence; are based on incorrect premises; or do not show that the Arbitrator clearly erred in making a central factual finding, but for which she would have reached a different result. Because such arguments do not provide bases for finding an arbitration award deficient on nonfact grounds, the answer is no.

The second question is whether the award is contrary to § 6101 because the Arbitrator allegedly: (1) failed to apply the "reasoned[-]determination"[3] analysis articulated in the U.S. Claims Court's decision in *Gahagan v. United States* (*Gahagan*);[4] and (2) focused on the substantial-cost exception to § 6101 without adequately considering whether the Agency made a determination about serious handicaps. Because the Arbitrator applied the reasoned-determination analysis in *Gahagan* and found that the Agency failed to demonstrate that the Agency made a reasoned determination about serious handicaps, the answer is no.

The third question is whether the award is contrary to public policy because the Arbitrator allegedly failed to consider the national-security concerns involved in the grievance. Because the Agency does not demonstrate that the award conflicts with any public policies that are grounded in laws or legal precedents, the answer is no.

II. Background and Arbitrator's Award

The grievants' work involves maintaining the roads that provide access to and from the White House, Central Intelligence Agency, National Security Agency, Andrews Air Force Base, and Ronald Reagan Washington National Airport, among other locations. The Agency altered the grievants' established work schedules so that they could respond to snow events. The Union filed a grievance alleging that the Agency violated § 6101 when it altered the grievants' schedules with less than one week's notice.

The grievance went to arbitration. At arbitration, the parties did not agree to a stipulated issue, so the Arbitrator framed the issue as: "Did the Agency violate [§ 6101] by changing employees' schedules with less than one week's notice due to inclement weather? If so, what is the appropriate remedy?"[5]

The Arbitrator found that § 6101 requires that an agency provide employees their work schedules not less than one week in advance, except when the agency head makes a "reasoned determination"[6] that the agency "would be seriously handicapped in carrying out its functions or that costs would be substantially increased."[7]

Before the Arbitrator, the Union argued that "the schedule changes were defective" because Agency chiefs,

[1] 5 U.S.C. § 6101.
[2] *Id.* § 6101(a)(3).
[3] Exceptions at 3 (quoting *Gahagan v. United States*, 19 Cl. Ct. 168, 179 (1989)).
[4] 19 Cl. Ct. 168.
[5] Award at 5.
[6] *Id.* at 8 (quoting *Gahagan*, 19 Cl. Ct. at 179).
[7] *Id.* at 7 (quoting 5 U.S.C. § 6101(a)(3)).

deputy chiefs, and a supervisor – rather than the Agency head – decided to make those changes.[8] The Arbitrator found that a supervisor who has been delegated the power to schedule overtime falls within the definition of "head of an agency"[9] for purposes of § 6101. Accordingly, the Arbitrator found that the Agency's delegation of power to the chiefs, deputy chiefs, and a supervisor to change the grievants' schedules did not, in and of itself, violate § 6101.

Next, the Arbitrator addressed whether the Agency violated § 6101 by changing the grievants' work schedules less than one week in advance. In this connection, she determined that the evidence failed to demonstrate that the Agency made a reasoned determination that compliance with § 6101's scheduling requirements would seriously handicap the Agency in carrying out its functions or would substantially increase costs. Specifically, the Arbitrator found that "the Agency cannot rely on the [substantial-costs] exception" because "[n]one of the Agency officials who testified . . . articulated how costs would be increased unless the [grievants'] schedules were changed[,] and no documents were introduced to reflect that an economic analysis was undertaken."[10]

The Arbitrator further found that "the record . . . lacked the necessary evidence to support [a conclusion] that the schedule changes . . . were made because Agency officials made a 'reasoned determination' that the Agency 'would be seriously handicapped in carrying out its functions.'"[11] The Arbitrator stated that work-schedule changes "may be necessary during a snow event to fulfill the Agency's mission."[12] But the Arbitrator found that an Agency witness testified that "no one made a determination that [the Agency] would be seriously handicapped" if the Agency did not change the grievants' schedules to respond to the snow events at issue in this case.[13] Further, the Arbitrator found that Agency witnesses provided "inconsistent" rationales for deviating from § 6101's scheduling requirements because they provided reasons that ranged from fatigue to an accident that occurred years ago.[14] In addition, the Arbitrator acknowledged an Agency witness' testimony that he did not believe he could get the grievants to complete the snow removal during the hours when he needed the work performed if he offered them voluntary overtime instead of changing their schedules. But the Arbitrator found that the witness' belief was "based on his assumption[,] and he did not make an effort to determine whether it was in fact the case."[15] Moreover, the Arbitrator found that a different Agency witness' "ability . . . to respond to the snow events without changing [work schedules] further undermined the Agency's position that [schedule] changes . . . were essential to the Agency's mission."[16]

Therefore, the Arbitrator found that the Agency's evidence "was insufficient to rise to the exception under [§ 6101] that the Agency 'would be seriously handicapped in carrying out its functions'" unless it changed the grievants' schedules.[17] Accordingly, she concluded that the Agency violated § 6101 by changing the grievants' work schedules less than one week in advance. As remedies, she awarded the grievants backpay, and directed the Agency to recredit the grievants any sick or annual leave used because of the Agency's violation.

The Agency filed exceptions to the Arbitrator's award, and the Union filed an opposition to the Agency's exceptions.

III. Preliminary Matter: We assume, without deciding, that the Agency's public-policy arguments are properly before us.

The Agency argues that the award is contrary to public policy.[18] The Union contends that the Agency failed to raise its public-policy arguments before the Arbitrator and, thus, that it cannot do so now.[19] Under §§ 2425.4(c) and 2429.5 of the Authority's Regulations, the Authority will not consider any arguments that could have been, but were not, presented to the Arbitrator.[20] Because the Agency's public-policy arguments lack merit for reasons discussed in section IV.C. below, it is unnecessary to decide whether those arguments are properly before us. Rather, we assume, without deciding, that they are.[21]

[8] *Id.*
[9] *Id.*
[10] *Id.* at 8.
[11] *Id.* at 9.
[12] *Id.*
[13] *Id.* at 8.
[14] *Id.* at 8-9.
[15] *Id.* at 8.
[16] *Id.* at 9.
[17] *Id.* at 8 (quoting 5 U.S.C. § 6101(a)(3)).
[18] Exceptions at 5-7.
[19] Opp'n at 7-8.
[20] 5 C.F.R. §§ 2425.4(c), 2429.5.
[21] *See, e.g.*, *NFFE, Local 2189*, 68 FLRA 374, 376 (2015) (Member Pizzella concurring) (assuming without deciding that argument supporting exception was properly before the Authority where considering the argument did not affect disposition of exception); *cf. U.S. Dep't of Agric., U.S. Forest Serv., Law Enf't & Investigations, Region 8*, 68 FLRA 90, 92-93 (2014) (assuming without deciding that argument supporting exception was properly before the Authority where the excepting party may not have raised the argument with the required level of specificity before the arbitrator, but the argument provided no basis for finding the award deficient).

IV. Analysis and Conclusions

A. The award is not based on nonfacts.

The Agency argues that the award is based on several nonfacts.[22] To establish that an award is based on a nonfact, the excepting party must establish that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result.[23] However, disagreement with an arbitrator's evaluation of evidence, including the determination of the weight to be given such evidence, provides no basis for finding the award deficient.[24]

The Agency argues that the award is based on nonfacts because the Arbitrator: (1) "focused too heavily" on the substantial-cost exception even though the "Agency's case was predicated entirely on the [serious-handicap] exception" to § 6101;[25] (2) failed to explain what constituted "necessary evidence"[26] of a reasoned determination that the Agency "would be seriously handicapped in carrying out its functions" if it did not change the grievants' schedules;[27] and (3) "failed to take into account," and made no determinations concerning, "the unique national[-]security implications involved in this matter."[28] None of these arguments identify any factual findings that are clearly erroneous, so they provide no basis for finding that the award is based on nonfacts.[29]

Additionally, according to the Agency, the award is based on a nonfact because the Arbitrator failed to consider evidence – specifically, an Agency witness' testimony that he did not believe that he could get the grievants to complete the snow removal during the hours when he needed the work performed if he offered them voluntary overtime instead of changing their schedules.[30] However, the Arbitrator *did* consider this testimony; she just found it insufficient to satisfy § 6101's exception clause because his belief was "based on his assumption[,] and he did not make an effort to determine whether it was in fact the case."[31] Thus, the Agency's argument challenges the weight that the Arbitrator accorded this witness' testimony. Such challenge provides no basis for finding an award deficient on nonfact grounds, so we reject this argument.[32]

Further, the Agency argues that the award is based on a nonfact because the Arbitrator allegedly reached "two . . . differing conclusions – either one of which may be true, but both of which cannot be true."[33] Specifically, the Agency challenges the Arbitrator's allegedly "irreconcilable" conclusions that:[34] (1) work-schedule changes "may be necessary during a snow event to fulfill the Agency's mission,"[35] and (2) "[an Agency witness'] ability . . . to respond to the snow events without changing [the grievants' schedules] further undermined the Agency's position that [schedule] changes . . . were essential to the Agency's mission."[36] The Union contends that these determinations are not factual findings.[37] But, even assuming that they are, they are not irreconcilable. Therefore, the premise of the Agency's argument is incorrect and provides no basis for finding the award deficient on nonfact grounds.

Moreover, the Agency challenges as a nonfact the Arbitrator's finding that Agency witnesses provided "inconsistent" rationales for deviating from § 6101's scheduling requirements.[38] In this regard, the Agency argues that "'inconsistent rationales' and differing scheduling changes . . . should have had no bearing on the Arbitrator's determination" of whether the Agency violated § 6101, because once the Arbitrator determined that various management officials had the authority to change the grievants' schedules, comparing their decisions "is a nonfact."[39] But the Agency's argument is nothing more than disagreement with the Arbitrator's evaluation of the evidence. Therefore, it provides no basis for finding that the award is based on a nonfact.[40]

Finally, the Agency claims that the award is based on a nonfact because the Arbitrator allegedly "erroneously found that the unique scheduling paradigm at the White House [g]rounds undercut the Agency's argument about the necessity to change tours of duty at other parks."[41] In this regard, the Agency challenges the Arbitrator's finding that an Agency witness' ability "to respond to the snow events without changing [the

[22] Exceptions at 7-14.
[23] *NLRB Prof'l Ass'n*, 68 FLRA 552, 554 (2015).
[24] *See e.g.*, *Int'l Bhd. Of Elec. Workers, Local 2219*, 69 FLRA 431, 433-34 (2016) (*IBEW*) (citations omitted); *U.S. DHS, CBP*, 68 FLRA 157, 160 (2015) (*DHS*) (citing *NLRB, Region 9, Cincinnati, Ohio*, 66 FLRA 456, 461 (2012) (*NLRB*)).
[25] Exceptions at 8.
[26] *Id.* at 11 (quoting Award at 9).
[27] *Id.*
[28] *Id.* at 12-13.
[29] *See, e.g.*, *U.S. DOJ, Fed. BOP, Fed. Corr. Inst. Jesup, Ga.*, 69 FLRA 197, 201 (2016).
[30] Exceptions at 8-9.
[31] Award at 8.
[32] *E.g.*, *IBEW*, 69 FLRA at 433-34 (citation omitted); *DHS*, 68 FLRA at 161 (citing *NLRB*, 66 FLRA at 461).
[33] Exceptions at 12.
[34] *Id.*
[35] Award at 9.
[36] *Id.*
[37] *See* Opp'n at 17.
[38] Exceptions at 9-10 (quoting Award at 9).
[39] *Id.* at 10.
[40] *E.g.*, *IBEW*, 69 FLRA at 433-34 (citation omitted); *DHS*, 68 FLRA at 161 (citing *NLRB*, 66 FLRA at 461).
[41] Exceptions at 10.

grievants' work schedules] *further* undermined the Agency's position that [schedule] changes . . . were essential to the Agency's mission." [42] This finding is allegedly a nonfact because – according to the Agency – that witness was testifying regarding snow removal at the White House grounds, which has scheduling practices that are different from those at other locations.[43] But, as the "further" wording indicates, the Arbitrator's finding came after she had already explained that Agency witnesses provided "inconsistent" rationales for deviating from § 6101's scheduling requirements.[44] As discussed above, the Agency has not demonstrated that the Arbitrator's finding regarding inconsistent rationales is based on a nonfact. Thus, there is no basis for concluding that her "further" finding[45] – even if clearly erroneous – is a central fact underlying the award, but for which she would have reached a different result.[46]

In sum, the Agency's arguments provide no basis for finding the award deficient on nonfact grounds, and we deny the nonfact exception.

B. The award is not contrary to § 6101.

The Agency argues that the award is contrary to § 6101.[47] When an exception involves an award's consistency with law, rule, or regulation, the Authority reviews any question of law raised by the exception and the award de novo.[48] In applying the standard of de novo review, the Authority assesses whether the arbitrator's legal conclusions are consistent with the applicable standard of law.[49]

First, the Agency argues that the award is contrary to § 6101 because the Arbitrator allegedly failed to apply the "reasoned[-]determination" analysis articulated in *Gahagan*.[50] Next, the Agency argues that the Arbitrator's analysis is deficient because the Arbitrator "focused principally on the [substantial-cost standard], even though the Agency did not argue this standard in its case-in-chief."[51] Therefore, according to the Agency, the Arbitrator did not adequately weigh all of the Agency's evidence under the serious-handicap standard.[52]

As discussed above, § 6101 provides an exception to its scheduling requirements where an agency head determines that compliance would either "substantially increase[]" costs or "seriously handicap[]" the agency's functions.[53] Under *Gahagan*, this agency-head determination must be based on "more than intuition,"[54] but an agency head need not make "exhaustive findings."[55] Rather, an agency head must provide "evidence of a reasoned determination."[56] In addition, to show that an agency head "made a determination about serious handicaps," the agency head must establish that compliance with § 6101's scheduling requirements "would jeopardize [the] agency's entire mission and demand priority attention throughout the organization."[57]

Applying these standards to decide whether the National Weather Service violated § 6101, the *Gahagan* court found that "the record . . . indicate[d] both that [the agency] documented no determination to satisfy the exception in § 6101 and that [the agency head] lacked information to make such a determination."[58] Because the court found no evidence that the agency head made a determination about serious handicaps or substantial costs, the court concluded that the agency failed to show that it "satisfied the legal requirements to qualify for [§ 6101's] exception clause."[59]

Here, the Agency claims that the Arbitrator failed to apply the reasoned-determination analysis articulated in *Gahagan*,[60] and "focused principally" on the substantial-cost exception to § 6101 (rather than the serious-handicap exception).[61] However, the Arbitrator *did* apply the reasoned-determination analysis when she found that "the record . . . lacked the necessary evidence to support [the conclusion] that the schedule changes . . . were made because Agency officials made a 'reasoned determination' that the Agency 'would be seriously handicapped in carrying out its functions'" unless it changed the grievants' schedules.[62] In this regard, the Arbitrator found that: (1) an Agency witness testified that "no one made a determination that [the Agency] would be seriously handicapped" if the Agency did not

[42] *Id.* at 11 (quoting Award at 9) (emphasis added).
[43] *Id.*
[44] Award at 8-9.
[45] *Id.* at 9.
[46] *See, e.g.*, *NLRB Prof'l Ass'n*, 68 FLRA at 555; *VA Med. Ctr. Palo Alto, Cal.*, 36 FLRA 98, 104-05 (1990).
[47] Exceptions at 3-4.
[48] *AFGE, Council of Prison Locals, Council 33*, 68 FLRA 757, 758 (2015) (citations omitted).
[49] *Id.* (citation omitted).
[50] Exceptions at 3 (quoting *Gahagan*, 19 Cl. Ct. at 179).
[51] *Id.* at 4 (citing Award at 8).
[52] *Id.*
[53] 5 U.S.C. § 6101(a)(3).
[54] 19 Cl. Ct. at 180.
[55] *Id.* at 179.
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.* at 180.
[60] Exceptions at 3.
[61] *Id.* at 4.
[62] Award at 9.

change the grievants' schedules;[63] (2) another Agency witness' testimony that he could not get the grievants to complete the snow removal during the hours when he needed the work performed if he offered them voluntary overtime instead of changing their schedules was based only on his "assumption" – rather than a reasoned determination;[64] and (3) an Agency witness testified that he was able to respond to the snow events without changing schedules.[65] The Arbitrator's conclusion is consistent with *Gahagan*. Therefore, the Agency's arguments provide no basis for finding the award contrary to § 6101, and we deny the Agency's contrary-to-law exception.[66]

C. The award is not contrary to public policy.

As noted previously, the Agency argues that the award is contrary to public policy.[67] Although the Authority will find an award deficient when it is contrary to public policy, this ground is "extremely narrow."[68] For an award to be found deficient as contrary to public policy, the asserted public policy must be "explicit," "well defined," and "dominant,"[69] and a violation of the policy "must be clearly shown."[70] The appealing party must also identify the policy "by reference to the laws and legal precedents."[71] As the U.S. Court of Appeals for the D.C. Circuit has explained, this ground for reviewing arbitration awards is "extremely narrow" because "judges have no license to impose their own brand of justice in determining applicable public policy; thus, the exception applies only when the public policy emanates from clear statutory or case law, '*not from general considerations of supposed public interests.* "'[72]

The Agency contends that the award is contrary to public policy because the Arbitrator "failed to take account of the unique national[-]security implications involved in this matter,"[73] and "made no determinations concerning these national[-]security concerns, or the proper weight that they should be accorded."[74] The Agency also argues that "[d]isallowing chiefs, deputy chiefs, and supervisors from changing [the grievants' schedules] to address pending inclement weather is contrary to public policy, given[] the [p]residential implications involved"[75] – specifically, because the area at issue includes the White House.[76]

However, the Agency fails to cite to any "explicit" public policy based on "well[-]defined" and "dominant" laws and legal precedents to support its exception. Consequently, the Agency's exception fails to meet the standards set forth above.[77]

Moreover, nothing in the award (or our decision) "[d]isallow[s]"[78] the Agency from considering inclement weather – and the potential national-security and presidential implications of such weather – when it changes schedules. Rather, the award merely requires the Agency to *actually make a reasoned determination* that compliance with § 6101's scheduling requirements would seriously handicap the Agency in carrying out its functions or would substantially increase costs. Here, the Arbitrator found that the Agency did not *actually make* the legally requisite reasoned determination – and, as discussed in Section IV.B. above, the Agency has not demonstrated that the award is based on nonfacts in this regard. Further, nothing in the award affects the Agency's ability to exercise legally permissible options *other* than changing schedules in order to fulfill its responsibilities. Therefore, the Agency does not provide a basis for finding that the award is deficient in this regard.

[63] *Id.* at 8.
[64] *Id.*
[65] *Id.* at 9.
[66] *See Nat'l Weather Serv. Employees Org.*, 38 FLRA 369, 380-81 (1990) (finding award consistent with *Gahagan* where arbitrator found the record evidence did not support the agency's contention that its scheduling policy was based on the agency head's determination that scheduling shift workers seven days in advance would seriously handicap the agency's functions and would substantially increase its costs).
[67] Exceptions at 5-7.
[68] *NTEU*, 63 FLRA 198, 201 (2009) (quoting *U.S. Postal Serv. v. NALC*, 810 F.2d 1239, 1241 (D.C. Cir. 1987) (*NALC*), cert. dismissed, 108 S. Ct. 1589 (1988)).
[69] *W.R. Grace & Co. v. Local Union 759, Int'l Union of United Rubber Workers of Am.*, 461 U.S. 757, 766 (1983) (*Rubber Workers*).
[70] *AFGE, Local 1415*, 69 FLRA 386, 392 (2016) (*Local 1415*) (quoting *U.S. Dep't of VA, Bd. of Veterans Appeals*, 68 FLRA 170, 174 (2015) (*VA*) (quoting *United Paperworkers v. Misco, Inc.*, 484 U.S. 29, 43 (1987)).
[71] *E.g.*, *id.* (quoting *VA*, 68 FLRA at 174 (quoting *Rubber Workers*, 461 U.S. at 766)).
[72] *NALC*, 810 F.2d at 1241 (quoting *Am. Postal Workers Union, AFL-CIO v. U.S. Postal Serv.*, 789 F.2d 1, 8 (D.C. Cir. 1986)).
[73] Exceptions at 6.
[74] *Id.* at 7.
[75] *Id.*
[76] *Id.* at 6.
[77] *See, e.g.*, *AFGE, Council of Prisons Locals, Local 3977*, 62 FLRA 41 (2007) (finding the excepting party "ha[d] not demonstrated that the award is contrary to public policy because [it] ha[d] cited no 'explicit, well-defined and dominant' public policy to support its exception"); *NAGE, Local R4-6*, 55 FLRA 1298, 1300 (2000) (denying public-policy exception where the excepting party "cite[d] no explicit or well-defined policy to support its assertion").
[78] Exceptions at 6.

For the above reasons, the Agency's exception provides no basis for finding that the award is contrary to public policy. Accordingly, we deny this exception.

V. Decision

We deny the Agency's exceptions.

Member Pizzella, dissenting:

It is self-evident to me (and I doubt that few would disagree) that the safety of the President (and his family) is in the national interest. It is also self-evident to me that the ability of national-security officials to physically reach the President, or for the President to be able to reach national-security officials, without delay and on a moment's notice, equally is in the national interest. Thus, it goes without saying that actions or activities which contribute to this national interest constitute sound public policy.

My colleagues in the majority reject this notion.

Instead, the majority concludes, as did Arbitrator Marsha Kelliher, that the national interest − which supports the ability of the National Park Service (NPS) to ensure access into, and egress out of, the White House in anticipation of a major snowstorm in Washington, D.C. in February 2015 – is not a sufficient circumstance to countermand routine work-scheduling requirements to ensure such access. According to the majority, the national interest at stake in this case is merely "*supposed*."[1]

Unlike the majority, this is not a difficult call for me. I conclude, with all certainty, that the responsibility of NPS to ensure access to and from the President − during a weather-related (as here) or a domestic-or-international-crisis-related emergency − is in the national interest and thus, by its very nature, constitutes *sound* public policy which takes priority over any work-scheduling preferences which might otherwise apply under normal, routine circumstances.

The majority prefers that the NPS would have "exercise[d]" any "option[] *other than* changing schedules in order to fulfill its responsibilities."[2] But the majority's preference, in this respect, is quite irrelevant. That is not our call to make. The Authority has no business telling NPS officials how they can, or should, fulfill their responsibilities.

In short, the NPS does not violate *any* law when *emergency* conditions, such as those present in this case, require senior NPS officials to change the work schedules of a few critical employees in order to ensure that the President (and his family) and national-security officials have the ability to get into or out of the White House and for essential personnel to access the President, and for the President to access the national-security hubs of the Central Intelligence Agency (CIA) and National Security Administration (NSA) and also Andrews Air Force Base (Andrews AFB) and Ronald Reagan National Airport (Reagan Airport).

NPS maintenance workers, who perform their duties at these security-sensitive sites, have been designated as a critical component of the federal government's continuity-of-operations plan by Presidential Policy Directive PPD-2.[3] Federal courts have long-recognized that "protect[ing] the President,"[4] by ensuring continuous access to and from the White House,[5] is a "*public interest*."[6] And the Supreme Court and the United States Court of Appeals for the District of Columbia Circuit have described the national interest, underlying this public policy, as "*overwhelming*"[7] and "*compelling*."[8]

Before the Arbitrator, various NPS officials described in great detail the public policy and "unique national[-]security implications" at stake during a crippling snowstorm.[9] Under such circumstances, there is an obvious and dangerous "impact [on] the President and First Family . . . , [c]ongressional [leaders], and [a]dministration personnel" if access into and out of the White House, as well as access into and out of the CIA, NSA, Andrews AFB, and Reagan Airport, is not maintained.[10]

NPS officials described prior snow events − when emergency snow removal operations became necessary, the President had to travel, and essential employees had to get to the NSA, Andrews AFB, and a Secret Service facility – which could not have been successfully executed without the ability to change work schedules on short notice.[11] According to the NPS officials, it is these "security implications," and the underlying public policy, which "distinguish this case

[1] Majority at 8.
[2] *Id.* at 9.
[3] Presidential Policy Directive, Critical Infrastructure Security and Resilience, https://www.whitehouse.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil ("The Department of the Interior, in collaboration with the SSA for the Government Facilities Sector, shall identify, prioritize, and coordinate the security and resilience efforts for national monuments and icons and incorporate measures to reduce risk to these critical assets, while also promoting their use and enjoyment.").
[4] *A Quaker Action Group v. Morton*, 362 F.Supp. 1161, 1169 (D.D.C. 1973).
[5] *Id.* at 1161-69.
[6] *Id.* at 1169 (emphasis added).
[7] *Watts v. U.S.*, 394 U.S. 705, 707 (1969) (emphasis added).
[8] *Sherrill v. Knight*, 569 F.2d 124, 130 (1977) (emphasis added) (citing *Watts*, 394 U.S. at 707).
[9] Exceptions at 6.
[10] *Id.*
[11] *Id.* at 6-7.

from essentially every other case in which changes to tours of duty are involved."[12]

My colleagues refuse to recognize that theses national interests are self-evident simply because NPS officials did not use the "options" that the majority would have preferred (without the slightest hint as to what those "options" would be)[13] and did not use the right magic words in a precise formula.[14]

The public policy at stake in this case is more than "explicit," "well-defined," and "dominant."[15] As discussed above, it is self-evident and serves very important national interests pertaining to the safety of the President of the United States and other national-security officials.

The Arbitrator's award is, without any doubt, contrary to public policy.

Thank you.

[12] *Id.* at 6.
[13] Majority at 9.
[14] *Id.*
[15] Majority at 8 (citations omitted).