

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Aliceville, Ala. & AFGE, Local 573, Council of Prison Locals # 33*, 71 FLRA 716 (2020) (Member DuBester dissenting)

This case involved a grievance alleging that the Agency failed to provide notice and an opportunity to bargain when it began assigning supervisors to vacant posts instead of bargaining unit employees so that the Agency could avoid paying overtime. The Arbitrator sustained the grievance, finding a violation of Article 4 of the parties' agreement. The Agency argued that the award failed to draw its essence from Article 18 of the parties' agreement. The Authority found that the Arbitrator erroneously considered the parties' past practice to have modified the parties' agreement and found that the Agency's action of reassigning employees to cover vacant shifts was within the scope of Article 18. Consequently, there was no additional obligation to provide notice and an opportunity to bargain. Therefore, the Authority vacated the award for failure to draw its essence from the parties' agreement.

Member DuBester dissented. He found that the Arbitrator's award was consistent with the plain and unambiguous language of the parties' bargaining agreement, which requires the Agency to afford qualified bargaining unit employees with first consideration for overtime assignments in positions they normally fill, and to provide the union with notice and an opportunity to bargain over changes in the unit employees' working conditions. He noted that the majority had not identified plain and unambiguous contractual terms with which the award conflicted, and that the judicial decisions relied on by the majority did not support overturning the Arbitrator's finding of a past practice.

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.