**70 FLRA No. 60**

NATIONAL LABOR RELATIONS BOARD
PROFESSIONAL ASSOCIATION
(Union)

and

NATIONAL LABOR RELATIONS BOARD
(Agency)

0-NG-3359

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DECISION AND ORDER
ON NEGOTIABILITY ISSUES

July 11, 2017

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Before the Authority: Patrick Pizzella, Acting Chairman, and Ernest DuBester, Member

## I. Statement of the Case

This case is before the Authority on a negotiability appeal (petition) that the Union filed under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute (the Statute).[1] The petition involves the negotiability of three proposals that concern the Agency's implementation of WebTA, an electronic timekeeping system.

The question before us is whether the proposals are outside the duty to bargain because they impermissibly affect management's right to assign work under § 7106(a)(2)(B) of the Statute.[2] Because the proposals affect management's right to assign work, and the Union does not argue that the proposals fall within a limitation on management's rights, we find that they are outside the duty to bargain.

## II. Background

The parties' instant dispute arose when the Agency notified the Union that it intended to transition from its existing automated timekeeping system to WebTA, an electronic timekeeping system. WebTA requires *all* employees to enter their own work time online and to certify the accuracy of the entry. The Union made a number of proposals concerning WebTA. Three of those proposals would, in effect, exempt all bargaining-unit employees from their obligations under WebTA. The Agency declared those three proposals outside the duty to bargain as contrary to management's right to assign work under § 7106(a)(2)(B) of the Statute.

We agree.

## III. Proposals 14-16

### A. Wording

Proposal 14

Employees who work Standard Business Hours, under Article 33.3 of the CBA, will not be required to use WebTA to enter and certify their time.[3]

Proposal 15

Employees who work a Flexitour schedule, under Article 33.4 of the CBA, will not be required to use WebTA to enter and certify their time.[4]

Proposal 16

Employees who work a 5-4-9 Compressed Work Schedule, under Article 33.5 of the CBA, will not be required to use WebTA to enter and certify their time.[5]

### B. Meaning

The parties agree that the proposals would prevent the Agency from requiring bargaining-unit employees who work standard business hours, flexitour schedules, and 5-4-9 compressed work schedules, respectively, to enter and certify their time in WebTA.[6]

### C. Analysis and Conclusion: The proposals are outside the duty to bargain because they impermissibly affect management's right to assign work.

The Agency argues that Proposals 14, 15, and 16 impermissibly affect management's right to assign work under § 7106(a)(2)(B) of the Statute because they preclude the Agency from assigning unit employees the task of entering and certifying their time in WebTA.[7] An agency's right to assign work includes the right to

[1] 5 U.S.C. § 7105(a)(2)(E).
[2] *Id.* § 7106(a)(2)(B).
[3] Pet. at 4.
[4] *Id.* at 5.
[5] *Id.* at 6.
[6] Record of Post-Petition Conference at 2.
[7] Statement of Position Br. at 14.

determine the particular duties to be assigned, when work assignments will occur, and to whom or what positions the duties will be assigned.[8] Therefore, proposals that preclude management from assigning certain tasks to particular individuals affect management's right to assign work.[9] Because the parties agree that the proposals would prevent the Agency from assigning unit employees the task of entering and certifying their time in WebTA, the proposals affect management's right to assign work.[10]

Despite the Union's agreement that these proposals would prevent the Agency from assigning any bargaining-unit employees the WebTA responsibilities that are required of every other Agency employee, the Union argues that the proposals do not affect management's right to assign work.[11] In support of its argument, the Union cites[12] several Authority decisions, but they are distinguishable from the present case.[13]

We find that the proposals affect management's right to assign work under § 7106(a)(2)(B) of the Statute. In fact, it is difficult to imagine a proposal that would affect the right to assign work more directly or completely.

Accordingly, the proposals are outside the duty to bargain unless the Union can establish that they enforce an applicable law within the meaning of § 7106(a)(2),[14] or fall within an exception under § 7106(b).[15]

The Union expressly concedes that it is not claiming that the proposals enforce "applicable laws" within the meaning of § 7106(a)(2),[16] or that they fall within any exceptions under § 7106(b).[17] As the Union concedes that the proposals do not fall within a limitation on management's rights, we find that the proposals are outside the duty to bargain.[18]

## IV. Order

We dismiss the Union's petition.

[8] *See, e.g.*, *NFFE, IAMAW, Fed. Dist. 1, Fed. Local 1998*, 69 FLRA 586, 591 (2016) (citing *NTEU*, 66 FLRA 584, 585 (2012) (*NTEU*)); *AFGE, Local 3529*, 56 FLRA 1049, 1050 (2001) (*Local 3529*) (citing *AFGE, Local 1985*, 55 FLRA 1145, 1148 (1999)).

[9] *See, e.g.*, *Local 3529*, 56 FLRA at 1050; *NTEU, Chapter 243*, 49 FLRA 176, 181-82 (1994) (*Chapter 243*) (citing *NAGE, Locals R14-22 & R14-89*, 45 FLRA 949, 956 (1992) (*Fort Bliss*); *AFGE, Local 1923*, 44 FLRA 1405, 1428 (1992)); *NTEU, Chapter 12*, 36 FLRA 70, 73-74 (1990) (citing *AFGE, AFL-CIO, Local 3385*, 7 FLRA 398, 401-03 (1981)).

[10] *See Chapter 243*, 49 FLRA at 189 (finding that Provision 4, which sought to preclude the agency from assigning particular duties to supervisors, affected management's right to assign work); *Fort Bliss*, 45 FLRA at 956 (finding that Proposal 1, requiring that gate inspections be performed under the supervision of a particular employee, affected management's right to assign work).

[11] Resp. Br. at 4 & n.1.

[12] *Id.* at 1-3.

[13] *See 92 Bomb Wing, Fairchild Air Force Base, Spokane, Wash.*, 50 FLRA 701, 703 (1995) (finding the implementation of a sign-out board not an exercise of the right to assign work where the board's purpose was to inform "customers" about the employee's work availability, not to hold the employee accountable for use of duty time); *Overseas Educ. Ass'n, Inc.*, 29 FLRA 734, 758 (1987) (agency made assign-work claim "without supporting arguments"); *AFGE, AFL-CIO, Local 1603*, 16 FLRA 96, 97 (1984) (rejecting agency claim that proposal involved assignment of work to supervisors because proposal did not expressly require non-unit employees to perform any particular task); *AFGE, AFL-CIO, Local 1760*, 8 FLRA 202, 202-03 (1982) (agency did not allege that proposals interfered with the right to assign work).

[14] *See AFGE, Local 997*, 66 FLRA 499, 500 (2012) (*Local 997*); *NLRB Union, NLRB Prof'l Ass'n*, 62 FLRA 397, 401-03 (2008), *aff'd sub nom. NLRB Union v. FLRA*, 313 Fed. Appx. 328 (D.C. Cir. 2009).

[15] *See e.g.*, *NTEU*, 66 FLRA at 585-86; *Local 997*, 66 FLRA at 501.

[16] Resp. Form at 3, 5, 7.

[17] *Id.*; Resp. Br. at 4 n.1.

[18] *See, e.g.*, *NTEU*, 66 FLRA at 585-86 (finding a proposal outside the duty to bargain where the proposal affected management's right to assign work and the union failed to assert that the proposal was either a procedure or an appropriate arrangement under § 7106(b)); *Local 997*, 66 FLRA at 501 (finding a proposal that affected management's right to discipline under § 7106(a)(2)(A) outside the duty to bargain where the union did not argue that the proposal was an exception to management's rights under § 7106(b), or that it enforced an applicable law under § 7106(a)(2)); *Nat'l Weather Serv. Emps. Org.*, 63 FLRA 450, 453 (2009) (finding a provision contrary to management's rights where the union did not expressly state that the provision enforces an "applicable law" within the meaning of § 7106(a)(2), and did not assert that the provision was encompassed by any exception to management's rights under § 7106(b)).