

73 FLRA No. 165

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 480  
COUNCIL OF PRISON LOCALS #33  
(Union)

and

UNITED STATES  
DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF PRISONS  
FEDERAL CORRECTIONAL  
INSTITUTION McDOWELL  
WELCH, WEST VIRGINIA  
(Agency)

0-AR-5942

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DECISION

March 29, 2024

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Before the Authority: Susan Tsui Grundmann, Chairman,  
and Colleen Duffy Kiko, Member  
(Chairman Grundmann concurring)

**I. Statement of the Case**

Arbitrator Grant D. Shoub issued an award finding the Agency was not obligated to bargain over certain temporary assignments. The Union filed an exception arguing the award is contrary to law. Because the Union does not sufficiently support this exception, we deny it.

**II. Background and Arbitrator’s Award**

At the Agency’s prison facility, the Agency employs five unit secretaries across three residential units as follows: two in Unit A; two in Unit B; and one in Unit C. The Agency promoted the Unit C secretary and

assigned the other four secretaries to perform certain duties of the now-vacant Unit C position for eight weeks.

The Union requested the Agency bargain over the alleged change to these four secretaries’ duties. Claiming the secretaries were performing only their regular duties and that a temporary increase of work did not trigger a bargaining obligation, the Agency denied the request. The Union grieved, alleging the Agency’s denial violated the parties’ agreement, § 7106(b)(1) of the Federal Service Labor-Management Relations Statute (the Statute),<sup>1</sup> and § 4 of Executive Order 14003 (the Executive Order).<sup>2</sup> The grievance proceeded to arbitration, where the parties stipulated the following issue: whether “the Agency violate[d] the [parties’ agreement,] . . . § 7106, or [the] Executive Order” by refusing to bargain.<sup>3</sup>

Based on the evidence presented at arbitration, the Arbitrator found the Agency did not assign the four secretaries a new supervisor, and the secretaries performed work that “was no different” from their normal duties.<sup>4</sup> Relying on these findings, the Arbitrator concluded the parties’ agreement did not impose a bargaining obligation, because “the working conditions of the Unit A and Unit B [s]ecretaries were not affected.”<sup>5</sup>

The Arbitrator also considered the Statute, as well as the Executive Order’s instruction that agencies negotiate over the subjects set forth in § 7106(b)(1) of the Statute. However, he found “nothing in . . . § 7106(b)(1) . . . require[d] the Agency to negotiate over the temporary increase in the normal and regular duties” of the secretaries.<sup>6</sup>

Based on these conclusions, the Arbitrator found the Agency did not violate the parties’ agreement, the Statute, or the Executive Order by refusing to bargain over the temporary assignments. Therefore, he denied the grievance.

The Union filed an exception on January 2, 2024, and the Agency filed an opposition on February 5, 2024.

<sup>1</sup> 5 U.S.C. § 7106(b)(1) (nothing in § 7106 precludes parties from negotiating “at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work”).

<sup>2</sup> Protecting the Federal Workforce, Exec. Order No. 14,003, 86 Fed. Reg. 7,231, 7,232 (Jan. 22, 2021) (“The head of each agency[,] subject to the provisions of chapter 71 of title 5,

United States Code, shall elect to negotiate over the subjects set forth in 5 U.S.C. [§] 7106(b)(1) and shall instruct subordinate officials to do the same.”).

<sup>3</sup> Award at 3.

<sup>4</sup> *Id.* at 15.

<sup>5</sup> *Id.* at 16 (internal quotation marks omitted).

<sup>6</sup> *Id.* at 19.

### III. Analysis and Conclusion: The Union does not demonstrate that the award is contrary to law.

The Union contends the award is contrary to the Executive Order and § 7106(b) of the Statute.<sup>7</sup> The Union's only explanation for this contention is: "The [A]gency failed to negotiate with the local [U]nion [over a] change in working conditions whereas the [A]rbitrator cites the Agency was not required to negotiate what merely was an increase in the regular duties of the Unit A and Unit B [s]ecretaries."<sup>8</sup> Section 2425.6(e)(1) of the Authority's Regulations provides that an exception "may be subject to dismissal or denial if . . . [t]he excepting party fails to raise and support a ground" listed in § 2425.6(a)-(c).<sup>9</sup> Consistent with that section, when a party does not explain how an award is deficient, the Authority will deny the party's exception as unsupported.<sup>10</sup>

The Arbitrator found the Agency temporarily increased the secretaries' "normal and regular duties," and concluded that neither § 7106(b)(1) of the Statute nor the Executive Order obligated the Agency to bargain under those circumstances.<sup>11</sup> The Union's exception does little more than express the Union's disagreement with that conclusion.<sup>12</sup> Although the Union cites the Executive Order and § 7106(b) of the Statute,<sup>13</sup> the Union does not explain how the Arbitrator's application of either of those authorities was erroneous or offer any rationale as to how those authorities obligated the Agency to bargain under the circumstances of this case. Thus, the Union does not adequately support its claim that the award is contrary to law. Accordingly, we deny this exception, as unsupported, under § 2425.6(e)(1) of the Authority's Regulations.<sup>14</sup>

### V. Decision

We deny the Union's exception.

<sup>7</sup> Exceptions Form at 4.

<sup>8</sup> *Id.*

<sup>9</sup> 5 C.F.R. § 2425.6(e)(1).

<sup>10</sup> *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Ashland, Ky.*, 73 FLRA 775, 776 (2024) (citing *NTEU*, 70 FLRA 57, 60 (2016)).

<sup>11</sup> Award at 19 ("[N]othing in . . . § 7106(b)(1) . . . requires the Agency to negotiate over the temporary increase in the normal and regular duties of the . . . [s]ecretaries.").

<sup>12</sup> See Exceptions Form at 4.

<sup>13</sup> *Id.*

<sup>14</sup> See *AFGE, Loc. 153*, 73 FLRA 792, 793 (2024) (*Loc. 153*) (denying contrary-to-law exception as unsupported where excepting party cited § 7106 of the Statute but did not explain how the award conflicted with that provision); *AFGE, Loc. 922*, 67 FLRA 458, 459 (2014) (denying contrary-to-law exception as unsupported where excepting party cited numerous laws but did not explain how the award conflicted with those laws); see also *AFGE, Loc. 12*, 69 FLRA 360, 361 (2016) (denying exception that was not "adequately support[ed]"). We note that the Authority recently revised its test for assessing management-rights exceptions in cases "where the arbitrator has found a [collective-bargaining-agreement] violation." *Consumer Fin. Prot. Bureau*, 73 FLRA 670, 676 (2023). As the Arbitrator did not find such a violation, that revised test does not apply here. *E.g., Loc. 153*, 73 FLRA at 793 n.25.

**Chairman Grundmann, concurring:**

For the reasons stated in the decision, I agree it is appropriate to deny the Union's exception as unsupported. I write separately to note the following.

In denying the Union's grievance, the Arbitrator relied on, among other things, the Authority's decisions in *U.S. DHS, U.S. CBP, El Paso, Texas (CBP El Paso)*,<sup>1</sup> and *U.S. DOJ, Federal BOP, Federal Correctional Complex, Coleman, Florida (FCC Coleman)*.<sup>2</sup> I was not a Member when the Authority issued those decisions and, thus, I did not participate in those cases. However, I note the U.S. Court of Appeals for the D.C. Circuit vacated the decision in *CBP El Paso*.<sup>3</sup> Additionally, I am open to revisiting *FCC Coleman* in a future, appropriate case.

Therefore, I concur.

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<sup>1</sup> 70 FLRA 501 (2018) (Member DuBester dissenting).

<sup>2</sup> 71 FLRA 790 (2020) (Member DuBester dissenting).

<sup>3</sup> *AFGE, AFL-CIO, Loc. 1929 v. FLRA*, 961 F.3d 452 (D.C. Cir. 2020).