

**74 FLRA No. 14**

INTERNATIONAL FEDERATION  
OF PROFESSIONAL AND TECHNICAL ENGINEERS  
LOCAL 4  
(Union)

and

UNITED STATES  
DEPARTMENT OF THE NAVY  
PORTSMOUTH NAVAL SHIPYARD  
(Agency)

0-NG-3677

DECISION AND ORDER  
ON A NEGOTIABILITY ISSUE

October 23, 2024

Before the Authority: Susan Tsui Grundmann, Chairman,  
and Colleen Duffy Kiko and Anne Wagner, Members

**I. Statement of the Case**

This matter is before the Authority on a negotiability appeal filed by the Union under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute (the Statute).<sup>1</sup> The petition for review (petition) contains one proposal that would require the Agency to designate Portsmouth, New Hampshire, as the official duty station of a newly-established architect position. For the reasons discussed below, we find that the proposal affects the Agency's right to determine its organization under § 7106(a)(1) of the Statute<sup>2</sup> but does not constitute a negotiable procedure or appropriate arrangement under § 7106(b)(2) or (3), respectively.<sup>3</sup> Therefore, we find the proposal nonnegotiable.

<sup>1</sup> 5 U.S.C. § 7105(a)(2)(E).

<sup>2</sup> *Id.* § 7106(a)(1).

<sup>3</sup> *Id.* § 7106(b)(2), (3).

<sup>4</sup> All subsequent dates occurred in 2023 unless otherwise noted.

<sup>5</sup> We note that the response and reply are timely because the Authority granted the Union a two-week extension of time to file its response.

<sup>6</sup> 5 C.F.R. § 2424.23. Because the Union filed its petition before October 12, 2023, we apply the Authority's Regulations in effect at the time of filing. Negotiability Proceedings, 88 Fed. Reg. 62445, 62445 (Sept. 12, 2023) (revising negotiability

**II. Background**

The overarching context of the parties' dispute is their longstanding disagreement regarding the location of the Agency's Portsmouth Naval Shipyard facility: the Agency asserts the facility is in Maine, whereas the Union asserts the facility is in New Hampshire. However, their negotiability dispute concerns the narrower question of the official duty station of a newly-established architect position.

The Agency assigned the architect position to its Portsmouth Naval Shipyard facility, and designated the position's official duty station as Kittery, Maine. During negotiations over the architect position, the Union submitted the proposal at issue, which would designate Portsmouth, New Hampshire, as the position's official duty station. After receiving the proposal, the Agency provided the Union with an unsolicited written allegation of nonnegotiability.

On August 10, 2023,<sup>4</sup> the Union filed its petition with the Authority. Subsequently, the Agency filed its statement of position (statement). The Union filed its response on October 17, and the Agency filed a reply to the response on November 1.<sup>5</sup> Pursuant to § 2424.23 of the Authority's Regulations, an Authority representative conducted a post-petition conference (conference) with the parties and issued a written record of that conference.<sup>6</sup>

**III. Preliminary Matter: The Union does not establish that a hearing is necessary.**

The Union requests a hearing, claiming that "fact finding may be necessary to fully understand the arguments of both the Union and the Agency."<sup>7</sup> Specifically, the Union alleges the parties have a "factual dispute regarding the location of Portsmouth Naval Shipyard."<sup>8</sup> Under § 2424.31 of the Authority's Regulations, the Authority may order a hearing "[w]hen necessary to resolve disputed issues of material fact in a negotiability . . . dispute, or when it would otherwise aid in decision making."<sup>9</sup> Neither the Union's request nor the record raises a factual issue that must be resolved to determine the proposal's negotiability. Moreover, to the extent the Union's asserted negotiability dispute is, in

Regulations, "to better expedite proceedings, consistent with Congress's direction," and applying revised Regulations "to all petitions for review filed on or after October 12, 2023"); *see, e.g., AFGE, Loc. 2031, 73 FLRA 769, 769 n.5 (2023)* (Chairman Grundmann concurring) (applying Authority's "prior Regulations throughout th[e] decision" where union filed petition for review before October 12, 2023).

<sup>7</sup> Pet. at 5.

<sup>8</sup> Record of Post-Pet. Conference (Record) at 2.

<sup>9</sup> 5 C.F.R. § 2424.31.

effect, a “factual dispute regarding the location of Portsmouth Naval Shipyard,”<sup>10</sup> we note that a negotiability appeal under the Statute is not the proper forum in which to determine the lawful demarcation of state borders.<sup>11</sup> Therefore, we deny the Union’s hearing request.<sup>12</sup>

#### IV. The Proposal

##### A. Wording

The OF 8 Form for Position Description ARCHITECT, GS-0808-7, 9, 11, 12, 13 PD #U12K7 will state in boxes 4 and 5 as “Portsmouth, NH” for the Employing Office Location and Duty Station. On the employees SF-50 blocks 14, 22, and 39 will also state “Portsmouth, NH” for this position. On the SF-50 block 38 will list the duty station code for Portsmouth NH.<sup>13</sup>

##### B. Meaning

The parties agree that the proposal would require the Agency to designate Portsmouth, New Hampshire, as the official duty station and work location for the identified architect position.<sup>14</sup> The parties also agree that the Agency would have to record Portsmouth, New Hampshire, as the duty-station location when processing the architects’ Standard Form 50 and Optional Form 8, which are documents issued by the Office of Personnel Management (OPM).<sup>15</sup> However, the Union explains that the proposal “is not intended to change the physical location” of any employees and that, under the proposal, architects would work at the Agency’s Portsmouth Naval Shipyard facility.<sup>16</sup> On the other hand, the Agency contends that the proposal could effectively require the Agency to move the

Portsmouth Naval Shipyard’s “offices, buildings[,] and dry docks” from their existing location in Kittery, Maine.<sup>17</sup>

Where the parties disagree over the meaning of a proposal, the Authority looks first to the proposal’s wording and the union’s statement of intent.<sup>18</sup> If the union’s explanation comports with the proposal’s plain wording, then the Authority adopts that meaning in determining whether the proposal is within the duty to bargain.<sup>19</sup>

Per its plain wording, the proposal requires the Agency to state, in various “boxes” and “blocks” on OPM forms, that Portsmouth, New Hampshire, is the architects’ duty station.<sup>20</sup> There is no language in the proposal suggesting that the Agency must relocate its existing shipyard facility or establish a new worksite for the architects. Further, the Union’s explanation of the proposal – that the Agency would not have to change the physical location of the Portsmouth Naval Shipyard<sup>21</sup> – is consistent with the proposal’s plain wording. Accordingly, we adopt the Union’s explanation for purposes of assessing the proposal’s negotiability.<sup>22</sup>

##### C. Analysis and Conclusions

1. The proposal affects management’s right to determine its organization.

The parties agree that the proposal would establish Portsmouth, New Hampshire, as the architects’ duty station,<sup>23</sup> but disagree as to whether the proposal affects management’s right to determine its organization

<sup>10</sup> Record at 2.

<sup>11</sup> Resp. Form at 3 (claiming there is “no official . . . border between” New Hampshire and Maine), *id.* at 4 (requesting that Authority find Maine and New Hampshire’s Piscataqua River Boundary subject to an unresolved “border dispute”), *id.* at 2-3 (asking Authority to consider aerial views, maps, and nautical charts to find that the Portsmouth Naval Shipyard is located in New Hampshire); Resp., Attach. 12, Statement on the Location of the Portsmouth Naval Shipyard, Badger’s Island, and the New Hampshire Maine Boundary in Portsmouth Harbor, Congressman Bob Smith (R-NH) (June 4, 1990) at 15-74 (providing chronology of “facts relative to the location of the Portsmouth Naval Shipyard,” dating back to 1620, that includes statements made by seventeenth-century ship captains), *id.* at 2 (alleging that “from a boundary ruling from the King of England some 250 years ago to the present day,” the boundary between New Hampshire and Maine “has never been marked out in the area of Portsmouth . . . [Naval] Shipyard”); *see also New Hampshire v. Maine*, 532 U.S. 742, 750-56 (2001) (holding, for purposes of case before it, that doctrine of “judicial estoppel bar[red] New Hampshire from asserting that the Piscataqua River boundary runs along the Maine shore”).

<sup>12</sup> *See NTEU*, 70 FLRA 941, 941 n.3 (2018) (Member DuBester dissenting on other grounds) (denying hearing request where “record contain[ed] sufficient information” to resolve petition without hearing).

<sup>13</sup> Pet. at 4. During the conference, the Union modified the proposal to correct a typographical error and insert a period at the end of the last sentence. Record at 1.

<sup>14</sup> Record at 2.

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

<sup>16</sup> *Id.*; *see also* Resp. Form at 4 (asserting that, under the proposal, the “[g]eographic location of all employees would remain the same”).

<sup>17</sup> Reply Br. at 2.

<sup>18</sup> *AFGE, Loc. 15*, 73 FLRA 125, 131 (2022) (*Loc. 15*) (citing *AFGE, Council 119*, 72 FLRA 63, 64 (2021) (Member Abbott dissenting in part on other grounds)).

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

<sup>20</sup> Pet. at 4; *see also* Record at 2.

<sup>21</sup> Record at 2; Resp. Form at 4.

<sup>22</sup> *Loc. 15*, 73 FLRA at 131.

<sup>23</sup> Record at 2.

under § 7106(a)(1) of the Statute.<sup>24</sup> The Agency argues that the proposal interferes with management's right to determine its organization by preventing the Agency from designating Kittery, Maine, as the architects' duty station, a designation the Agency asserts "is directly and substantively related to the accomplishment of the Agency's mission."<sup>25</sup>

Management's right to determine its organization encompasses an agency's determination as to how it will structure itself to accomplish its mission and functions, including such matters as the geographic locations in which an agency will provide services or otherwise conduct its operations.<sup>26</sup> Where an arbitration award would have required an agency to change an employee's duty station from Ogden, Utah, to Las Vegas, Nevada, the Authority found this affected management's right to determine "where[,] organizationally[,] certain functions shall be established and *where the duty stations of the positions* providing those functions *shall be maintained.*"<sup>27</sup> Here, by dictating that the Agency must establish and maintain the architects' duty station in Portsmouth, New Hampshire, the Union's proposal has the same effect. Accordingly, the proposal affects the Agency's right to determine its organization.<sup>28</sup>

The Union alleges that, under the proposal, the architects "would not change their physical location" and "their [ job] duties will remain the same."<sup>29</sup> In this regard, the Union contends that the proposal's only impact is "correct[ing] . . . the[ architects'] forms to list

Portsmouth," New Hampshire, as the duty station.<sup>30</sup> The Agency disagrees and asserts that changing an employee's official duty station affects "critical determinations about . . . locality pay, performance requirements, travel expenses[,] and tax liability."<sup>31</sup>

Contrary to the Union's contention, the proposal does not merely require the Agency to enter a particular location on certain forms. When an agency engages in administrative activities such as processing locality-pay adjustments, reimbursing expenses, and paying overtime, the geographic location of an employee's duty station is a central, if not determinative, factor upon which an agency relies.<sup>32</sup> The proposal requires the Agency to use the Union's proposed duty-station location when performing any administrative task related to the architects' official duty station. Accordingly, even after considering the Union's arguments, we find the proposal has a direct and substantive effect on the administrative and functional structure of the Agency, and we reject the Union's argument that the proposal would not affect management's right to determine its organization.<sup>33</sup>

2. The Union does not show that the proposal is a negotiable procedure.

In its response, the Union argues that the proposal is a negotiable procedure under § 7106(b)(2) of the Statute.<sup>34</sup> Section 2424.25(c)(1) of the Authority's Regulations requires a union to set forth its arguments and

<sup>24</sup> 5 U.S.C. § 7106(a)(1). Compare Statement Br. at 3 (arguing that the proposal "require[s] the Agency to forego its . . . decision regarding the geographic location of the shipyard, the efficiency of shipyard operations[,] and its overall organizational structure"), with Resp. Form at 7 ("The organizational structure at [Portsmouth Naval Shipyard] will not change with the Union[']s proposal").

<sup>25</sup> Statement Br. at 3-5.

<sup>26</sup> *NFFE, Loc. 7*, 53 FLRA 1435, 1438 (1998) (citing *NTEU, Chapter 83*, 35 FLRA 398, 409 (1990) (*NTEU, Chapter 83*)).

<sup>27</sup> *U.S. DOD, Def. Logistics Agency*, 70 FLRA 932, 934 (2018) (*DOD*) (Member DuBester dissenting) (quoting *U.S. Dep't of Transp., Maritime Admin.*, 61 FLRA 816, 822 (2006)) (internal quotation marks omitted).

<sup>28</sup> See *id.* at 934 n.23 ("[D]etermining an employee's official duty station necessarily affects management's right to determine the agency's organization . . ." (emphasis omitted)).

<sup>29</sup> Resp. Form at 5.

<sup>30</sup> *Id.*

<sup>31</sup> Reply Br. at 5.

<sup>32</sup> See, e.g., 5 C.F.R. § 531.603 (entitling an employee to locality pay based on geographic area of their official worksite); *id.* § 531.605(b) (using employee's official work site for purposes of reimbursing relocation expenses); *id.* § 550.112(j) (relying on mileage radius relative to employee's official duty station for purposes of calculating employee's entitlement to overtime pay for travel). We note that, in its reply brief, the Agency argued it would be inappropriate for it to designate a duty station anywhere

but "where the employee regularly performs their duties." Reply Br. at 4-5 (citing 5 C.F.R. § 531.605). To the extent this argument could be construed to contend that the proposal is nonnegotiable because it is contrary to 5 C.F.R. § 531.605, that argument is untimely. 5 C.F.R. § 2424.24; see also, e.g., *AFGE, Loc. 2058*, 68 FLRA 676, 681 (2015) (Member Pizzella concurring in part, dissenting in part on other grounds) (agency could not raise new contrary-to-law arguments in its reply that it could have raised in its statement of position).

<sup>33</sup> See *DOD*, 70 FLRA at 934 n.23 (finding that changing employee's official duty station affected an agency's right to determine its organization because, among other reasons, the "agency must administer locality-based payments using an employee's official duty station"); *AFGE, Loc. 3529*, 55 FLRA 830, 832 (1999) (finding proposals which "dictate[d] where, organizationally, the [a]gency's staffing function [was] established" affected agency's right to determine organization); *NTEU, Chapter 83*, 35 FLRA at 412 (recognizing that agency's designation of official duty station concerned management's right to determine its organization where designation "was for purposes of implementing administrative matters, such as reimbursement of travel expenses" (citing *AFGE, AFL-CIO, Loc. 3805*, 5 FLRA 693 (1981) (*Loc. 3805*))); cf. *AFGE, Loc. 3601*, 39 FLRA 504, 516 (1991) (holding proposal requiring agency to provide private office did not affect management's right to determine organization because it did not determine "the specific geographic location" of employee's duty station).

<sup>34</sup> Resp. Form at 8.

supporting authorities for any assertion that a proposal constitutes an exception to a management right, including “[w]hether and why the proposal” constitutes a negotiable procedure under § 7106(b)(2).<sup>35</sup>

The Union claims that the proposal is a negotiable procedure because “[a]spects of position descriptions (PDs) and OF-8 are negotiable such as duty station and duty location,” and “[t]he procedure the [A]gency uses to fill positions is the use of the PD and the OF-8 forms.”<sup>36</sup> However, the Union neither cites any authority to support its claim nor explains how the proposal is negotiable under § 7106(b)(2). When a party fails to support an argument that a proposal constitutes a negotiable procedure, the Authority rejects it as a bare assertion.<sup>37</sup> Consequently, we reject the Union’s argument as a bare assertion.

3. The Union does not show that the proposal is an appropriate arrangement.

A proposal that affects a management right under § 7106(a) of the Statute is within the duty to bargain if it is an appropriate arrangement under § 7106(b)(3).<sup>38</sup> To determine whether a proposal constitutes an appropriate arrangement, the Authority first considers whether the proposal is intended to be an arrangement for employees adversely affected by the exercise of a management right.<sup>39</sup> When an agency does not dispute that a proposal is an arrangement, the Authority will find that the agency concedes that the proposal constitutes an arrangement.<sup>40</sup> Because the Agency does not dispute that the proposal is an arrangement, we find the proposal is an arrangement.<sup>41</sup>

Regarding whether an arrangement is appropriate, or whether it is inappropriate because it excessively interferes with the asserted management rights, the Authority weighs the benefits afforded to

employees under the arrangement against the proposal’s burden on the exercise of management’s rights.<sup>42</sup> The Authority has held that proposals which “negate” management’s exercise of a § 7106 right by “reversing management’s substantive decision altogether” are not appropriate arrangements.<sup>43</sup>

The Union argues that the proposal is an appropriate arrangement because it eliminates the state tax liability architects would otherwise incur if assigned to a Maine duty station.<sup>44</sup> According to the Union, employees who encumber the architect position *and* reside in New Hampshire would “not be burdened by . . . Maine income taxes,” if the Agency listed Portsmouth, New Hampshire, as their duty station.<sup>45</sup>

Although the proposal affords a monetary benefit to architects who both work at the Portsmouth Naval Shipyard and reside in New Hampshire, the burdens on management’s right to determine the Agency’s organization are substantial. The proposal wholly negates the Agency’s substantive decision to designate Kittery, Maine, as the architects’ official duty station. Moreover, the proposal contains no exceptions. Thus, it precludes the Agency from changing the architects’ official duty station to any location other than

<sup>35</sup> 5 C.F.R. § 2424.25(c)(1)(ii).

<sup>36</sup> Resp. Form at 8.

<sup>37</sup> 5 C.F.R. § 2424.25(c)(1)(ii); *see NAGE, Loc. R1-134*, 73 FLRA 637, 643 (2023) (rejecting argument that proposal constituted negotiable procedure where union did not cite any authority to support argument and failed to explain how proposal met § 7106(b)(2)’s requirements).

<sup>38</sup> *Antilles Consol. Educ. Ass’n*, 73 FLRA 282, 284 (2022) (citing *NTEU*, 72 FLRA 752, 755 (2022) (Chairman DuBester concurring in part and dissenting in part)).

<sup>39</sup> *AFGE, Loc. 1164*, 67 FLRA 316, 317 (2014) (Member Pizzella concurring) (citing *NAGE, Loc. R14-87*, 21 FLRA 24, 31 (1986) (*KANG*)).

<sup>40</sup> *NATCA*, 66 FLRA 213, 216 (2011) (citing *NATCA, Loc. ZHU*, 65 FLRA 738, 739-40 (2011)).

<sup>41</sup> *See* 5 C.F.R. § 2424.32(c)(1) (providing that “[f]ailure to raise . . . an argument will, where appropriate, be deemed a waiver of such argument”); *see, e.g., AFGI, Loc. 12*, 73 FLRA 603, 606 (2023) (*Loc. 12*) (where agency did not dispute that proposal was arrangement under § 7106(b)(3), Authority found proposal was arrangement).

<sup>42</sup> *Loc. 12*, 73 FLRA at 606 (citing *NAIL, Loc. 5*, 67 FLRA 85, 87 (2012)).

<sup>43</sup> *Ass’n of Civilian Technicians, Ky. Long Rifle Chapter & Bluegrass Chapter*, 70 FLRA 968, 970 (2018) (*ACT*) (Member DuBester dissenting); *see also NFFE, Loc. 1945*, 25 FLRA 675, 678 (1987) (*Loc. 1945*) (“Clearly, a proposal which completely reverses the substantive effect of a management decision under [§] 7106 does not constitute an appropriate arrangement under [§] 7106(b)(3).”).

<sup>44</sup> Resp. Form at 9-10.

<sup>45</sup> *Id.* at 10; *see also id.* (recognizing that architects “living in N[ew] H[ampshire] would not have to pay Maine income taxes,” but those residing in Maine “will continue to pay Maine income taxes”).

Portsmouth, New Hampshire. A proposal that has such an effect cannot constitute an appropriate arrangement.<sup>46</sup>

Because we find the proposal nonnegotiable, it is unnecessary to consider the Agency's argument that it has no obligation to bargain over the proposal.<sup>47</sup>

## V. Order

We dismiss the Union's petition.

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<sup>46</sup> See *Loc. 1945*, 25 FLRA at 678 (finding it "not necessary to balance the factors discussed in [KANG]" where "proposal negate[d] the exercise of management's rights" and, therefore, was not appropriate arrangement); see also *ACT*, 70 FLRA at 970 (where proposal "attempt[ed] to negate" agency's uniform choice by allowing employees to wear different uniform at their discretion, Authority held proposal was not appropriate arrangement); *IFPTE, Loc. 1*, 49 FLRA 225, 249 (1994) (finding proposal which created "absolute" restriction on agency's exercise of management right "substantially impaired" that right and was outside the duty to bargain); *AFGE, Loc. 3509*, 46 FLRA 1590, 1606 (1993) (proposal excessively interfered with right to determine organization by "nullify[ing] [agency's] decision to place" position in certain office and "requir[ing] the [a]gency to forego the functional structure that it has deemed best promotes efficient and effective operations"); *Overseas Educ. Ass'n*, 29 FLRA 257, 260 (1987) (proposal rescinding agency's change "excessively interfere[d]" with management right by "effectively negat[ing]" management's exercise of that right); *Loc. 3805*, 5 FLRA at 695 (holding proposal did not constitute appropriate arrangement because it "would have the effect of negating or reversing management's decision" to change employees' duty station).

<sup>47</sup> Reply Br. at 7 (alleging that "the Union has not demonstrated that there has been a change in . . . policy, practice[,] or procedure . . . giv[ing] rise to a bargaining obligation"); see, e.g., *Loc. 12*, 73 FLRA at 607 n.60 (finding it unnecessary to address agency's bargaining-obligation-dispute argument where Authority found proposal contrary to management's rights).