

**CASE DIGEST:** *AFGE, Nat'l Council of EEOC Locals No. 216*, 71 FLRA 535 (2020)

This case concerned the negotiability of ground-rules proposals to govern mid-term bargaining. Initially, the Authority found that a proposal that appeared only in an attachment to the petition for review was not before the Authority for a decision. Further, the Authority found that the Union permissibly modified the wording of its proposals at the post-petition conference.

Proposal 1 required the Agency's chair to provide a list of negotiators to the Union, or to designate another employee to provide that list. The Authority found that Proposal 1 was outside the duty to bargain because it affected management's right to assign work under § 7106(a)(2)(B). Proposal 2 concerned a wholly discretionary process that, based on the Union's statement of intent, the Authority found was essentially meaningless and, consequently, nonnegotiable. Proposal 3 addressed when the Agency would pay for travel and per diem for negotiations, and how the parties would resolve negotiation impasses. The Authority found that Proposal 3 was covered by the parties' collective-bargaining agreement. Proposal 4 prohibited the use of transcripts and recording devices for negotiation sessions, but permitted the parties to take notes. The Authority found that Proposal 4 concerned a mandatory subject of bargaining and was negotiable. Accordingly, the Authority dismissed the petition, in part, and ordered the Agency to bargain, upon request, over Proposals 2 and 4.

Member DuBester dissented to the majority's decision in regard to Proposals 1, 2, and 3. He found that Proposal 1 does not affect management's right to assign work because it imposes no obligations beyond those required by the Federal Service Labor-Management Relations Statute. As to Proposal 2, he found it concerned a discretionary process for assigning duties to bargaining-team members, and the Agency failed to demonstrate that it affected management's rights. And he found that Proposal 3 was not covered by the parties' agreement.

\*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.