

CASE DIGEST: *U.S. Dep't of Transp., FAA*, 71 FLRA 28 (2019) (Member Abbott concurring; Member DuBester dissenting)

The Agency filed an application for review of an FLRA Regional Director's (RD's) decision finding that certain employees are not confidential employees within the meaning of 5 U.S.C. § 7103(a)(13). The Authority noted that the employees were responsible for assisting their supervisor with responding to formal grievances and Union-filed unfair-labor-practice (ULP) charges. Although the employees had not yet had an opportunity to assist their supervisor with those matters, that did not end the inquiry as to whether they are confidential. To determine whether an employee is confidential, the Authority clarified that it will consider duties the employee may be called upon to perform, not just duties already performed.

Member Abbott concurred, noting that the FLRA RDs operate under delegated authority, and the Federal Service Labor-Management Relations Statute mandates that the Authority completely review any RD determination made pursuant to that delegated authority.

Member DuBester dissented, asserting that Authority precedent and the record supported the RD's decision. He also would not have rejected the parties' agreement to use representative witnesses. Thus, he would have found it unnecessary to remand the matter to the RD.

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