

CASE DIGEST: *U.S. Dep't of Educ.*, 71 FLRA 516 (2019) (Member DuBester concurring).

In this case, the Agency filed a motion to dismiss alleging that the grievance was barred under § 7116(d) of the Federal Service Labor-Management Relations Statute (Statute) by an earlier-filed unfair labor practice (ULP) charge addressing the same issues. Although the Arbitrator concluded that the Union could not simultaneously pursue its ULP charge and its grievance in different forums, he suspended the Union's grievance pending resolution of the ULP charge instead of dismissing it. The Agency excepted to the Arbitrator's award, arguing that both § 7116(d) and the parties' agreement required the Arbitrator to dismiss the grievance. The Authority found that the Agency's exceptions were interlocutory, but that there were extraordinary circumstances warranting review. The Authority concluded that the grievance was not barred under § 7116(d) and remanded the matter to the parties for resubmission to the Arbitrator.

Member DuBester concurred in finding that § 7116(d) did not bar the grievance.

This case digest is a summary of a decision 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.