

71 FLRA No. 192

UNITED STATES
DEPARTMENT OF AGRICULTURE
OFFICE OF THE GENERAL COUNSEL
(Petitioner)

0-PS-46

DECISION ON REQUEST FOR GENERAL
STATEMENT
OF POLICY OR GUIDANCE

September 30, 2020

Before the Authority: Colleen Duffy Kiko, Chairman,
and Ernest DuBester and James T. Abbott, Members
(Member DuBester dissenting)

I. Background

The U.S. Department of Agriculture, Office of the General Counsel (USDA) requests a general statement of policy or guidance (general statement) concerning the authority of an agency head, under § 7114(c) of the Federal Service Labor-Management Relations Statute (the Statute),¹ to review the legality of an expiring collective-bargaining agreement that states that it will remain in force until the parties reach a new agreement.

Section 7114(c)(1) of the Statute states that “[a]n agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency,”² and § 7114(c)(2) states, in pertinent part, that “[t]he head of the agency shall approve the agreement within [thirty] days from the date the agreement is executed if the agreement is in accordance with the provisions of [the Statute] and any other applicable law, rule, or regulation.”³ A different provision of the Statute – § 7116(a)(7) – makes it an unfair labor practice for an agency “to enforce any rule or regulation (other than a rule or regulation implementing” a prohibition on certain personnel practices) that “is in conflict with any applicable collective[-]bargaining agreement if the agreement was in

effect before the date the rule or regulation was prescribed.”⁴

The Authority has previously addressed how to apply §§ 7114(c) and 7116(a)(7) in cases where parties specify that, unless one or both of them request to renegotiate an expiring agreement, the agreement will be automatically renewed (or rolled over) for another term at the end of its current term. In such cases, the Authority has held that an automatically renewed agreement is subject to agency-head review beginning “the day after the expiration of the contractual window period for requesting renegotiation of the expiring agreement,”⁵ and that the automatically renewed agreement must comply with any government-wide rules or regulations that changed during the agreement’s previous term.⁶

USDA asks that the Authority clarify when an agency head may review the legality of an expiring agreement that includes a provision stating that, where renegotiations are requested, the existing agreement continues in force until the parties reach a new one (a continuance provision).⁷ USDA asserts that arbitrators’ interpretations of continuance provisions are unpredictable and inconsistent.⁸

In particular, USDA asks the Authority to issue a general statement holding that:

1. When a party requests to renegotiate an expiring agreement that contains a continuance provision, an agency head may review the legality of the expiring agreement as early as § 7114(c) of the Statute would allow the agency head to do so if the expiring agreement were automatically renewed; and
2. An expiring agreement that remains in force until the parties reach a new agreement is effectively renewed automatically every day, so, for as long as the expiring agreement continues in force during renegotiations, a new agency-head-review period begins each day.

The Authority invited interested persons to submit written comments on whether a general statement was warranted under § 2427.5 of the Authority’s

¹ 5 U.S.C. § 7114(c).

² *Id.* § 7114(c)(1).

³ *Id.* § 7114(c)(2).

⁴ *Id.* § 7116(a)(7).

⁵ *Kan. Army Nat’l Guard, Topeka, Kan.*, 47 FLRA 937, 943 (1993) (*Army*).

⁶ *Id.* at 942.

⁷ Request at 2.

⁸ See generally Notice of Opportunity to Comment on a Request for a General Statement of Policy or Guidance on Agency-Head Review of Agreements that Continue in Force Until New Agreements Are Reached, 85 Fed. Reg. 3,858 (Jan. 23, 2020) (Notice). The Notice set forth USDA’s understanding of previous Authority decisions related to this topic, as well as further details on the operation of §§ 7114(c) and 7116(a)(7) of the Statute.

Regulations,⁹ and, if so, what the Authority's policy or guidance should be.¹⁰ In reaching the decision below, the Authority has carefully considered USDA's arguments and the nineteen comments submitted about USDA's request.

II. Decision

In the past, the Authority has addressed the applications of §§ 7114(c) and 7116(a)(7) of the Statute through means other than a general statement.¹¹ However, even when other means are available for resolving a question, the Authority considers "whether an Authority statement would prevent the proliferation of cases involving the same or similar question."¹² We note that, over the last few years, there have been a significant number of government-wide regulatory actions on topics of central importance to federal labor-management relations.¹³ For parties whose conduct is governed by a continuance provision during renegotiations of their collective-bargaining agreement, these recent government-wide regulatory actions will prompt questions regarding the proper applications of §§ 7114(c) and

7116(a)(7). Therefore, we find that, by issuing a general statement, we will "prevent the proliferation of cases involving the same or similar question[s]" as the ones set forth in USDA's request,¹⁴ and, accordingly, we grant the request.

Sections 7114(c) and 7116(a)(7) may interact in their applications under certain circumstances, such as when an agency head disapproves an automatically renewed agreement on the basis of conflicting government-wide regulations that came into force during the agreement's previous term. But, regardless of whether agency-head review occurs under § 7114(c), § 7116(a)(7)'s bar on implementing new government-wide regulations that conflict with a preexisting collective-bargaining agreement¹⁵ lasts only for the agreement's "express term."¹⁶ Once the agreement expires, all existing, applicable government-wide regulations govern the parties' conduct immediately by operation of law.¹⁷ And that operation does not depend on

⁹ 5 C.F.R. § 2427.5.

¹⁰ Notice, 85 Fed. Reg. at 3,859.

¹¹ *E.g.*, *U.S. Dep't of the Army, Headquarters III Corps & Fort Hood, Fort Hood, Tex.*, 40 FLRA 636, 641-43 (1991) (decision on exceptions to an arbitration award); *AFGE, AFL-CIO, Local 1931*, 32 FLRA 1023, 1068-72 (1988) (decision and order on negotiability issues), *rev'd as to other matters sub nom. Dep't of the Navy, Naval Weapons Station Concord, Cal. v. FLRA*, No. 88-7408 (9th Cir. Feb. 2, 1989); *MSPB Prof'l Ass'n*, 30 FLRA 852, 860-62 (1988) (same).

¹² 5 C.F.R. § 2427.5(b).

¹³ These actions include:

(1) the President's issuance of several Executive Orders with implications for federal labor relations, Developing Efficient, Effective, and Cost-Reducing Approaches To Federal Sector Collective Bargaining, Exec. Order No. 13,836, 83 Fed. Reg. 25,329 (May 25, 2018); Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use, Exec. Order No. 13,837, 83 Fed. Reg. 25,335 (May 25, 2018); Promoting Accountability and Streamlining Removal Procedures Consistent With Merit System Principles, Exec. Order No. 13,839, 83 Fed. Reg. 25,343 (May 25, 2018); Revocation of Executive Order Creating Labor-Management Forums, Exec. Order No. 13,812, 82 Fed. Reg. 46,367 (Sept. 29, 2017); *see also* Memorandum on Executive Orders 13836, 13837, and 13839, 2019 DAILY COMP. PRES. DOC. 1 (Oct. 11, 2019), 84 Fed. Reg. 56,095 (Oct. 21, 2019);

(2) the Office of Personnel Management's (OPM's) promulgation of regulations regarding: (a) weather and safety leave, Weather and Safety Leave, 83 Fed. Reg. 15,291 (Apr. 10, 2018) (codified at 5 C.F.R. pt. 630, subpart P); (b) paid parental leave, Paid Parental Leave, 85 Fed. Reg. 48,075 (Aug. 10, 2020); and (c) compensatory time off for religious observances, Compensatory Time Off for Religious Observances and Other Miscellaneous Changes, 84 Fed. Reg. 17,931 (Apr. 29, 2019) (codified at 5 C.F.R. § 550.103; *id.* pt. 550, subpart J; *id.* § 550.1302);

(3) the Department of Labor's adoption of implementing regulations for the Families First Coronavirus Response Act, as well as the possibility of similar future regulations to respond to the ongoing economic and public-health situations, Paid Leave Under the Families First Coronavirus Response Act, 85 Fed. Reg. 19,326 (Apr. 6, 2020);

(4) the Authority's adoption of a regulation about dues-assignment revocations, Miscellaneous and General Requirements, 85 Fed. Reg. 41,169 (July 9, 2020) (to be codified at 5 C.F.R. § 2429.19); and

(5) OPM's proposal of regulations regarding: (a) administrative, investigative, and notice leave, Administrative Leave, Investigative Leave, Notice Leave, and Weather and Safety Leave, 82 Fed. Reg. 32,263 (July 13, 2017) (if adopted, administrative, investigative, and notice leave provisions to be codified at 5 C.F.R. pt. 630, subparts N, O); and (b) performance-based reduction-in-grade and removal actions and adverse actions, Probation on Initial Appointment to a Competitive Position, Performance-Based Reduction in Grade and Removal Actions and Adverse Actions, 84 Fed. Reg. 48,794 (Sept. 17, 2019).

¹⁴ 5 C.F.R. § 2427.5(b).

¹⁵ As mentioned earlier, there is an exception for regulations implementing 5 U.S.C. § 2302, and such regulations become effective immediately. *See* 5 U.S.C. § 7116(a)(7).

¹⁶ *U.S. DOD, Def. Contract Audit Agency, Central Region*, 37 FLRA 1218, 1228 (1990) (DCA).

¹⁷ *Id.*; *see also U.S. Dep't of Commerce, Patent & Trademark Office*, 65 FLRA 817, 819 (2011).

either agency-head review or the completion of further negotiations.¹⁸

The Authority has explained that § 7116(a)(7) promotes the “preservation, stability, and certainty” of collective-bargaining agreements by ensuring that they continue in force for their express term despite newly issued, conflicting government-wide regulations.¹⁹ By contrast, the Authority has recognized that, unless a collective-bargaining agreement contains unambiguous, concrete dates regarding its effectiveness and duration, the agreement does not bolster “stability”²⁰ or “certainty.”²¹ And of particular relevance to USDA’s request, agreements that are in effect due to indefinite continuance provisions lack unambiguous, concrete dates establishing their durations.²² Consequently, when an agreement operates pursuant to an indefinite continuance provision, that agreement only minimally advances, and in some ways undermines, the policy values that animate § 7116(a)(7).

Importantly, the Authority not only interprets, but also *applies* § 7116(a)(7) “narrowly” in order to avoid undermining the “policy of the Statute barring negotiations in conflict with [g]overnment-wide regulations.”²³ But continuance provisions of indefinite duration, when added to an agreement’s original term, are inconsistent with applying § 7116(a)(7) narrowly. Those provisions do not establish a concrete date after which government-wide regulations that became effective during the agreement’s original term will come into force.²⁴

Further, when the Authority clarified the mechanics for conducting agency-head review of automatically renewed agreements under § 7114(c), the

Authority recognized that predictability would safeguard the role of agency-head review in “ensur[ing] that collective[-]bargaining agreements conform to applicable laws and regulations.”²⁵ Thus, unambiguous, knowable effective dates and durations are critical to fulfilling the purposes of both §§ 7114(c) and 7116(a)(7). And, for the reasons already discussed, continuance provisions of indefinite duration fail to provide parties with such certainty.

Once a continuance provision of indefinite duration extends an agreement’s operation, that newly extended agreement is, in a meaningful sense,²⁶ no longer the same one that was “in effect” before the extension occurred.²⁷ Rather than serving as a source of predictable, fixed expectations, an indefinitely extended agreement is merely a “temporary stopgap” that one or both parties are working to change.²⁸ As such, an indefinitely extended agreement lacks the parties’ confidences in a way that an original, renegotiated, or rollover agreement does not. Yet both renegotiated and rollover agreements reset the clock on the § 7116(a)(7) bar for another contract term and provide an opportunity for agency-head review under § 7114(c), whereas, counterintuitively, a temporary stopgap does not do either of those things.

Moreover, when an agreement contains a continuance provision, parties that fail to initiate or complete renegotiations in time to reach a new agreement before the existing one expires know that such a failure will trigger the operation of the continuance provision. Therefore, by their course of conduct, those parties effectively execute a new, extended agreement when they allow the continuance provision to go into effect.²⁹ Treating agreements that are extended pursuant to an

¹⁸ *DCA*, 37 FLRA at 1228 (“[W]e do not find that the enforceability of [g]overnment-wide regulations is dependent on negotiations upon the expiration of the collective[-]bargaining agreement.”). We are not suggesting that agencies may disregard their obligations to bargain over the implementation of new government-wide regulations – merely that such negotiations need not be completed before the regulations are implemented. See *U.S. DHS, U.S. ICE*, 70 FLRA 628, 630 (2018) (Member DuBester dissenting), *pet. for rev. denied*, *AFGE Nat’l Council, 118-ICE v. FLRA*, 926 F.3d 814, 819 (D.C. Cir. 2019).

¹⁹ *DCA*, 37 FLRA at 1228.

²⁰ *U.S. DOD, Army Nat’l Guard, Camp Keyes, Augusta, Maine*, 34 FLRA 59, 64 (1989) (*DOD*) (holding that “an agreement to extend the terms of a collective[-]bargaining agreement during renegotiations” is a “temporary stopgap” measure that could not trigger the agreement bar to a representation petition under § 7111(f)(3) of the Statute).

²¹ *U.S. Dep’t of the Interior, Redwood Nat’l Park, Crescent City, Cal.*, 48 FLRA 666, 671 (1993) (*Interior*) (holding that an agreement without a “clear and unambiguous effective date and language setting forth its duration” failed to provide “certainty” as to when the contract bar would cease to apply under § 7111(f)(3)).

²² See *Interior*, 48 FLRA at 671 (certainty); *DOD*, 34 FLRA at 64 (stability).

²³ *DCA*, 37 FLRA at 1228.

²⁴ We cannot conclude that Congress intended for time-sensitive actions to be delayed by whatever length of time it takes agencies and unions to renegotiate new agreements.

²⁵ *Army*, 47 FLRA at 942.

²⁶ At least as meaningful as the change involved when a rollover agreement becomes effective.

²⁷ 5 U.S.C. § 7116(a)(7).

²⁸ *Dep’t of the Army, Corpus Christi Army Depot, Corpus Christi, Tex.*, 16 FLRA 281, 282 (1984); see also *DOD*, 34 FLRA at 64.

²⁹ *Cf. Army*, 47 FLRA at 940-41 (citing *Fort Bragg Ass’n of Teachers*, 44 FLRA 852, 857 (1992)) (“[T]he date of execution is the date on which no further action is necessary to finalize a complete agreement.”). Because the parties conduct will trigger the operation of a continuance provision only once – specifically, when it first extends the expiring agreement for an additional, indefinite term that lasts until a new agreement is reached – we reject USDA’s suggestion that an indefinitely extended agreement is effectively renewed automatically every day.

indefinite continuance provision in this manner accords with the Authority's treatment of automatically renewed, or rollover, agreements. In the case of rollover agreements, the parties' *lack of action* – namely, their decision not to request renegotiations – confirms the effectiveness of the expiring agreement's provisions for an additional term,³⁰ and triggers the window for agency-head review of the automatically renewed agreement.³¹ Similarly, parties that fail to initiate or complete renegotiations in time to prevent the operation of a continuance provision are executing an extension of their agreement through their lack of action.

For all of the foregoing reasons, we find that when, as a result of one or both parties seeking to renegotiate an existing collective-bargaining agreement, a continuance provision extends the agreement's operation beyond the originally established, concrete expiration date, the first day of the extension period that is beyond the original expiration date marks the beginning of a new term for the agreement under §§ 7114(c) and 7116(a)(7).³² On that first day of the extension, all government-wide regulations that became effective during the previous term of the agreement will, where applicable, govern the parties immediately by operation of law, and the thirty-day period for agency-head review will begin.³³

In sum, we grant USDA's request, but we confine our decision to the foregoing analysis, rather than adopting the policy formulations that USDA proposed.

³⁰ *Id.* at 942 (describing rollover agreements as those that “automatically renew[] *without further action* by the parties” (emphasis added)).

³¹ *Id.* at 942-43 (finding a rollover agreement subject to agency-head review after “the time limits for making a request to renegotiate the agreement expire[] with *no timely request* forthcoming” (emphasis added)).

³² We will no longer follow previous decisions to the contrary.

³³ *See* note 29. The next opportunity for agency-head review would occur after the parties execute an agreement that terminates or supersedes the extended agreement that the continuance provision put into effect.

Member DuBester, dissenting:

In several recent decisions, my colleagues have reversed long-standing and well-reasoned Authority precedent based solely upon their view that it was inconsistent with the plain language of the Federal Service Labor-Management Relations Statute (Statute).¹ Today's decision illustrates that my colleague's fealty to this principle is, at best, situational.

The majority concludes that when the term of a collective bargaining agreement is extended by operation of a continuance provision, "the first day of the extension period that is beyond the original expiration date marks the beginning of a new term for the agreement under §§ 7114(c) and 7116(a)(7)" of the Statute.² But this conclusion is squarely inconsistent with the plain language of these provisions.

At the outset, it must be noted that any analysis of this issue is hamstrung by the majority's decision to issue today's ruling in the form of a policy statement. Because there is no actual contract language before us, the parties we govern can only speculate how today's decision will apply to any particular bargaining agreement.³ But applying the decision to continuance provisions that the Authority *has* considered in previous cases quickly reveals its flaws.

As part of a typical continuance provision, the parties agree that either party "may give written notice to the other" within a certain time period preceding the bargaining agreement's expiration date "for the purpose of renegotiating [the] agreement."⁴ The parties further agree that, should either party exercise this option, the "present agreement will remain in full force and effect during the renegotiation of said agreement and until such time as a new agreement is approved."⁵

Against this backdrop, it becomes clear why the majority's decision is incompatible with §§ 7114(c) and 7116(a)(1). Section 7114(c) states that the thirty-day period for agency-head review of an agreement commences "from the date the *agreement is executed*."⁶ Consistent with this provision, the Authority has held that the "date of execution that triggers the 30-day agency head review period is the date on which no further action is necessary to finalize the agreement."⁷

As noted, the majority concludes that the parties' extension of their existing bargaining agreement by operation of a continuance provision triggers the thirty-day agency head review period under § 7114(c). However, it does not even attempt to reconcile this conclusion with the plain language of this provision, which states that the agency-head review process commences upon the *execution* of the agreement.⁸

The majority's application of § 7116(a)(7) to continuance provisions is equally flawed. This provision states that, with a limited exception, an agency may not "enforce any rule or regulation . . . which is in conflict with any applicable collective bargaining agreement if the agreement was *in effect* before the date the rule or regulation was prescribed."⁹

The majority concludes that this statutory bar expires on the "first day" that an agreement is extended by operation of a continuance provision.¹⁰ But this conclusion simply cannot be squared with the plain language of § 7116(a)(7), because – as noted – the parties to a continuance provision have mutually agreed that their existing agreement shall remain in *full force and effect* until such time as a new agreement is approved.

¹ See, e.g., *Dep't of the Navy, Navy Region Mid-Atl., Norfolk, Va.*, 70 FLRA 512, 515 (2018) (Member DuBester dissenting) (reversing Authority precedent interpreting § 7116(d) of the Statute because "we must return to the straight-forward interpretation of the Statute as given to us by Congress"); *U.S. Dep't of VA, Kan. City VA Med. Ctr., Kan. City, Mo.*, 70 FLRA 465, 468 (2018) (Member DuBester dissenting) (reversing Authority decisions interpreting § 7112(b)(3) of the Statute because they are inconsistent with that provision "as written").

² Majority at 6.

³ The majority understood this when it joined me in denying a previous request for policy statement on a similar issue. See *USDA, Office of the Gen. Counsel*, 71 FLRA 504, 504 (2019) (denying a request that the Authority "clarify that collective bargaining agreements . . . formally expire when the basic term or rollover period of the agreement concludes" because the request was so "dependent upon the circumstances of the case at issue . . . that this issue of law and policy must be developed more fully in the context of an actual dispute").

⁴ *Dep't of the Army, Headquarters III Corps & Fort Hood, Fort Hood, Tex.*, 40 FLRA 636, 637 (1991) (*Fort Hood*).

⁵ *Id.*

⁶ 5 U.S.C. § 7114(c)(2) (emphasis added).

⁷ *U.S. DOD, Ill. Nat'l Guard, Springfield, Ill.*, 68 FLRA 199, 203 (2015) (citing *Fort Bragg Ass'n of Teachers*, 44 FLRA 852, 857 (1992)).

⁸ The majority appears to suggest that this statutory condition is satisfied for continuance provisions because the parties, by failing to initiate or complete their negotiations before the expiration date of their agreement, "effectively execute a new, extended agreement when they allow the continuance provision to go into effect." Majority at 5. While creative, the obvious problem with this contractual interpretation is that it is squarely inconsistent with the language of the continuance provision itself, which states that, under those precise circumstances, the agreement will remain in full force and effect until a new agreement is approved.

⁹ 5 U.S.C. § 7116(a)(7) (emphasis added).

¹⁰ Majority at 6.

Perhaps recognizing this inconsistency, the majority explains that the parties' extended agreement is, "in a meaningful sense, no longer the same one that was 'in effect' before the extension occurred."¹¹ This "meaningful sense" standard of contract interpretation is – to put it mildly – novel. It assuredly is *not* the standard the majority has rigorously applied in reversing arbitrators' awards for failing to adhere to an agreement's "clear and unambiguous terms."¹² But under any reasoned analysis, the majority falls well-short of demonstrating how its interpretation of § 7116(a)(7) can be reconciled with the language of that provision.

These fundamental flaws in the majority's analysis are not cured by its attempt to analogize continuance provisions to "renegotiated and rollover agreements."¹³ In a typical rollover agreement, the parties agree that, if neither party requests to renegotiate the agreement, it "shall be automatically renewed" for a defined term.¹⁴ As noted, this is simply not the case for continuance provisions, by which the parties agree to *extend* their existing agreement until a new agreement is finalized.

And far from "prevent[ing] the proliferation of cases involving the same or similar question" raised by the request for a policy statement,¹⁵ the majority's decision will only create confusion where none existed previously.¹⁶ Moreover, by injecting the agency-head review process into the middle of the parties' negotiations for a new agreement, today's decision will unnecessarily introduce both conflict and uncertainty into these negotiations, thereby giving rise to the sort of protracted bargaining that, until today, my colleagues have regularly condemned.¹⁷

If one thing is clear from the rash of policy statements that the majority has recently issued, it is that this is no way to establish Authority precedent on significant matters affecting federal-sector labor relations. The Authority could have readily addressed the question presented in today's decision through an actual case arising from an arbitration, negotiability or unfair labor practice proceeding. This would have required us not only to apply the governing principles to actual contract language, but also to address – and rebut – arguments raised by the parties as part of the adjudicative process.

By issuing hastily and poorly reasoned policy statements that are untethered to the facts of actual disputes – and which barely reference the well-articulated positions taken by commenting parties opposing their issuance – the majority, in my view, has abdicated its responsibility to provide leadership in the field of federal-sector labor relations.¹⁸ As I stated in a previous dissenting opinion, "the federal labor-management relations community deserves better."¹⁹

Accordingly, I dissent.

¹¹ *Id.* at 5.

¹² *See, e.g., U.S. Small Bus. Admin.*, 70 FLRA 525, 528 (2018) (Member DuBester concurring, in part, and dissenting, in part) (holding that arbitrators "may not modify the plain and unambiguous provisions of an agreement based on parties' past practices" because "such a rule best serves the statutory policy of providing parties 'with stability and repose with respect to [the] matters [that they have] reduced to writing'" (quoting *Dep't of the Navy v. FLRA*, 962 F.2d 48, 59 (D.C. Cir. 1992))).

¹³ Majority at 5.

¹⁴ *Fort Hood*, 40 FLRA at 637.

¹⁵ Majority at 3 (quoting 5 C.F.R. § 2427.5(b)).

¹⁶ Notably, the majority finds that issuance of this policy statement is necessary solely because "over the last few years, there have been a significant number of government-wide regulatory actions" that potentially affect federal labor-management relations. Majority at 3. It fails to explain, however, why any questions concerning the application of §§ 7114(c) and 7116(a)(7) to continuance provisions could not be addressed, and resolved, in the context of an actual case in controversy.

¹⁷ *See, e.g., Nat'l Weather Serv. Emps. Org.*, 71 FLRA 918, 920 n.28 (2020) (Member DuBester dissenting) ("the Authority

cannot turn a blind eye to the prolonged and contentious manner of the parties' bargaining history, as doing so would undermine the Statute's purposes of promoting constructive labor-management relationships and 'the effective conduct of public business'" (quoting 5 U.S.C. § 7101(a)(1)(B)); *U.S. DHS, U.S. CBP*, 71 FLRA 744, 746-47 (2020) (Concurring Opinion of Member Abbott) (Member Abbott concurring; Member DuBester dissenting) (condemning the parties for "a negotiation process that has gone on way too long" because it "does not 'contribute[] to the effective conduct of public business'" (quoting 5 U.S.C. § 7101(a)(1)(B))).

¹⁸ *See, e.g., OPM*, 71 FLRA 571, 576-79 (2020) (Dissenting Opinion of Member DuBester) (Member Abbott concurring; Member DuBester dissenting); *Nat'l Right to Work Found., Inc.*, 71 FLRA 923, 927-29 (2020) (Dissenting Opinion of Member DuBester); *U.S. Dep't of Educ.*, 71 FLRA 968, 972-76 (2020) (Dissenting Opinion of Member DuBester); *U.S. OPM*, 71 FLRA 977, 982-85 (2020) (*U.S. OPM*) (Dissenting Opinion of Member DuBester).

¹⁹ *U.S. OPM*, 71 FLRA at 982 (Dissenting Opinion of Member DuBester).