

CASE DIGEST: *U.S. Dep't of VA, J.J. Pershing VA Med. Ctr. & AFGE, Local 2338, 71 FLRA 947 (2020) (Member DuBester dissenting)*

With this case, we again remind the federal labor-relations community that procedural deadlines pursuant to a collective-bargaining agreement must be taken seriously. The Arbitrator found that the Agency had waived any timeliness objections by failing to raise them prior to arbitration. He further found that even in the absence of waiver, the fact that the grievance alleged a continuing violation meant the Union could invoke arbitration at any time. The Authority found that the procedural arbitrability determinations failed to draw their essence from the parties' agreement because the Arbitrator added a requirement to the parties' agreement and ignored the clear language of Article 44. Accordingly, the Authority vacated the award.

Member DuBester dissented, finding that the Arbitrator's waiver determination was well supported and not precluded by the parties' agreement. Therefore, he would have denied the Agency's essence exception.

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.