

71 FLRA No. 98

OFFICE OF PERSONNEL MANAGEMENT
(Petitioner)

0-PS-35

DECISION ON
REQUEST FOR GENERAL STATEMENT
OF POLICY OR GUIDANCE

January 22, 2020

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

I. Background

In accordance with § 2427.2 of the Authority's Regulations,¹ the Office of Personnel Management (OPM) requests a general statement of policy or guidance clarifying what circumstances meet the criteria in 5 C.F.R. § 2424.50 for determining when a "compelling need" exists for an agency rule or regulation.²

Section 7117(a)(2) of the Federal Service Labor-Management Relations Statute provides that the duty to bargain does not extend to matters which are the subject of an agency rule or regulation for which there is a "compelling need (as determined under regulations prescribed by the Authority)."³ Section 2424.50 of the Authority's Regulations, in turn, states that a compelling need exists when the agency rule or regulation meets one or more of the following "illustrative criteria":

(a) The rule or regulation is essential, as distinguished from helpful or desirable, to the accomplishment of the mission or the execution of functions of the agency or primary national subdivision in a manner that is consistent with the requirements of an effective and efficient government.

(b) The rule or regulation is necessary to ensure the maintenance of basic merit principles.

(c) The rule or regulation implements a mandate to the agency or primary national subdivision under law or other outside authority, which implementation is essentially nondiscretionary in nature.⁴

In its request, OPM asks that the Authority issue a general statement of policy or guidance that would clarify, through the use of examples, what circumstances meet the illustrative criteria under § 2424.50. In the alternative, OPM requests that the Authority supplement its regulations to include such guidance after providing notice and the opportunity for public comment.

On December 23, 2019, the Authority issued a Federal Register notice soliciting comments from interested persons on proposed changes to the Authority's Regulations, including § 2424.50. Among other matters, the notice solicits "specific examples of an agency rule or regulation for which there is a compelling need and appropriate illustrative criteria that would establish a compelling need for the rule or regulation."⁵

II. Decision

In deciding whether to issue a general statement of policy or guidance, the Authority will consider "[w]hether the question can more appropriately be resolved by other means."⁶ The question raised in OPM's request is more appropriately resolved by other means – namely, through the forthcoming issuance of revised Authority Regulations following notice and the opportunity for public comment. Consequently, it would be inappropriate to issue a general statement of policy or guidance addressing OPM's request. Accordingly, we deny OPM's request.

¹ 5 C.F.R. § 2427.2.

² *Id.* § 2424.50.

³ 5 U.S.C. § 7117(a)(2).

⁴ 5 C.F.R. § 2424.50(a)-(c).

⁵ Negotiability Proceedings, 84 Fed. Reg. 70,439 (Dec. 23, 2019).

⁶ 5 C.F.R. § 2427.5(a).