

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Miami, Fla. & AFGE, Local 3960, Council of Prison Locals, C-33*, 71 FLRA 660 (2020) (Member Abbott concurring; Member DuBester dissenting).

This case concerned a grievance about the assignment of non-custody employees to fill in at short-staffed custody posts, thus avoiding paying overtime to custody employees. The Arbitrator found that an “unwritten contractual right” came into being in the parties current Collective Bargaining Agreement (CBA) by the Agency’s practice of not augmenting custody posts with non-custody employees prior to 2016. The Arbitrator concluded that the Agency’s actions were a violation of Articles 3, 4, 5, 18 and 27 of the CBA and the parties’ Ground Rules for Supplemental Agreements and Memorandum of Understanding Meetings. On exceptions, the Agency argued that the Arbitrator’s award failed to its essence from the CBA. The Authority found that the Arbitrator ignored the clear language of Article 18 of the CBA, which gives the Agency broad discretion to assign and reassign employees. The Authority found that the Arbitrator’s award failed to draw its essence from the CBA because the Arbitrator improperly found that a past practice created a new provision in the CBA. Accordingly, the Authority vacated the award.

Member Abbott concurred emphasizing that deference to an arbitrator’s interpretation of an agreement is not unlimited. He found, consistent with multiple federal court and state court decisions, that the *Steelworkers* Trilogy cases were made in the context of private-sector labor disputes, and a narrower scope of deference should apply to public-sector labor disputes.

Member DuBester dissented, concluding that the award drew its essence from the parties’ agreement. He found that the majority identified no “clear language” with which the award conflicted, and the judicial decisions relied on by the majority did not support overturning the Arbitrator’s finding of a past practice. Member DuBester also disagreed that the deference to arbitral awards outlined in the *Steelworkers* Trilogy should no longer be applied by the Authority in reviewing essence exceptions. He noted that the Authority’s application of the *Steelworkers* principles is consistent with the language and legislative history of the Statute as well as court decisions addressing this question.

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.