

CASE DIGEST: *NTEU*, 72 FLRA 556 (2021) (Member Abbott concurring;
Chairman DuBester dissenting)

This case concerned the negotiability of two proposals pertaining to the assignment of Contractor Management Module (the Module) work to bargaining-unit employees (BUE) and the evaluations of BUEs assigned Module work. The Agency argued that the proposals were outside the duty to bargain because they were covered by the parties' agreement. The Authority found that both proposals concerned the same subject matter as certain provisions in the parties' agreement. Moreover, because the Union failed to demonstrate that the proposals were not covered by the parties' agreement, the Authority found that the proposals were outside the duty to bargain. Accordingly, the Authority dismissed the Union's petition as to both proposals.

Chairman DuBester dissented, finding that the proposals were not covered by the parties' agreement because the pertinent provisions of the agreement did not address how the new module's adoption would be implemented or affect employees. In his view, the parties should be allowed to clarify these matters through the bargaining process rather than their negotiated grievance procedure.

Member Abbott concurred with the decision, but wrote separately to address several concerns that he had with both the Authority's covered by doctrine and the new standards advanced by the dissent. Rather than radically changing the covered by doctrine, he believed that the doctrine simply must be expanded to preclude those matters that were discussed by the parties during negotiations but were, for whatever reason, not included as a provision in the final agreement.

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.