**74 FLRA No. 74**

NATIONAL TREASURY
EMPLOYEES UNION
(Union)

and

UNITED STATES
DEPARTMENT OF HEALTH
AND HUMAN SERVICES
(Agency)

0-AR-6106

DECISION

July 31, 2026

Before the Authority: Colleen Duffy Kiko, Chairman, and Anne Wagner and Charles O. Arrington, Members[1]

## I. Statement of the Case

The Union filed a grievance alleging, among other things, that the Agency violated the parties' collective-bargaining agreement and the Federal Service Labor-Management Relations Statute (the Statute) by failing to give the Union notice and an opportunity to bargain before offering bargaining-unit employees (unit employees) opportunities for: (1) Voluntary Early Retirement Authority (VERA), which allows employees to voluntarily retire early; and (2) Voluntary Separation Incentive Payments (VSIP), which compensate employees for voluntarily leaving the federal government. Arbitrator Christopher M. Shulman issued an award finding that the Agency violated the parties' agreement, but not the Statute. The Union filed an exception alleging that the award is contrary to law. Because we are unable to determine whether the award is contrary to law as alleged, we remand the matter to the parties for resubmission to the Arbitrator, absent settlement, for further findings.

## II. Background and Arbitrator's Award

In February 2025,[2] President Donald J. Trump issued Executive Order 14,210 (EO 14210),[3] which required federal agencies to "promptly undertake preparations to initiate large-scale reductions in force."[4] In March, in response to EO 14210, the Agency sent emails to employees offering time-limited VERA and VSIP opportunities (collectively, VERA/VSIP offers).

The Union filed a grievance alleging, as relevant here, that the Agency violated Article 3 of the parties' agreement (Article 3), and committed an unfair labor practice (ULP) under § 7116(a)(1), (5), and (8) of the Statute,[5] by failing to give the Union notice and an opportunity to bargain before implementing the VERA/VSIP offers. The grievance also alleged that, by the same conduct, the Agency repudiated Article 3, thus committing a ULP. The Agency denied the grievance, and the parties proceeded to arbitration.[6]

The parties did not stipulate, and agreed to allow the Arbitrator to frame, the issues. The Arbitrator framed the pertinent issue as "whether the Agency violated its contractual or statutory obligations to provide the Union notice and an opportunity to bargain in advance of implementation of the VERA/VSIP offers . . . and, if so, what shall the remedy be?"[7]

At arbitration, the Union argued that the Agency gave it no notice before unilaterally implementing the VERA/VSIP offers. The Union also argued that the offers were a more-than-de-minimis change to unit employees' conditions of employment that required the Agency to notify the Union of, and bargain with the Union over, the offers' impact and implementation. Additionally, the Union contended that, by its actions, the Agency repudiated the parties' agreement. The Agency countered that it had no obligation to bargain over the VERA/VSIP offers, and that it did not bypass the Union or repudiate the parties' agreement.

The Arbitrator found that Article 3 requires the Agency to give the Union notice and an opportunity to bargain before implementing changes to conditions of employment that are more than de minimis. Article 3 provides, in pertinent part, that when the Agency "wishes to implement changes in . . . working conditions . . . , the [e]mployer will provide the Union advance notice of the

[1] Member Arrington has not participated in this decision.
[2] All subsequent dates occurred in 2025 unless otherwise noted.
[3] Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative, EO 14210, 90 Fed. Reg. 9669 (Feb.11 2025).
[4] *Id.* at 9670.
[5] 5 U.S.C. § 7116(a)(1), (5), (8).
[6] Before a hearing on the merits, the Agency argued in a motion to dismiss that the grievance was not arbitrable. *See* Award at 2. The Arbitrator denied the motion, finding the grievance arbitrable. *Id.* at 15. Because neither party excepts to this finding, we do not address it further. *Ass'n. of Admin. L. Judges, IFPTE*, 74 FLRA 325, 327 n.26 (2026) (*Judges*) (Member Arrington concurring on other grounds).
[7] Award at 9.

proposed changes in conditions of employment of bargaining[-]unit employees that are more than de minimis and/or over which there is otherwise a duty to bargain."[8] Article 3 also provides that "such notice shall meet statutory requirements," and that the Agency "will not implement any changes until it has provided proper and timely notice to the Union and the parties have completed all negotiations."[9]

The Arbitrator found that the Agency notified unit employees of the VERA/VSIP offers without giving the Union prior notice. He then found that the VERA/VSIP offers were a more-than-de-minimis change because the offers "contemplate[d] . . . unit employees making . . . catastrophic and irrevocable life decisions [and could have] also affect[ed] workload[s] of those . . . unit employees who d[id] not elect" VERA/VSIP.[10] He further determined that the parties "had established a past practice of notice and [an] opportunity to bargain over the impact and implementation of VERA/VSIP offers by their prior conduct."[11] The Arbitrator concluded that the Agency violated Article 3 by failing to provide the Union with the contractually required notice and opportunity to bargain over the offers' impact and implementation.

Regarding "the topic of potential ULPs," the Arbitrator found that "the Agency . . . did not bypass the Union by its emails [to unit employees] offering VERA/VSIP."[12] Specifically, the Arbitrator found that the "offer emails did not invite negotiation over wages, hours, or terms and conditions of employment; they were simply notifying employees of the process . . . to participate in a statutory retirement program the Agency made available as directed by [the Office of Personnel Management]."[13] Moreover, the Arbitrator found that the Agency's "single breach" of Article 3 did not "constitute[] a repudiation of the" parties' agreement.[14] Thus, the Arbitrator stated that he did "*not* determine that the Agency, by its breach of Article 3, . . . committed a[ ULP] in violation of 5 U.S.C. § 7116(a)(1), (5) []or (8), as alleged."[15] The Arbitrator further stated that, although the Agency violated Article 3 by failing to give the Union notice and an opportunity to bargain over the VERA/VSIP offers, the Agency "did not commit a[ ULP] violation thereby."[16]

Discussing a remedy, the Arbitrator stated that his conclusion "that the Agency violated Article 3. . . (but did not commit a ULP for the same conduct) begs the question of what remedy to afford."[17] As a remedy, the Arbitrator directed the Agency to cease from offering VERA/VSIP to unit employees without first, under Article 3, notifying the Union prior to implementation, in order "to afford the Union the opportunity to request impact[-]and[-]implementation bargaining."[18] The Arbitrator also directed the Agency to schedule a briefing and engage in impact-and-implementation bargaining with the Union "in accordance with Article 3" over the VERA/VSIP offers.[19]

However, the Arbitrator rejected several of the Union's requested remedies, including a status-quo-ante remedy and an order directing the Agency to post a notice that would have stated that the Agency violated the Statute by unilaterally changing conditions of employment and repudiating the parties' agreement. Citing a decision in which the Authority found that an agency committed a ULP by failing to bargain over a VSIP offer, the Arbitrator found that the Union did not demonstrate that a status-quo-ante remedy was appropriate.[20] On this point, the Arbitrator found that the Union failed to rebut the Agency's evidence and arguments that such remedy would "disrupt or impair the efficiency and effectiveness of Agency operations" and "could have significant financial impacts on [reinstated] . . . unit employees."[21] As for the requested notice-posting remedy, the Arbitrator stated: "[S]ince I have not found that the Agency violated the Statute [by] unilaterally changing conditions of employment and repudiating the . . . agreement . . . or otherwise, the request for posting of the requested notice would be unwarranted."[22]

Therefore, the Arbitrator partially sustained, and partially denied, the grievance.[23]

The Union filed an exception on March 4, 2026, and the Agency filed an opposition on April 3, 2026.

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[8] *Id.* at 6 (quoting Art. 3, § 2); *see also* Exception, Ex. 5, Parties' Collective-Bargaining Agreement (CBA) at 25.
[9] Award at 6 (quoting Art. 3, § 2); *see also* CBA at 25.
[10] Award at 17 (internal quotation marks omitted).
[11] *Id.* at 15.
[12] *Id.* at 18 (internal quotation marks omitted).
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.* at 21.
[17] *Id.* at 18.
[18] *Id.* at 19.
[19] *Id.* at 20.
[20] *Id.* (citing *U.S. Dep't of the Air Force, Air Force Materiel Command*, 54 FLRA 914 (1998)).
[21] *Id.*
[22] *Id.* at 19 (internal quotation marks omitted).
[23] *Id.* at 21. We note that the Union raised an additional claim in its grievance that the Arbitrator did not address. Exception, Ex. 11, Grievance at 3 (arguing the Agency committed a ULP by enforcing rules or regulations conflicting with the parties' agreement). However, because the Union does not except to the Arbitrator's failure to address that claim, we do not address it further. *Judges*, 74 FLRA at 327 n.26.

## III. Preliminary Matter: We grant the Union's motion to correct the record.

The Authority's Regulations do not provide for the filing of supplemental submissions, but provide that the Authority may, in its discretion, grant leave to file "other documents" as it deems appropriate.[24] Generally, a party must request leave to file a supplemental submission, as well as explain why the Authority should consider the submission.[25]

On March 19, 2026, the Union requested leave to file, and did file, a motion to correct an excerpt of the hearing transcript previously filed as an exhibit with its exception.[26] The Union maintains that, "[d]ue to an inadvertent error," the document attached as the exhibit was not from the correct transcript.[27] The Union states that the Agency does not oppose the motion to correct the record,[28] and the Agency does not contend otherwise in its opposition.

The Authority has granted an excepting party's unopposed request to submit documentary evidence to clarify the record in certain circumstances, such as where the evidence is discussed in the exceptions and the arbitration award, or to complete a previously filed exhibit.[29] Here, both the exception and the award discuss the hearing transcript, the submission would correct a previously filed exhibit, and the Agency does not oppose the Union's request. In these circumstances, we find it appropriate to grant the Union's motion and consider the corrected exhibit.[30]

## IV. Analysis and Conclusion: We remand the award for further findings.

The Union argues that the award is contrary to law because the Arbitrator failed to apply statutory standards and find that the Agency's failure to give the Union notice and an opportunity to bargain over the VERA/VSIP offers violated the Statute as well as Article 3.[31] When an exception involves an award's consistency with law, the Authority reviews any questions of law raised by the exception and the award de novo.[32] In applying the standard of de novo review, the Authority assesses whether the arbitrator's legal conclusions are consistent with the applicable standard of law.[33] In making that assessment, the Authority defers to the arbitrator's underlying factual findings unless the excepting party establishes they are nonfacts.[34]

When resolving a grievance that alleges a ULP under § 7116 of the Statute, an arbitrator must apply the same standards and burdens that the Authority applies in a ULP proceeding under § 7118 of the Statute.[35] It is well established that prior to implementing a change in conditions of employment, an agency is required to provide the exclusive representative with notice of the change and an opportunity to bargain over those aspects of the change that are within the duty to bargain if the change will have more than a de minimis effect on conditions of employment.[36]

As noted previously, the Arbitrator framed the pertinent issue as "whether the Agency violated its contractual *or statutory* obligations to provide the Union notice and an opportunity to bargain in advance of implementation of the VERA/VSIP offers . . . and, if so, what shall the remedy be?"[37] The Union contends that the Arbitrator's ULP analysis addressed only the bypass and repudiation claims, and contains no analysis of its claim that the Agency violated the Statute by failing to give the Union notice and an opportunity to bargain before implementing the VERA/VSIP offers (unilateral-change ULP).[38] The Union also contends that Article 3's notice and bargaining requirements are the same as the Statute's

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[24] 5 C.F.R. § 2429.26(a); *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Jesup, Ga.*, 69 FLRA 197, 199 (2016) (*BOP Jesup*) (Member Pizzella dissenting in part on other grounds).
[25] *BOP Jesup*, 69 FLRA at 199.
[26] Mot. at 2; *see* Exception, Ex. 4, Hr'g Tr.
[27] Mot. at 2.
[28] *Id.*
[29] *AFGE, Nat'l Council of HUD Locs. 222*, 58 FLRA 207, 207 n.* (2002) (*HUD*) (granting union's unopposed request to supplement exceptions with addendum to parties' settlement agreement where exceptions and award discussed such addendum); *U.S. DOD, Def. Logistics Agency, Def. Distrib. Depot, Red River, Texarkana, Tex.*, 56 FLRA 62, 62 n.1 (2000) (*DOD*) (granting agency's request to supplement exceptions with index and certification pages of transcript from arbitration hearing where agency submitted body of transcript as part of previously filed exceptions, and union had opportunity to respond to agency's request in opposition); *see also BOP Jesup*, 69 FLRA at 199-200 (granting request and considering submission that narrowed the issues before the Authority).
[30] *HUD*, 58 FLRA at 207 n.*; *DOD*, 56 FLRA at 62 n.1.
[31] Exception at 8-12.
[32] *NTEU, Chapter 133*, 74 FLRA 242, 244 (2025).
[33] *Id.*
[34] *Id.*
[35] *NTEU, Chapter 172*, 74 FLRA 80, 86 (2024) (citing *AFGE, Loc. 3954*, 72 FLRA 403, 404 (2021) (Member Abbott concurring)).
[36] *See SSA, Balt., Md.*, 74 FLRA 441, 443-45 (2026) (Member Wagner concurring in part and dissenting in part) (applying de minimis doctrine to assess unilateral-change ULP allegation); *U.S. Army Corps of Eng'rs, Memphis Dist., Memphis, Tenn.*, 53 FLRA 79, 81-82 (1997) (unilaterally changing conditions of employment violates § 7116(a)(1) and (5)).
[37] Award at 9 (emphasis added).
[38] Exception at 11-12.

requirements.[39] Therefore, according to the Union, the Arbitrator's finding of an Article 3 violation also supports finding a unilateral-change ULP.[40] Thus, the Union asserts that the Arbitrator's conclusion that the Agency did not commit any ULPs – based solely on his bypass and repudiation findings – is deficient.[41]

The basis for the Arbitrator's conclusion that the Agency did not violate the Statute is unclear. In addressing the statutory issues, he did not set forth and apply the legal standards for finding a unilateral-change ULP. Rather, his analysis of the statutory issues – which he described as "the topic of potential ULPs"[42] – focused solely on the bypass and repudiation claims,[43] which are distinct statutory violations with different legal tests than a unilateral-change ULP.[44] He also did not find, or give any indication, that a unilateral-change-ULP issue was not properly before him, nor does the Agency claim that is the case.

In finding a violation of *Article 3*, the Arbitrator applied certain statutory standards, such as the de minimis standard.[45] But, despite finding that the Agency's actions violated Article 3, he did not explain why those actions did not also constitute a unilateral-change ULP. Relatedly, the Arbitrator also did not explicitly address the Union's argument that Article 3 mirrors the Statute. In this regard, the Authority has applied statutory standards in assessing the application of contractual provisions that mirror, or are intended to be interpreted in the same manner as, the Statute.[46] In determining whether to apply statutory standards, the Authority considers several factors, including whether the contractual provision clearly incorporates the Statute either by reference or by use of similar or identical wording; whether the arbitrator interpreted the parties' agreement as incorporating statutory requirements; and whether the parties agree – or do not dispute – that the wording was intended to have the same meaning.[47] We note that the Agency does not directly address, and thus does not dispute, the Union's claim that Article 3 was intended to mirror the Statute's requirements.[48]

We are unable to determine, from the record before us, why the Arbitrator found no unilateral-change ULP. Accordingly, we are unable to determine whether the award is contrary to law, as alleged.[49]

Where an arbitrator's findings are insufficient for the Authority to determine whether the award is deficient on the grounds raised by a party's exceptions, the Authority will remand the award.[50] Consistent with this principle, we remand the award to the parties for resubmission to the Arbitrator, absent settlement, for further findings. Any resulting award should set forth and apply the statutory standards for assessing whether the Agency committed a unilateral-change ULP, and should address whether Article 3 is intended to be interpreted in the same manner as the Statute.[51]

## V. Decision

We remand this case for action consistent with this decision.

[39] *Id.* at 9-10.
[40] *Id.* at 8-9, 12.
[41] *Id.* at 12.
[42] Award at 18.
[43] *Id.*
[44] *U.S. DHS, CBP*, 73 FLRA 799, 805 (2024) (Chairman Grundmann concurring) (setting out legal test for repudiation of negotiated agreement, which violates § 7116(a)(1) and (5) (citing *U.S. Dep't of Com., Pat. & Trademark Off.*, 65 FLRA 290, 296 (2010) (Member Beck dissenting in part on other grounds))); *U.S. Dep't of the Treasury, IRS*, 64 FLRA 972, 977 (2010) (Member DuBester dissenting in part on other grounds) (setting out legal test for bypassing union, which violates § 7116(a)(1) and (5) (citing *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Elkton, Ohio*, 63 FLRA 280, 282 (2009))).
[45] *U.S. Dep't of Transp., FAA*, 74 FLRA 433, 434 (2026) (*FAA*) (noting that the de minimis doctrine is a defense to an allegation that an agency failed to satisfy a statutory bargaining obligation).
[46] *Id.* (citing *AFGE, Loc. 2338*, 73 FLRA 845, 847-48 (2024) (Chairman Grundmann concurring)); *AFGE, Loc. 3506*, 64 FLRA 583, 584 (2010) (*AFGE*).
[47] *FAA*, 74 FLRA at 434.
[48] Opp'n at 11-14 (arguing that the Arbitrator correctly found no statutory violation and asserting that the Union's exceptions contain "incorrect statements"); *see generally*, Opp'n, Ex. 4, Agency Post-Hr'g Br.
[49] *See U.S. Dep't of VA, Veterans Health Admin.*, 73 FLRA 855, 859 (2024) (*VA*).
[50] *Id.* (where arbitrator's findings were insufficient to determine applicable legal standard, the Authority did not resolve contrary-to-law exception and remanded for further findings); *U.S. DOJ, Fed. BOP, Metro. Corr. Ctr., S.D., Cal.*, 73 FLRA 495, 497 (2023) (*DOJ*) (where arbitrator failed to explain or support conclusions, remanding because the Authority was unable to determine whether the award was deficient on grounds raised by exceptions); *AFGE*, 64 FLRA at 584 (although "some of the cited contractual provisions appear[ed] to mirror statutory provisions" the arbitrator "did not address, and it [was] unclear, whether the parties intended their agreement to mirror the Statute or whether the grievance otherwise involved statutory issues," so the Authority remanded for clarification).
[51] *VA*, 73 FLRA at 859; *DOJ*, 73 FLRA at 497; *AFGE*, 64 FLRA at 584.