

71 FLRA No. 88

UNITED STATES
DEPARTMENT OF AGRICULTURE
(Petitioner)

0-PS-47

DECISION ON
REQUEST FOR GENERAL STATEMENT
OF POLICY OR GUIDANCE

December 16, 2019

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

I. Statement of the Case

Pursuant to § 2427.2 of the Authority’s Regulations,¹ the Petitioner requests that the Authority issue a general statement of policy or guidance establishing “default” ground rules to govern the negotiation of term collective-bargaining agreements.²

II. Background

The Authority has held that ground rules should further the process of bargaining new collective-bargaining agreements.³ The Petitioner states that its request was prompted by pervasive, protracted delays in ground-rules negotiations across the federal government. For support, the Petitioner cites ongoing litigation between several parties and an increase in disputes before the Federal Service Impasses Panel (the Panel) over ground rules.⁴

While the Petitioner notes that the Authority has previously found that ground rules are a mandatory subject of bargaining, it asks the Authority to change that precedent.⁵ Specifically, the Petitioner asks us to find that ground rules are not a condition of employment and, therefore, are not a mandatory subject of bargaining. Instead, the Petitioner asks the Authority to establish default ground rules – similar to those suggested by the

¹ 5 C.F.R. § 2427.2.

² Petitioner’s Request (Request) at 1.

³ *Id.* at 5 (quoting *U.S. Dep’t of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio*, 36 FLRA 524, 533 (1990)).

⁴ *Id.* at 2.

⁵ *Id.* at 4.

Panel in *U.S. OPM and AFGE, Local 32*⁶ – to serve as “benchmarks” that parties could “permissively elect to modify.”⁷

The Petitioner contends that by establishing such ground rules, the Authority would be establishing a government-wide rule or regulation that would “supersede” any statutory obligation to bargain and facilitate good faith bargaining.⁸

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 for two reasons.⁹

We first note that Executive Order 13836 (Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining) already mandates the Interagency Labor Relations Group to “[d]evelop[] model ground rules for negotiations.”¹⁰ The Executive Order also mandates various procedures and timeframes that, as relevant here, promote an effective and efficient means of accomplishing agency missions, “[to] reduce the cost of agency operations, including with respect to the use of taxpayer-funded union time,” and “to negotiate ground rules that minimize delay [and] set reasonable time limits for good-faith negotiations.”¹¹

Beyond the mandates of Executive Order 13836, disputes concerning ground rules would most appropriately be addressed in the context of the facts and circumstances presented by parties involved in an actual dispute.¹²

Accordingly, we deny the request.

IV. Order

We deny the Petitioner’s request.

⁶ *Id.* at 3 (citing *U.S. OPM and AFGE, Local 32*, 2018 FSIP 036 (2018)), 8-13.

⁷ *Id.* at 1-2.

⁸ *Id.* at 5; *see also id.* at 7.

⁹ 5 C.F.R. § 2427.5.

¹⁰ Exec. Order No. 13,836, *Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining*, 83 Fed. Reg. 25,329, 25,330 (May 25, 2018).

¹¹ *Id.* at 25,329, 25,331.

¹² *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)).

Member DuBester, concurring:

Because the questions posed by the request are most appropriately addressed in the context of facts and circumstances presented by parties in an actual dispute, I concur in the Decision to deny the request. However, I do not agree with the majority that the provisions it cites from Executive Order 13836 constitute an independent reason for denying the request. Indeed, the legality of an agency's application of these "various procedures and timeframes"¹ to its ground-rules negotiations is itself a question that is appropriately resolved as part of an actual case.² Accordingly, I agree that the request does not satisfy the standards governing the issuance of general statements of policy or guidance.

¹ Majority at 2.

² See, e.g., *AFGE, AFL-CIO v. Trump*, 929 F.3d 748, 757 (D.C. Cir. 2019) ("if an agency follows the executive orders' goal-setting provisions while bargaining with a union, the union could charge in an unfair labor practice proceeding that the agency's adherence to those provisions amounted to bad-faith bargaining in violation of the Statute. The FLRA could then determine whether the agency had done so, and whether the agency may continue pursuing those goals during bargaining.").