

74 FLRA No. 57

AMERICAN FEDERATION  
OF STATE, COUNTY, AND  
MUNICIPAL EMPLOYEES  
LOCAL 1653  
(Union)

and

UNITED STATES  
DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
MIKE MONRONEY AERONAUTICAL CENTER  
OKLAHOMA CITY, OKLAHOMA  
(Agency)

0-NG-3749

DECISION AND ORDER  
ON NEGOTIABILITY ISSUES

March 27, 2026

Before the Authority: Colleen Duffy Kiko, Chairman,  
and Anne Wagner and Charles O. Arrington, 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) concerns eight proposals related to the Agency’s implementation of a new trash-pickup policy. For the reasons discussed below, we: (1) find that the petition fails to present a negotiability dispute under § 2424.2(c) of the Authority’s Regulations as to five of the proposals,<sup>2</sup> and (2) under § 2424.32(d)(2) of the Authority’s Regulations,<sup>3</sup> treat the Union’s failure to respond to the Agency’s management-rights claims

regarding the remaining proposals as a concession that those proposals are contrary to § 7106 of the Statute.<sup>4</sup> Accordingly, we dismiss the petition.

**II. Background**

After the Agency provided the Union with notice of its intent to implement a centralized trash-pickup policy (centralized trash policy), the Union requested to bargain. Under the Agency’s proposed policy, employees would dispose of trash in centrally-located receptacles, with contractors responsible for collecting and removing any trash placed in the receptacles. Previously, employees discarded trash in bins located at their individual work stations, and contractors performed desk-side trash pickup and removal.

During negotiations, the Union submitted eight proposals regarding the impact and implementation of the centralized trash policy. In response, the Agency provided the Union with a written allegation of nonnegotiability.

On July 23, 2025,<sup>5</sup> the Union filed its petition with the Authority. On July 30, the Authority’s Office of Case Intake and Publication issued an order directing the Union to show cause why the Authority should not dismiss the petition as to Proposals 2, 3, 5, and 6 because the parties’ dispute over those proposals appeared to “concern a bargaining-obligation [dispute] rather than a negotiability dispute.”<sup>6</sup> Responding to the Authority’s order, the Union “consent[ed] to the Authority dismissing [P]roposals 2, 3, 5, and 6,” and noted that the Union intended to “refile . . . the proposal[s] as an unfair labor practice [(ULP)] against the Agency.”<sup>7</sup>

Pursuant to § 2424.23 of the Authority’s Regulations, Authority representatives conducted a post-petition conference (conference) with the parties and issued a written record of that conference.<sup>8</sup> At the conference, the Union stated that it filed a ULP charge regarding Proposals 2, 3, 5, and 6 with the Federal Labor Relations Authority’s Washington, D.C. Regional Office.<sup>9</sup> Thus, the parties agreed to discuss only Proposals 1, 4, 7, and 8 during the conference.<sup>10</sup> On September 29, the

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

<sup>2</sup> 5 C.F.R. § 2424.2(c).

<sup>3</sup> *Id.* § 2424.32(d)(2).

<sup>4</sup> 5 U.S.C. § 7106.

<sup>5</sup> All subsequent dates occurred in 2025 unless otherwise noted.

<sup>6</sup> July 30 Order to Show Cause (July Order) at 2.

<sup>7</sup> Union’s Resp. to July Order at 1.

<sup>8</sup> 5 C.F.R. § 2424.23.

<sup>9</sup> Record of Post-Pet. Conference (Record) at 2. On November 18, the Authority issued a second show-cause order directing the Union to provide information about its pending ULP charge and explain why the petition should not be dismissed, in part, because the charge directly relates to Proposals 2, 3, 5, and 6. November 18 Order to Show Cause (November Order) at 1-2 (citing 5 C.F.R. § 2424.30(a)). The Union confirmed that it filed a ULP charge regarding the proposals identified in the order and “decline[d] to further respond.” Union’s Resp. to November Order at 1.

<sup>10</sup> Record at 1 (“[T]he parties’ agreed that Proposals 2, 3, 5, and 6 need not be discussed during the conference.”).

Agency filed its statement of position (statement), to which the Union did not file a response.

**III. Preliminary Matter: We dismiss the petition as to Proposals 2, 3, 5, 6, and 8, without prejudice.**

Under § 7117 of the Statute and § 2424.2(c) of the Authority's Regulations,<sup>11</sup> "the Authority will consider a petition for review only where there is a negotiability dispute."<sup>12</sup> A negotiability dispute is a disagreement "concerning the legality of a proposal or provision."<sup>13</sup> When there is no such disagreement concerning a proposal contained in a petition, the Authority will dismiss the petition as to that proposal.<sup>14</sup> Further, a petition that "concerns only a bargaining[-]obligation dispute may not be resolved" in a negotiability proceeding.<sup>15</sup>

As noted above, the Authority's July 30 order directed the Union to show cause why the Authority should not dismiss the petition as to Proposals 2, 3, 5, and 6 because the parties' dispute over those proposals appeared to concern only a bargaining-obligation dispute, not a negotiability dispute. In its response to the Authority's order, the Union does not assert that the proposals present negotiability disputes and, instead, "consents" to the proposals' dismissal.<sup>16</sup> Given these circumstances, we dismiss the petition as to Proposals 2, 3, 5, and 6.

Regarding Proposal 8, in its allegation of nonnegotiability, the Agency asserted that the proposal conflicted with management's rights under § 7106 of the Statute and that the proposal is covered by the parties' agreement.<sup>17</sup> In its statement, the Agency does not repeat its § 7106 claim and, consequently, has "effectively withdr[awn] that allegation . . . by abandoning it before us now."<sup>18</sup> The Agency also does not argue that the proposal is inconsistent with any other law, rule, or regulation. Instead, in its statement, the Agency argues only that the proposal is covered by the parties' agreement,<sup>19</sup> which is a

bargaining-obligation dispute.<sup>20</sup> Because the only argument that the Agency makes to the Authority with regard to Proposal 8 is a bargaining-obligation dispute, we dismiss the petition as to that proposal.<sup>21</sup>

Accordingly, we dismiss Proposals 2, 3, 5, 6, and 8, without prejudice to the Union's right to refile, if the conditions governing review of negotiability appeals are satisfied.<sup>22</sup> Because we dismiss these parts of the petition on the ground that they do not present a negotiability dispute, it is unnecessary to resolve whether the Union's pending ULP charge – which implicates Proposals 2, 3, 5, and 6 – warrants dismissing the relevant parts of the petition because those proposals are "directly related" to the ULP.<sup>23</sup>

**IV. Proposals 1, 4, and 7<sup>24</sup>**

**A. Wording**

**1. Proposal 1**

AFSCME BUEs shall not be required to perform any janitorial services (including trash handling) unless janitorial services are explicitly listed in their JAT and job description.<sup>25</sup>

**2. Proposal 4**

The FAA will provide training on an annual basis to any employee required to engage in trash collection, transporting trash, or emptying trash cans on hazards associated with trash handling to include safe handling of trash that potentially contains bodily fluids, trash-borne pathogens, and hazardous materials that may be contained in trash. No AFSCME BUE will be required to perform any trash handling duties unless they have had this training within the previous 365 day period.<sup>26</sup>

<sup>11</sup> 5 U.S.C. § 7117; 5 C.F.R. § 2424.2(c).

<sup>12</sup> *AFGE*, *Loc. 15*, 73 FLRA 125, 126 (2022) (*Loc. 15*).

<sup>13</sup> 5 C.F.R. § 2424.2(c).

<sup>14</sup> *Loc. 15*, 73 FLRA at 126.

<sup>15</sup> 5 C.F.R. § 2424.2(d).

<sup>16</sup> Union's Resp. to July 30 Order at 1; *see also* Union's Resp. to November Order at 1 (reaffirming Union's response to Authority's July 30 order).

<sup>17</sup> Pet., Attach. 1 at 4.

<sup>18</sup> *NFFE*, *Loc. 1998*, *IAMAW*, 71 FLRA 417, 417-18 (2019) (Member Abbott dissenting in part on other grounds).

<sup>19</sup> Statement at 14.

<sup>20</sup> 5 C.F.R. § 2424.2(a)(1) (listing, as an example of a bargaining-obligation dispute, a claim that "[a] proposal concerns a matter that is covered by a collective[-]bargaining agreement").

<sup>21</sup> *Id.* § 2424.2(d); *see NATCA*, *Loc. ZHU*, 65 FLRA 738, 741 (2011) (where the only argument raised by the agency with regard to certain proposals concerned a bargaining-obligation dispute, dismissing petition as to those proposals).

<sup>22</sup> *Loc. 15*, 73 FLRA at 126.

<sup>23</sup> 5 C.F.R. § 2424.30(a) ("[T]he Authority will dismiss a petition for review when [a union] files a[ ULP] charge . . . and the charge . . . concerns issues directly related to the petition."); *see AFGE*, *Council 53*, *Nat'l VA Council*, 71 FLRA 1124, 1125 (2020) (Member Abbott dissenting on other grounds) (finding it unnecessary to consider applicability of 5 C.F.R. § 2424.30(a) after dismissing petition for failing to present negotiability dispute).

<sup>24</sup> As we resolve these proposals on the same basis, we address them together.

<sup>25</sup> Pet. at 5; Record at 2.

<sup>26</sup> Pet. at 7; Record at 3.

## 3. Proposal 7

No AFSCME employee will be required to lift trash cans or bags that weigh more than twenty-five (25) pounds. The FAA will reasonably accommodate employees who have any disability which prevents them from performing trash handling duties by excusing them from duties. No employees shall be retaliated against or discriminated against in performance, promotion, awards, transfer, or in any other way as a result of a reasonable accommodation that excuses them from trash handling duties.<sup>27</sup>

## B. Meaning

The parties agree that these terms have the following meanings when used in Proposals 1, 4, or 7: (1) “AFSCME” refers to the Union; (2) “BUEs” means bargaining-unit employees; and (3) “JAT” stands for job-analysis tool, which provides information regarding an employee’s job duties for classification purposes.<sup>28</sup> The parties also agree that Proposals 1 and 4 require the Agency to list trash-handling duties in an employee’s official documents, and provide relevant training on an annual basis, as a prerequisite to assigning an employee those duties.<sup>29</sup> With respect to Proposal 7, the parties agree that the proposal, as explained in the petition, “ensure[s] that the Agency will adhere to the requirements of the Americans with Disabilities [A]ct.”<sup>30</sup> The parties agree further that Proposal 7 bars the Agency from committing prohibited personnel practices against employees who, “due to physical limitations,” cannot perform trash-handling duties.<sup>31</sup> Additionally, the parties agree that Proposal 7’s first sentence creates a restriction on the assignment of trash-handling duties that operates independently from the reasonable-accommodation process described in the second and third sentences.<sup>32</sup>

<sup>27</sup> Record at 4. At the conference, the Union modified the proposal’s third sentence by changing “employee” to “employees,” adding the conjunction “or” between the terms “against” and “discriminated,” and removing the phrase “or otherwise negatively impacted.” *Id.* We note that the Agency does not object to the Union’s modifications, and we consider the proposal as modified. *See, e.g., NTEU, Chapter 296 & 336, 74 FLRA 299, 302 n.36 (2025).*

<sup>28</sup> Record at 2.

<sup>29</sup> *Id.* at 3; Pet. at 5 (explaining that Proposal 1 “is intended to ensure that employees who are required to perform . . . trash handling . . . have this duty described on their official documentation”), *id.* at 8 (“[P]roposal [4] is designed to ensure that employees have the proper training to engage in [trash-handling duties.]”).

<sup>30</sup> Pet. at 10; Record at 4 (parties affirming “the operation and impact of Proposal 7 [a]s set forth in the petition”).

<sup>31</sup> Pet. at 10; Record at 4.

## C. Analysis and Conclusion: Proposals 1, 4, and 7 are outside the duty to bargain.

The Agency asserts that Proposals 1, 4, and 7 are contrary to management’s rights under § 7106(a) and (b) of the Statute. As for Proposal 1 specifically, the Agency argues that the proposal “excessively interferes with management’s right to assign work under § 7106(a)(2)(B) of the Statute and to determine its method and means of performing work under § 7106(b)(1).”<sup>33</sup> Regarding Proposals 4 and 7, the Agency contends that these proposals are contrary to management’s rights to assign work and determine the methods and means of performing work, as well as management’s right to assign employees under § 7106(a)(2)(A) of the Statute.<sup>34</sup> The Agency also argues that Proposals 1, 4, and 7 are neither negotiable procedures under § 7106(b)(2) of the Statute, nor appropriate arrangements under § 7106(b)(3).<sup>35</sup>

Section 2424.32(a) of the Authority’s Regulations states, in pertinent part, that unions have “the burden of . . . raising and supporting arguments that [a] proposal . . . is within the duty to bargain, within the duty to bargain at the agency’s election, or not contrary to law.”<sup>36</sup> The Regulations also provide that a “[f]ailure to respond to an argument or assertion raised by the other party may, in the Authority’s discretion, be treated as conceding such argument or assertion.”<sup>37</sup>

Here, the Union did not file a response to the Agency’s statement, nor did it raise any arguments in its petition that address the negotiability of Proposals 1, 4, and 7.<sup>38</sup> In these circumstances, consistent with the above-cited Regulations and Authority precedent, we find it appropriate to treat the Union’s failure to respond to the Agency’s management-rights claims as concessions that Proposals 1, 4, and 7 affect the asserted management rights,<sup>39</sup> and that they are neither negotiable procedures under § 7106(b)(2) of the Statute nor appropriate

<sup>32</sup> Record at 4-5.

<sup>33</sup> Statement at 3 (citing 5 U.S.C. § 7106(a)(2)(B), (b)(1)).

<sup>34</sup> *Id.* at 6-8, 10-11.

<sup>35</sup> *Id.* at 5, 8, 11.

<sup>36</sup> 5 C.F.R. § 2424.32(a).

<sup>37</sup> *Id.* § 2424.32(d)(2).

<sup>38</sup> *E.g.,* Pet. at 6 (“The Union reserves its right to respond after the Agency has met their burden of explaining why the proposal is non-negotiable.”).

<sup>39</sup> *See AFGE, Council 119, 72 FLRA 63, 66 (2021) (Council 119) (Member Abbott dissenting in part on unrelated grounds) (“[W]hen a union does not respond to a statement of position, and the petition for review does not contest certain assertions in the statement of position, the Authority will find that the union concedes those assertions . . . .” (quoting *Nat’l Nurses United, 70 FLRA 306, 307 (2017)* (internal quotation marks omitted))).*

arrangements under § 7106(b)(3).<sup>40</sup> Accordingly, we find that Proposals 1, 4, and 7 are outside the duty to bargain as contrary to management rights.<sup>41</sup> Because we find the proposals outside the duty to bargain on this basis, it is unnecessary to consider the Agency's remaining argument regarding Proposal 7.<sup>42</sup>

## V. Order

We dismiss the Union's petition.

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<sup>40</sup> See *Loc. 15*, 73 FLRA at 132 (concluding that proposals did not fall within an exception to management rights under § 7106(b) where union failed to raise § 7106(b) arguments).

<sup>41</sup> See *Council 119*, 72 FLRA at 64-65 (dismissing petition as to proposal because union neither disputed agency's management-rights claim nor argued that proposal fell within an exception to management's rights under § 7106(b)); *AFGE, Loc. 1156*, 63 FLRA 649, 649-50 (2009) (finding proposal outside the duty to bargain where union did not respond to agency's management-rights argument and petition did not identify applicable exception to management's rights).

<sup>42</sup> Statement at 12 (alleging that the "subject matter" of Proposal 7 "has been bargained in Article 46" of the parties' agreement); see, e.g., *IFPTE, Loc. 4*, 74 FLRA 59, 63 (2024) (finding it unnecessary to consider agency's bargaining-obligation-dispute argument after Authority found proposal contrary to management's rights).