

**71 FLRA No. 87**

UNITED STATES  
DEPARTMENT OF VETERANS AFFAIRS  
(Petitioner)

0-PS-42

DECISION ON REQUEST FOR GENERAL  
STATEMENT  
OF POLICY OR GUIDANCE

December 13, 2019

Before the Authority: Colleen Duffy Kiko, Chairman, and  
Ernest DuBester and James T. Abbott, Members

**I. Statement of the Case**

Pursuant to § 2427.2 of the Authority's Regulations,<sup>1</sup> the Petitioner requests that the Authority issue a general statement of policy or guidance clarifying the meaning of the phrase "adversely affected" in § 7106(b)(3) of the Federal Service Labor-Management Relations Statute (the Statute).<sup>2</sup>

**II. Background**

Under § 7106(b)(3) of the Statute, parties must bargain over "appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials."<sup>3</sup> According to the Petitioner, the Authority has expansively interpreted "adversely affected," which results in "extensive and time-consuming negotiations before agencies can exercise [the] management rights"<sup>4</sup> set forth in § 7106(a) of the Statute.<sup>5</sup>

The Petitioner acknowledges that the Authority uses the long-established analysis set forth in *NAGE, Local R-14-87*<sup>6</sup> to determine whether a proposal is within the duty to bargain under § 7103(b)(3). However, the Petitioner asks the Authority to change its analytical framework to create a "rebuttable presumption" that the exercise of a management right under § 7106(a) of the Statute does not "adversely affect" employees.<sup>7</sup> The

Petitioner explains that, under its proposed standard, a labor organization could only rebut the presumption by presenting evidence – rather than merely asserting – that any proposal is a response "to actual adverse effects directly caused by the exercise of [a] management right[]." <sup>8</sup> The Petitioner posits that the Authority's adoption of such a requirement would permit agencies to exercise their management rights "immediately" without bargaining.<sup>9</sup>

**III. Discussion**

Upon careful consideration of the Petitioner's request, we find that it is not appropriate for resolution through the issuance of a general ruling.<sup>10</sup> These questions would most appropriately be addressed in the context of the facts and circumstances presented by parties involved in an actual dispute.<sup>11</sup> Accordingly, we deny the request.

**IV. Order**

We deny the Petitioner's request.

<sup>1</sup> 5 C.F.R. § 2427.2.

<sup>2</sup> Petitioner's Request (Request) at 1.

<sup>3</sup> 5 U.S.C. § 7106(b)(3).

<sup>4</sup> Request at 2.

<sup>5</sup> 5 U.S.C. § 7106(a).

<sup>6</sup> 21 FLRA 24 (1986).

<sup>7</sup> Request at 4.

<sup>8</sup> *Id.* at 5.

<sup>9</sup> *Id.*

<sup>10</sup> 5 C.F.R. § 2427.5.

<sup>11</sup> *E.g., Gen. Counsel*, 51 FLRA 409, 412 (1995) (citing *Order Denying Request for Gen. Ruling*, 14 FLRA 757, 758 (1984); *Order Denying Request for a Gen. Ruling*, 9 FLRA 823, 824 (1982)).