

74 FLRA No. 71

INTERNATIONAL FEDERATION  
OF PROFESSIONAL AND TECHNICAL ENGINEERS  
AFL-CIO  
LOCAL 777

and

INTERNATIONAL FEDERATION  
OF PROFESSIONAL AND TECHNICAL ENGINEERS  
AFL-CIO  
LOCAL 4, CHAPTER 1

and

INTERNATIONAL FEDERATION  
OF PROFESSIONAL AND TECHNICAL ENGINEERS  
AFL-CIO  
LOCAL 97

and

INTERNATIONAL FEDERATION  
OF PROFESSIONAL AND TECHNICAL ENGINEERS  
AFL-CIO  
LOCAL 98

and

NATIONAL FEDERATION  
OF FEDERAL EMPLOYEES  
INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS, AFL-CIO  
LOCAL 1

and

NATIONAL FEDERATION  
OF FEDERAL EMPLOYEES  
INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS, AFL-CIO  
LOCAL 466

and

NATIONAL FEDERATION  
OF FEDERAL EMPLOYEES  
INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS, AFL-CIO  
LOCAL 777

and

NATIONAL FEDERATION  
OF FEDERAL EMPLOYEES  
INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS, AFL-CIO  
LOCAL 1753

and

NATIONAL FEDERATION  
OF FEDERAL EMPLOYEES  
INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS, AFL-CIO  
LOCAL 1781

and

NATIONAL FEDERATION  
OF FEDERAL EMPLOYEES  
INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS, AFL-CIO  
LOCAL 2198

and

NATIONAL FEDERATION  
OF FEDERAL EMPLOYEES  
INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS, AFL-CIO  
FOREST SERVICE COUNCIL

and

NATIONAL FEDERATION  
OF FEDERAL EMPLOYEES  
CHAPTER 282

and

MAE APGOVANNON, LEX BARKER,  
SAM BEAURIVAGE, DAVID CARULLI,  
JACOB MORRISON, PAUL OSADEBE,  
MATHIAS QUACKENBUSH, AUDRA SERRIAN,  
DAVID SHANLEY-DILLMAN, MATTHEW VOISINE,  
ANNA WEBB  
(Petitioners)

0-MC-0037

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DECISION ON PETITION  
FOR AMENDMENT OF RULES

June 30, 2026

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Before the Authority: Colleen Duffy Kiko, Chairman, and Anne Wagner and Charles O. Arrington, Members

**I. Background**

On March 27, 2025, President Donald J. Trump issued Executive Order 14,251 (EO 14251),<sup>1</sup> amending Executive Order 12,171,<sup>2</sup> and on August 28, 2025, President Trump issued Executive Order 14,343 (EO 14343)<sup>3</sup> (collectively, the exclusions orders). Pursuant to § 7103(b)(1) of the Federal Service Labor-Management Relations Statute (the Statute)<sup>4</sup> and 22 U.S.C. § 4103(b), the President – through the exclusions orders – excluded certain agencies and agency subdivisions from the Statute’s coverage. The Petitioners are unions and individuals affected by the exclusions orders.

Under 5 U.S.C. § 553(e)<sup>5</sup> and 5 C.F.R. § 2429.28,<sup>6</sup> the Petitioners request that the Federal Labor Relations Authority (FLRA or Authority) amend the FLRA’s Regulations to provide additional options for processing cases the Authority or the FLRA’s Office of the General Counsel (OGC) has put into abeyance because of ongoing litigation over the exclusions orders. The Petitioners seek to create “a pathway for affected parties to advance their dispute[s] through the Authority’s processes to be able to obtain meaningful judicial review.”<sup>7</sup> Specifically, the Petitioners propose amending the FLRA’s Regulations by adding: (1) a new section to Part 2429 – Miscellaneous and General Requirements;<sup>8</sup> and (2) an exception to the restrictions on interlocutory appeals found in § 2429.11.<sup>9</sup>

The Petitioners’ proposed new section, designated as 5 C.F.R. § 2420.20, is entitled “Actions involving parties affected by exclusions under litigation,” and states:

- (a) This section applies whenever the President excludes an agency or agency subdivision from the provisions of chapter 71 of title 5 of the United States Code pursuant to 5 U.S.C. 7103(b), and there is pending litigation in the courts of the United States as to the validity of said exclusion that applies to one or more of the parties in any matter arising pursuant to parts 2422 through 2426 of this subchapter.
- (b) In any matter meeting the conditions in paragraph (a) of this section, the Authority, the

General Counsel, any Administrative Law Judge appointed by the Authority under 5 U.S.C. 3105, and any Regional Director, or Hearing Officer may place the matter in abeyance pending disposition of the litigation challenging the applicable exclusion.

- (c) In matters placed in abeyance pursuant to paragraph (b) of this section, any party may file a request with the Authority:
  - (1) To grant a temporary order ordering the parties to maintain the status quo ante, or for specific performance of the terms of an executed contract, or other appropriate equitable remedy pending the ultimate resolution of the matter, or
  - (2) To render an immediate decision on the Authority’s jurisdiction over the matter after obtaining the views of the parties and other interested persons, orally or in writing, as the Authority deems necessary and appropriate. Such decision shall order dismissal of the matter or resumption of proceedings and shall be a final order of the Authority.
- (d) If the Authority does not render a decision upon a request made pursuant to paragraph (c) of this section within 180 days of its filing, the request is constructively denied[,] which shall be a final decision of the Authority, and the Authority shall publish confirmation thereof.<sup>10</sup>

The Petitioners also propose amending § 2429.11 of the FLRA’s Regulations<sup>11</sup> to reflect proposed § 2429.20 by stating: “Except as set forth in part 2423 or in section 2429.20 of this part, the Authority and the General Counsel ordinarily will not consider interlocutory appeals.”<sup>12</sup>

## II. Decision: We deny the petition.

As the Petitioners note, the exclusions orders, which directly concern the Authority’s jurisdiction, are the subject of ongoing litigation in federal district and circuit courts.<sup>13</sup> The Authority and the OGC have temporarily suspended the processing of cases involving parties covered by the exclusions orders as a prudential matter given the state of litigation and related preliminary injunctions.<sup>14</sup> As part of its procedures, the FLRA provides parties the opportunity to establish that they are not subject to the exclusions orders.<sup>15</sup> While a case is in abeyance, any raised claims are preserved, processing deadlines are suspended, and the FLRA will not issue a final order to resolve the issues.

The Petitioners argue that deferring case processing “indefinitely” has “generally the same results

as if the Authority were to default to presuming the validity of the exclusion[s] [orders][.] but does so in a posture that denies the adversely[ ]affected party the ability to challenge the [exclusions orders] facially or as applied.”<sup>16</sup> The Petitioners assert that their proposed regulatory amendments would allow parties who want to take “a more aggressive posture” to “exhaust the remedies before the Authority before pursuing judicial review.”<sup>17</sup>

The Authority rejects the proposed amendments for the following reasons.<sup>18</sup>

Paragraph (d) of proposed § 2429.20 seeks to impose a 180-day regulatory deadline for the Authority to respond to a party’s motion, under paragraph (c), for either preliminary equitable relief or a jurisdictional ruling concerning any case in abeyance due to the exclusions orders.<sup>19</sup> The Authority’s failure to meet that deadline would be defined as a “constructive deni[al]” of the motion.<sup>20</sup> Under the proposed regulation, the Authority would be required to “publish confirmation” of the

<sup>1</sup> Exclusions from Federal Labor-Management Relations Program, EO 14251, 90 Fed. Reg. 14553 (Apr. 3, 2025); see OPM, *Guidance on Executive Order Exclusions from Federal Labor-Management Programs* (Mar. 27, 2025), <https://www.opm.gov/policy-data-oversight/latest-memos/guidance-on-executive-order-exclusions-from-federal-labor-management-programs.pdf>.

<sup>2</sup> Exclusions from the Federal Labor-Management Relations Program, Exec. Order No. 12171, 44 Fed. Reg. 66565 (Nov. 19, 1979).

<sup>3</sup> Further Exclusions from the Federal Labor-Management Relations Programs, EO 14343, 90 Fed. Reg. 42683 (Sept. 3, 2025).

<sup>4</sup> 5 U.S.C. § 7103(b)(1).

<sup>5</sup> This section of the Administrative Procedure Act provides: “Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.” 5 U.S.C. § 553(e).

<sup>6</sup> This FLRA Regulation permits “[a]ny interested person” to file a petition to propose amendments to the FLRA’s Regulations. 5 C.F.R. § 2429.28.

<sup>7</sup> Pet. at 3.

<sup>8</sup> 5 C.F.R. Part 2429.

<sup>9</sup> *Id.* § 2429.11.

<sup>10</sup> Pet. at 4.

<sup>11</sup> 5 C.F.R. § 2429.11 (“Except as set forth in part 2423, the Authority and the General Counsel ordinarily will not consider interlocutory appeals.”).

<sup>12</sup> Pet. at 4.

<sup>13</sup> *Id.* at 3; see, e.g., *AFGE, AFL-CIO v. Trump*, 792 F. Supp. 3d 985, 1006-07 (N.D. Cal. 2025) (enjoining enforcement of exclusions order against plaintiff unions), *vacated*, 167 F.4th 1247 (9th Cir. 2026); *NTEU v. Trump*, 780 F. Supp. 3d 237, 269 (2025) (same), *stay granted*, 2025 WL 1441563 (D.C. Cir. 2025); *Fed. Educ. Ass’n v. Trump*, 795 F. Supp. 3d 74, 103 (D.D.C. 2025) (same), *stay denied*, 2025 WL 2738626 (D.C. Cir. 2025).

<sup>14</sup> E.g., Order to Show Cause to IFPTE, Loc. 777 at 3, *IFPTE, Loc. 777*, 0-NG-3742 (May 1, 2025) (Order) (“Because the Authority’s jurisdiction over this matter is in question, the deadlines for any remaining filings in this case . . . are temporarily suspended.” (emphasis omitted)).

<sup>15</sup> See, e.g., Order at 1 (“[T]he Authority directs the Union to show cause why the Authority should not dismiss this matter for lack of jurisdiction.” (citing *U.S. Att’y’s Off., S. Dist. of Tex., Hous., Tex.*, 57 FLRA 750 (2002))); Notice of Abeyance from FLRA San Francisco Regional Office to NFFE at 1, *U.S. Dep’t of the Army, U.S. Army Contracting Command*, AT-REP-26-0024 (May 12, 2026) (directing the parties to notify the regional agent if “you believe your agency or agency subdivision is either not excluded from the coverage of the . . . Statute by the [exclusions orders], or falls within one of the [exclusions orders’] exemptions”); Order to U.S. Dep’t of VA & AFGE at 1, *U.S. Dep’t of VA*, 0-AR-6134 (June 8, 2026) (stating that if the parties believe the exclusions orders do not apply to them, then “the Authority preemptively grants requests for leave to file supplemental submissions raising such an argument”).

<sup>16</sup> Pet. at 3.

<sup>17</sup> *Id.*

<sup>18</sup> See 5 U.S.C. § 555(e) (“Prompt notice shall be given of the denial in whole or in part of a . . . petition, . . . accompanied by a brief statement of the grounds for denial.”).

<sup>19</sup> Pet. at 4.

<sup>20</sup> *Id.*

constructive denial, which then would be a “final decision of the Authority.”<sup>21</sup>

In short, under paragraph (c) of proposed § 2429.20, the Authority would be required to either award some affirmative relief or issue a jurisdictional decision. If the Authority takes no action under paragraph (c), then paragraph (d) would require the Authority to confirm that its inaction on these matters is a default Authority decision. Adopting paragraphs (c) and (d) of proposed § 2429.20 would be inconsistent with the FLRA’s exercise of its discretion to put relevant cases into abeyance as a prudential matter given the state of litigation and related preliminary injunctions.<sup>22</sup>

Moreover, the Petitioners appear to anticipate that paragraph (d)’s constructive-denial decisions could be appealed to court.<sup>23</sup> Even assuming the FLRA retains jurisdiction over the cases described by the proposed regulations, § 7123(a) of the Statute limits parties’ appeal rights, notably denying judicial review of orders involving appropriate-unit determinations and arbitration awards that do not involve an unfair labor practice.<sup>24</sup> To the extent that proposed § 2429.20 is intended to create a path for direct judicial review in those scenarios, that would be inconsistent with § 7123(a) of the Statute.

For these reasons, we find that it would be inappropriate to promulgate paragraphs (c) and (d) of proposed § 2429.20. The remaining proposed revisions – specifically, paragraphs (a) and (b) of proposed § 2429.20, and the request to modify current § 2429.11 – appear to exist solely to enact paragraphs (c) and (d) of proposed § 2429.20.<sup>25</sup> The Petitioners have not explained how those remaining proposed revisions would independently function, and have not requested that we promulgate them separately.<sup>26</sup> Thus, we decline to independently consider those portions of the proposed regulatory revisions.

For the foregoing reasons, we find that the Petitioners’ arguments do not support amending the FLRA’s Regulations as proposed. Therefore, we deny the petition.<sup>27</sup>

<sup>21</sup> *Id.*

<sup>22</sup> We note this practice is routine within the judicial system. *See Albertson v. Millard*, 345 U.S. 242, 245 (1953) (directing lower court to hold case in abeyance pending litigation over matter that would directly impact decision).

<sup>23</sup> *See* Pet. at 3 (requesting “pathway” to “meaningful judicial review”); *see also id.* at 4 (proposing application of the new provision to “any matter arising pursuant to parts 2422 through 2426” of the FLRA’s Regulations, which includes cases concerning representation, unfair labor practices, negotiability, arbitration awards, and consultation rights).

<sup>24</sup> *See* 5 U.S.C. § 7123(a).

<sup>25</sup> *See* Pet. at 4.

<sup>26</sup> *See id.* at 1-4.

<sup>27</sup> *See Ashley Kjarbo*, 73 FLRA 892, 893-94 (2024) (then-Member Kiko concurring) (denying petition where arguments in support of requested regulatory change did not comport with statutory requirements); *NTEU*, 73 FLRA 428, 429 (2023) (Chairman Grundmann concurring) (denying petition after rejecting arguments supporting proposed regulatory amendments).