74 FLRA No. 77

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 3403
(Union)

and

UNITED STATES
DEPARTMENT OF AGRICULTURE
ECONOMIC RESEARCH SERVICE
NATIONAL INSTITUTE OF FOOD AND AGRICULTURE
(Agency)

0-NG-3576

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DECISION AND ORDER
ON A NEGOTIABILITY ISSUE

September 10, 2026

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Before the Authority: Colleen Duffy Kiko, Chairman, and Anne Wagner and Charles O. Arrington, Members
(Member Arrington concurring;
Member Wagner concurring in part and dissenting in part)

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).[1] The Union's petition for review (petition) concerns one provision about union-dues revocations that the Agency head disapproved under § 7114(c) of the Statute.[2] For the following reasons, we find that the provision is contrary to § 2429.19 of the Authority's Regulations.[3]

II. Background

Section 7115 of the Statute concerns an employee's "written assignment" authorizing an agency to withhold union dues from the employee's pay and provides that, except under certain circumstances, "any such assignment may not be revoked for a period of [one] year."[4] The Authority had previously held that such wording "must be interpreted to mean that authorized dues [assignments] may be revoked only at *intervals* of [one] year."[5] However, in 2020, the Authority issued *OPM*, rejecting that interpretation of § 7115 and finding:

> it would assure employees the fullest freedom in the exercise of their rights under the Statute if, after the expiration of the initial one-year period during which an assignment may not be revoked under § 7115(a), an employee had the right to initiate the revocation of a previously authorized dues assignment at any time that the employee chooses.[6]

Shortly thereafter, the Authority commenced notice-and-comment rulemaking concerning § 7115(a), and issued a final rule adding a new provision – § 2429.19 – to the Authority's Regulations. Section 2429.19 provides that "after the expiration of the one-year period during which an assignment may not be revoked under 5 U.S.C. [§] 7115(a), an employee may initiate the revocation of a previously authorized assignment at any time that the employee chooses."[7]

After the parties executed a collective-bargaining agreement, the Agency head disapproved the provision under § 7114(c) of the Statute.[8] The Statute requires that "[a]n agreement between an[] agency and an exclusive representative shall be subject to approval by the head of the agency."[9] Additionally, § 7114(c) of the Statute provides an agency head with thirty days to approve an executed agreement if it "is in accordance with [the Statute] and any other applicable law, rule, or regulation."[10] As such, and as relevant here, an agency head can disapprove an executed agreement if it conflicts with a government-wide regulation.[11]

[1] 5 U.S.C. § 7105(a)(2)(E).
[2] *Id.* § 7114(c); *see also id.* § 7114(c)(2) (agency head may disapprove an executed agreement if it is not "in accordance with [the Statute] . . . [or] any other applicable law, rule, or regulation").
[3] 5 C.F.R. § 2429.19.
[4] 5 U.S.C. § 7115(a).
[5] *U.S. Army, U.S. Army Materiel Dev. & Readiness Command, Warren, Mich.*, 7 FLRA 194, 199 (1981) (*Army*) (emphasis added).
[6] 71 FLRA 571, 573 (2020) (Member DuBester dissenting).
[7] 5 C.F.R. § 2429.19.
[8] 5 U.S.C. § 7114(c).
[9] *Id.* § 7114(c)(1).
[10] *Id.* § 7114(c)(2).
[11] *NAIL, Loc. 7*, 67 FLRA 654, 660-61 (2014) (Member Pizzella concurring in part and dissenting in part on other grounds).

The Union then filed the petition, and the Agency filed a statement of position (statement) arguing that portions of Sections 5(A) and (D) of the disapproved provision are contrary to § 2429.19. The Union filed a response to the Agency's statement (response). The Agency did not file a reply to the Union's response. Pursuant to § 2424.23 of the Authority's Regulations, Authority representatives conducted a post-petition conference (conference) with the parties.[12] At the conference, the parties agreed that the wording of the provision was accurately stated in the petition.

III. Preliminary Matters

A. We deny the Union's severance request.

In its petition and response, the Union states it is requesting severance of the provision.[13] The Authority's Regulations, at the time the petition was filed,[14] required a union to support a request for severance "with an explanation of how each severed portion of the proposal . . . may stand alone, and how such severed portion would operate."[15] Here, the Union's requests do not identify which portions of the provision it wants to be severed, nor do they address how any severed portion would stand alone or operate.[16] Rather, the Union's requests for severance merely state that it "will provide [the explanation] at [a] later date,"[17] and "[t]he provision is separate and distinct."[18] Therefore, because the Union's severance request fails to comply with the Authority's Regulations, we deny the request.[19]

B. We deny the Union's request for a hearing.

In its petition, the Union requests a hearing under § 2424.31(c) of the Authority's Regulations "[t]o further examine the record."[20] Section 2424.31 of the Authority's Regulations states that a hearing may be appropriate "[w]hen necessary to resolve disputed issues of material fact in a negotiability . . . dispute, or when it would otherwise aid in decision making."[21] As noted in the conference record,[22] the Union acknowledges that there are no disputed issues of material fact,[23] and we do not find a hearing would otherwise aid in resolving the parties' negotiability dispute. Therefore, we deny the Union's request for a hearing.[24]

IV. The Provision

A. Wording

Section 5 – Cancelling Dues Withholding

A. The Union will provide the appropriate designated form to employees upon request. An employee may cancel dues withholding once per year on the anniversary date by submitting the appropriate designated form to the Union.

B. The Union official will determine the anniversary date of the allotment by referring to the original form. The ending date of the pay period in which the first anniversary date occurs will be entered on the form.

C. In accordance with 5 U.S.C[.] [§] 7115, employees may discontinue dues withholding after one (1) year as a dues paying BUE by following the procedures as outlined in this Section.

D. In order for dues deduction to be stopped on the first full pay period after the anniversary date, the SF-1188 must be submitted to the Union and the Labor Relations Officer no earlier than thirty (30) calendar days prior to the anniversary date. SF-1188 forms submitted after the anniversary date will not be accepted.

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[12] 5 C.F.R. § 2424.23. We note the Authority's Regulations concerning negotiability proceedings were revised effective September 12, 2023, 88 Fed. Reg. 62445 (Sep. 12, 2023), and then corrected on October 18, 2023. 88 Fed. Reg. 71731 (Oct. 18, 2023). Because the Union's petition in this case was filed before that date, we apply the prior Regulations. *See NTEU, Chapter 337*, 74 FLRA 412, 412 n.5 (2026) (applying Regulations in effect on filing date to negotiability petition).

[13] Pet. at 5; Resp. Form at 3.

[14] The petition was filed August 27, 2021. *See* Pet. at 1.

[15] 5 C.F.R. § 2424.25(d).

[16] Pet. at 5; Resp. Form at 3.

[17] Pet. at 5.

[18] Resp. Form at 3.

[19] 5 C.F.R. § 2424.25(d) (1998); *see NATCA*, 66 FLRA 213, 216 (2011) (denying severance request because it "neither state[d] which proposals it wishe[d] to sever nor addresse[d] how any severed portions would stand alone or operate").

[20] Pet. at 6.

[21] 5 C.F.R. § 2424.31(c).

[22] Record of Post-Petition Conference (Rec.) at 2.

[23] *See* Pet. at 6.

[24] *See IFPTE, Loc. 4*, 73 FLRA 635, 636 (2023) (denying a hearing request where the union did not establish that there were any material facts in dispute and the Authority did not find a hearing would otherwise aid in resolving the dispute).

> E. Employees may rejoin the Union by resubmitting a new SF-1187. A reestablished one (1) year anniversary period for dues withholding will then be established based on the new SF-1187.[25]

B. Meaning

One year after an employee has authorized dues withholding, the parties agree that the provision permits an employee to revoke authorization for dues withholding, but only during the thirty-day period prior to the anniversary date, and on an annual basis during the thirty-day period before the employee's anniversary date in each subsequent year.[26] Further, the parties agree that the provision does not allow employees to revoke their dues withholding outside of the thirty-day annual period prescribed by the provision.[27]

C. Analysis and Conclusion: The provision is contrary to § 2429.19 of the Authority's Regulations.

The Agency argues two sections of the provision are contrary to § 2429.19 of the Authority's Regulations because they allow unit employees to revoke the assignment of their dues only during an annual thirty-day period.[28] Specifically, the Agency argues that Section 5(A) of the provision is contrary to law because it permits employees to "cancel dues withholding once per year on the anniversary date by submitting the appropriate designated form to the Union."[29] Further, the Agency notes that language in Section 5(D) of the provision contextualizes the intent of Section 5(A), stating that employees must submit the proper form no earlier than thirty days prior to their anniversary date "[i]n order for dues deduction to be stopped" and that "SF-1188 forms submitted after the anniversary date will not be accepted."[30] In its response, the Union does not challenge the Agency's assertion that the provision is contrary to § 2429.19 of the Authority's Regulations.[31] Rather, the Union argues that the Authority should overturn *OPM* and rescind § 2429.19, because they are contrary to the Statute, the legislative history for 5 U.S.C. § 7115(a), and Authority precedent.[32]

As explained below, we find the provision is contrary to a government-wide regulation. In doing so, we reject the Union's arguments for overturning *OPM* and rescinding § 2429.19 of the Authority's Regulations.

Section 7115(a) states:

> [i]f an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. . . . Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of [one] year.[33]

In *OPM*, the Authority found that, after the first year of dues withholding, § 7115(a)'s plain wording does not restrict the times at which employees may revoke dues assignments to only annual intervals.[34] Rather, the Authority found that the phrase providing that an

[25] Pet. at 4.
[26] Rec. at 2.
[27] *See id.*
[28] Statement Br. at 7-8.
[29] *Id.*
[30] *Id.*

[31] Resp. Br. at 8-11, 14-15. In its response, the Union notes "[t]he [A]gency did not, in its notice of disapproval, rely on or cite [§] 2429.19." Resp. Br. at 6. To the extent the Union argues that the Authority should not consider legal arguments – regarding § 2429.19 – that were made for the first time in the Agency's statement, the Authority has noted "[t]here is no requirement in either the Statute or the Authority's Rules and Regulations that a disapproval of a[n] . . . executed agreement must be made with specificity." *NFFE*, 29 FLRA 1491, 1513 (1987). Rather, § 2424.24(c) of the Authority's Regulations requires agencies to present legal arguments in their statement of position. 5 C.F.R. § 2424.24(c); *see NFFE*, 29 FLRA at 1513. Accordingly, we will consider the legal arguments that were properly raised by the Agency in its statement. *E.g.*, *Pro. Airways Sys. Specialists*, 61 FLRA 97, 98 (2005) (Member Pope dissenting in part on unrelated grounds) (rejecting union request that Authority not consider arguments raised for the first time in the agency's statement because "the [a]gency was not required to set forth all of its arguments in its allegation of nonnegotiability").
[32] Resp. Br. at 8-11, 14-15.
[33] 5 U.S.C. § 7115(a).
[34] *OPM*, 71 FLRA at 572.

assignment "may not be revoked for a period of [one] year" most reasonably establishes a single, initial one-year bar on revocation.[35] The Authority also noted that nothing in the text of § 7115(a), apart from the limiting conditions set forth in § 7115(b), expressly addresses revocations after that initial one-year period.[36] The Authority emphasized that it should not simply "rubber-stamp" old interpretations if they are not grounded in the Statute's mandate to interpret the Statute in a way that promotes efficient and effective government.[37] Therefore, the Authority concluded that decisions requiring an "annual revocation window" – including *U.S. Army, U.S. Army Materiel Development & Readiness Command, Warren, Michigan* (*Army*)[38] – reflected a policy determination, rather than a requirement compelled by the Statute's text.[39]

Thereafter, the Authority issued a final rule adopting § 2429.19 of the Authority's Regulations.[40] As relevant here, § 2429.19 of the Authority's Regulations states that "[c]onsistent with the exceptions in 5 U.S.C. [§] 7115(b), after the expiration of the one-year period during which an assignment may not be revoked under 5 U.S.C. [§] 7115(a), an employee may initiate the revocation of a previously authorized assignment at any time that the employee chooses."[41] The final rule noted that the legislative history of § 7115(a) of the Statute does not clearly support an interpretation of § 7115(a) that necessitates annual revocation intervals.[42] While a six-month annual revocation window was mandated by the executive order that created federal labor-management relations, the final rule noted that, when drafting § 7115(a), Congress did "not mention intervals *at all*."[43] The final rule also explained that § 2429.19 would apply only to dues assignments that are authorized on or after the rule's effective date.[44]

Therefore, it is clear the provision is contrary to § 2429.19 of the Authority's Regulations because the provision would prohibit employees from initiating the revocation of a previously authorized dues assignment at any time that the employee chooses, after the one-year period of irrevocability. However, as noted above, the Union argues that the Authority should overturn *OPM* and rescind § 2429.19.[45] As explained below, the Union's arguments provide no basis for overturning *OPM* and rescinding § 2429.19 of the Authority's Regulations.

The Union, citing Authority precedent and reiterating points made by the dissent in *OPM*, argues that the legislative history of the Statute establishes that Congress intended for § 7115(a) to mean that authorized dues allotments may be revoked only at intervals of one year.[46] Similarly, here, the dissent maintains that *Army* and other Authority precedent establish that § 7115(a) authorizes the revocation of dues allotments only at one-year intervals.[47] We disagree. As noted above, the Authority in *OPM* considered *Army* and rejected its interpretation of § 7115(a), including its improper reliance on legislative history even when the text of § 7115(a) is clear.[48] In response to a petition filed by the National Treasury Employees Union, the Authority later issued a notice proposing to amend or rescind § 2429.19 and soliciting comments.[49] However, after receiving numerous comments in strong support of leaving § 2429.19 unchanged, the Authority withdrew the proposed rulemaking (the withdrawal).[50] In the withdrawal, the Authority noted that "[a]part from the comments received from federal unions, the vast majority of comments . . . supported maintaining § 2429.19 without change and opposed the imposition of additional restrictions on the ability of employees to cancel their dues assignments."[51] Specifically, the Authority stated that thirty-three of the thirty-nine "comments received from individuals and agencies . . . supported maintaining § 2429.19 without change, and did not support rescinding *OPM*."[52] The Authority also rejected arguments – like those the Union and dissent raise here – in favor of overruling *OPM* and rescinding § 2429.19, and the reasoning set forth in that rejection applies equally here.[53]

The dissent, citing Black's Law Dictionary for the proposition that "period" can mean an interval,[54] argues that the Statute's use of "a period of [one] year"[55]

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[35] *Id.* (quoting 5 U.S.C. § 7115(a)).
[36] *Id.*
[37] *See id.* at 573.
[38] 7 FLRA at 199.
[39] *OPM*, 71 FLRA at 573.
[40] Miscellaneous and General Requirements, 85 Fed. Reg. 41169, 41169 (July 9, 2020) (Final Rulemaking).
[41] 5 C.F.R. § 2429.19.
[42] Final Rulemaking, 85 Fed. Reg. at 41170.
[43] *Id.* (emphasis added).
[44] *Id.*
[45] Resp. Br. at 8-11, 14-15.
[46] *Id.* at 9-10, 16-17 (citing *AFGE, AFL-CIO*, 51 FLRA 1427, 1433-34 (1996) (*AFGE*); *Dep't of the Navy, Portsmouth Naval Shipyard, Portsmouth, N.H.*, 19 FLRA 586, 589 (1985) (*Naval Shipyard*); *Army*, 7 FLRA at 199).
[47] Dissent at 25-26.
[48] *OPM*, 71 FLRA at 572-73, 573 n.23.
[49] Miscellaneous and General Requirements, 87 Fed. Reg. 78014, 78014-15 (Dec. 21, 2022) (Notice of Proposed Rulemaking) (requesting public comments after granting petition to rescind *OPM* and amend § 2429.19).
[50] Miscellaneous and General Requirements, 91 Fed. Reg. 10774, 10774-75 (Mar. 5, 2026) (Withdrawal of Proposed Rescission).
[51] *Id.* at 10774.
[52] *Id.*
[53] *Id.* at 10774-75.
[54] Dissent at 21.
[55] 5 U.S.C. § 7115(a).

means that dues revocations can only occur on a yearly basis. However, the example accompanying the dissent's chosen definition of "period" includes an *additional modifier* that shows the cyclical nature of the length of time being discussed: "*the daily* period of the circadian rhythm."[56] For § 7115(a) to be comparable, it would need to prescribe "the yearly period of irrevocability" for an assignment.[57] Instead, § 7115(a) refers to "*a*" single one-year period of irrevocability.[58] In an attempt to further justify its interpretation of § 7115(a), the dissent cites two U.S. District Court decisions that use the interval version of Black's Law Dictionary's definition of "period."[59] But those cases do not involve disputes over the meaning of the phrase "a period of one year," and neither case holds that "a period of one year" means "a recurring interval of one year."[60] As such, we remain unpersuaded.

Additionally, *Army*'s reliance on the Statute's legislative history is flawed and, therefore, the dissent's reliance on *Army* is equally flawed. The Senate-passed version of the legislation that led to the Statute expressly provided that dues assignments "shall be revocable at stated intervals of not more than [six] months."[61] However, the House-passed provision used the language ultimately enacted in § 7115(a) – that an assignment "may not be revoked for a period of [one] year" – and the House Committee Report stated that "[a]ssignments normally are to be irrevocable for one year."[62] Therefore, Congress demonstrated that it knew how to prescribe recurring intervals but chose not to include that language in § 7115(a). "Congress's abandonment of the word 'intervals' supports a conclusion that [§]7115(a) prohibits revocation only for the first year after an assignment is authorized."[63] Nevertheless, *Army* improperly imported the Executive Order's recurring-interval mechanism into § 7115(a), even though Congress omitted from the Statute the language that created that mechanism.[64] Consequently, we find that *Army* did not properly interpret either § 7115(a) or its legislative history.

The dissent maintains[65] that rescinding § 2429.19 "would not significantly upset any reliance interests."[66] However, we reiterate that § 2429.19 has governed covered dues-assignment revocations for six years, that collective-bargaining agreements containing prior revocation procedures have expired, and that employees have subsequently executed new assignments subject to § 2429.19.[67] Returning to *Army* would disturb a regulatory framework that has been implemented throughout the federal government, and the dissent does not explain how it would treat the assignments executed over the last six years under § 2429.19.

We also note the dissent acknowledges that no federal court has held that § 7115(a) requires annual revocation intervals.[68] Further, the dissent cites appellate decisions that merely described or applied the then-controlling *Army* framework without independently resolving whether § 7115(a)'s text compels that framework.[69] Thus, those decisions establish only that courts applied *Army* while it remained controlling, not that they endorsed its reasoning.[70] Therefore, neither reliance on *Army*-based precedent,[71] nor arguments based on "the text, purpose, and structure of the Statute,"[72] persuade us that the Authority erred in promulgating § 2429.19.[73]

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[56] Withdrawal of Proposed Rescission, 91 Fed. Reg. at 10774 (quoting *Period*, Black's Law Dictionary (12th ed. 2024)).
[57] *Id.*
[58] *Id.*at 10774-75 (quoting 5 U.S.C. § 7115(a)).
[59] *See* Dissent at 21 nn.45-46 (citing *Boschan v. Steinmetz*, No. 19 CIV. 6481 (LAP), 2020 WL 2475848, at *3 (S.D.N.Y. May 13, 2020); *Stover v. United States*, No. 5:22-CV-05074-CBK, 2023 WL 2763817, at *2 (D.S.D. Mar. 31, 2023)).
[60] The district court decisions cited by the dissent are not relevant to the dispute currently before us. In *Boschan*, the court held that the Statute of Frauds barred an oral agreement because the parties contemplated payment obligations extending beyond one year. 2020 WL 2475848, at *3. In *Stover*, the court found that an annual recreation pass was valid for one year, but the pass was not necessary to access a boat ramp where the plaintiff was injured. *Stover*, 2023 WL 2763817, at *2. Although both district courts relied on the definition of the word "annual" for their holdings, that word does not appear in § 7115(a), so the decisions are inapposite.
[61] *Army*, 7 FLRA at 197.
[62] Withdrawal of Proposed Rescission, 91 Fed. Reg. at 10775 (quoting H.R. Rep. No. 95-1403, at 48 (1978)).
[63] *Id.*
[64] *See id*. ("In essence, the dissent asserts that Congress continued the Executive Order's interval-based revocation system by deleting the word 'intervals' from [§] 7115(a) altogether.").
[65] *See id*. at 10780 (Dissenting View of Member Wagner).
[66] Dissent at 26.
[67] *See* Withdrawal of Proposed Rescission, 91 Fed. Reg. at 10774.
[68] Dissent at 21.
[69] *Id.* at 8 n.57 (citing *NTEU v. FLRA*, 647 F.3d 514, 518 (4th Cir. 2011) (*NTEU*); *AFGE, AFL-CIO, Loc. 1843 v. FLRA*, 843 F.2d 550, 553 n.3 (D.C. Cir. 1988) (*Loc. 1843*)).
[70] *See NTEU*, 647 F.3d at 518; *Loc. 1843*, 843 F.2d at 553 n.3.
[71] *AFGE*, 51 FLRA at 1433 n.5 (citing *Army*, 7 FLRA at 199); *Naval Shipyard*, 19 FLRA at 589 (noting that *Army* established § 7115(a) to mean that authorized dues allotments may be revoked only at intervals of one year).
[72] Resp. Br. at 14-15.
[73] *See* Withdrawal of Proposed Rescission, 91 Fed. Reg. at 10775; *see also* 5 U.S.C. § 7105(a)(2)(I) ("The Authority shall . . . take such other actions as are necessary and appropriate to effectively administer the [Statute]."). *Cf. U.S. DOJ, Exec. Off. for Immigr. Rev.*, 72 FLRA 622, 627 n.54 (2022) (then-Member Kiko concurring; Chairman DuBester dissenting) ("[M]erely reiterating the dissenting opinion to the underlying decision, which is reviewed by the majority prior to finalizing a decision for issuance, does not demonstrate extraordinary circumstances warranting reconsideration.").

The Union separately argues that because the provision does not conflict with the Statute, its inconsistency with § 2429.19 should not render it nonnegotiable.[74] The Union maintains that the text of § 7115(a) "contains no requirement that dues assignments become revocable at will after an employee's first year of union membership."[75] The Union further contends that the section does not – either implicitly or explicitly – "bar[] the negotiation of yearly dues[-]revocation intervals."[76] Rather, the Union asserts that § 7115(c) of the Statute "contemplates negotiation over those aspects of dues deductions not dictated by the Statute," and that "[i]f Congress had wished to place additional, statutory restrictions on" annual revocation intervals, then it would have explicitly done so.[77] Noting that the title of § 7115(a) states it was made to "effectuate '[a]llotments to representatives,'"[78] the Union argues that § 7115(a) should be read contextually as "exist[ing] for the benefit" of both unions and employees.[79] Therefore, the Union contends that the section should not be read as prohibiting annual revocation intervals.[80]

The Union's argument – which relies on § 7115(c)(1) – is unavailing. That section states that "the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose."[81] Nothing in § 7115(c)(1) conflicts with § 2429.19 of the Authority's Regulations or expressly authorizes what § 2429.19 forbids – restricting an employee's ability to revoke a previously authorized assignment after the one-year period of irrevocability.[82] As such, the Union's argument is unpersuasive.[83]

The Union further argues that "the Authority's decision in *OPM* . . . infringes upon the rights of federal employees by limiting their constitutional and statutory rights to associate with their union."[84] Citing § 7102 of the Statute, the Union claims that *OPM* interferes with employees' rights under this section by limiting their ability to associate with and support their union.[85]

Section 7102 of the Statute, however, is framed in terms of employee choice: "[e]ach employee shall have the right to form, join, or assist any labor organization, or to *refrain* from any such activity."[86] Therefore, these statutory rights include the choice to join or assist a union, as well as the choice to stop associating with or assisting a union.[87] Section 7102 does not create a union entitlement to continued dues withholding, nor does it empower a union to convert an employee's prior authorization into an ongoing, cyclical restriction on an employee's ability to end dues withholding at a later date.[88] Moreover, *Army* did not discuss § 7102's express protection of an employee's right to refrain from assisting a labor organization. In this regard, the rulemaking record for the final rule demonstrates why annual revocation periods are burdensome and why they limit an employee's ability to easily exercise § 7102 rights: (1) "[s]everal employees complained . . . it was difficult to determine their anniversary dates, as well as the window periods during which they were permitted to submit an SF-1188, in order to be able to revoke their previously authorized dues assignments[;]"[89] (2) commenters stated that "the unions . . . represent[ing] them were not helpful in determining the applicable anniversary dates or form-submission window periods," and that "the negotiated procedures for determining anniversary dates and window periods were not easily decipherable to a layperson."[90]

We also find the dissent's reliance on *AFGE, Council 214, AFL-CIO v. FLRA* (*Council 214*) is

[74] *See* Resp. Br. at 15-17.
[75] *Id.* at 7.
[76] *Id.*
[77] *Id.*
[78] *Id.* at 8 (emphasis omitted) (quoting 5 U.S.C. § 7115(a)).
[79] *Id.*
[80] *Id.* at 7-8.
[81] 5 U.S.C. § 7115(c)(1).
[82] 5 C.F.R. § 2429.19; *see* 5 U.S.C. § 7117(a)(1) (excluding from the duty to bargain in good faith any matter inconsistent with federal law or government-wide regulation, such as § 2429.19).
[83] We also note that "nothing prevents unions from developing dues-payment arrangements outside the federal payroll system that would provide them a greater measure of funding predictability." Final Rulemaking, 85 Fed. Reg. at 41171.
[84] Resp. Br. at 13.
[85] *Id*. The Union also argues that *OPM* should be overturned – and § 2429.19 of the Authority's Regulations rescinded – because *Janus v. AFSCME, Council 31*, 585 U.S. 878 (2018), is not applicable to § 7115 of the Statute and union membership is voluntary for federal employees. Resp. Br. at 12-14. However, this argument provides no basis for overturning *OPM*, or rescinding § 2429.19, because neither relied on, or cited, *Janus* as legal support. *See OPM*, 71 FLRA at 572-73; *see also* Final Rulemaking, 85 Fed. Reg. at 41169-72.
[86] 5 U.S.C. § 7102 (emphasis added).
[87] *See id.*
[88] *See id*.
[89] *See* Final Rulemaking, 85 Fed. Reg. at 41171. For example, one contract stated, "In order for the SF-1188 to be timely, it must be submitted to the Union between the anniversary date of the effective date of the dues withholding and twenty-one (21) calendar days prior to the anniversary date." *Id.* (quoting Master Agreement Between Dep't of VA & AFGE, Art. 41, § 6.A. (1997)) (internal quotation marks omitted).
[90] *See id.*

misplaced.[91] In *Council 214*, employees authorized dues deductions as bargaining-unit employees, but the agency continued to make deductions after those employees were promoted to supervisory positions outside the bargaining unit.[92] The agency then reimbursed the employees and attempted to recover the mistaken payments by "deduct[ing] the amounts from the remittance to the union of dues withheld from other employees in a subsequent period."[93] However, the court held that § 7115(a) "impos[ed] an absolute duty on the employer to turn over to the union all funds deducted" pursuant to those current employees' valid assignments.[94] The court emphasized that § 7115 was designed for the "primary benefit and convenience of the employee," that "[t]he employee has the right to decide whether to opt for withholding and to control the disposition of the funds so withheld," and that the agency acts as the employee's agent.[95] Thus, although *Council 214* did not concern revocation windows, its reasoning reinforces – rather than undermines – *OPM* and its focus on employee choice.[96] More importantly, nothing in *Council 214* supports converting an employee's voluntary assignment into indefinitely recurring restrictions on the employee's ability to terminate withholding after the one-year period prescribed by § 7115(a).

In sum, both *OPM* and § 2429.19 of the Authority's Regulations increase employees' freedom of association by ensuring employees are not locked into recurring annual windows that limit when the employee may revoke their dues assignment.[97] Put simply, the Union's interpretation of § 7102 restricts the statutory rights of federal employees by conditioning the practical exercise of their right to refrain from further union support on compliance with a narrow, recurring cancellation period. As such, we deny the Union's argument and find that § 7102 does not compel, or even support, that result.

Accordingly, because the provision explicitly provides that employees may revoke their dues assignments only during an annual revocation period, it is inconsistent with § 2429.19 of the Authority's Regulations.[98] Furthermore, we reject the Union's requests to overturn *OPM* and rescind § 2429.19.[99] Therefore, because the Union's request to sever the provision is denied, the entire provision is contrary to a government-wide regulation, and we dismiss the petition.[100]

V. Order

We dismiss the Union's petition.

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[91] 835 F.2d 1458 (D.C. Cir. 1987).
[92] *Id*. at 1460.
[93] *Id*.
[94] *Id*.
[95] *Id*.
[96] *See id*. ("The [S]tatute clearly was designed for the primary benefit and convenience of the employee.").
[97] *See OPM*, 71 FLRA at 573 ("In our view, it would assure employees the fullest freedom in the exercise of their rights under the Statute if, after the expiration of the initial one-year period during which an assignment may not be revoked under § 7115(a), an employee had the right to initiate the revocation of a previously authorized dues assignment at any time that the employee chooses.").
[98] *See* 5 C.F.R. § 2429.19; *see also OPM*, 71 FLRA at 572-73.
[99] As an independent reason for denying the Union's request to overturn *OPM*, we find that the Union has not established that the negotiability-appeals process is a proper vehicle for requesting the rescission of a general statement of policy or guidance. *Compare* 5 U.S.C. § 7117(c)(1) (describing a negotiability proceeding as a union's "appeal" of an agency's "alleg[ation] that the duty to bargain in good faith does not extend to any matter"), *with* 5 C.F.R. part 2427 (setting forth procedures for requesting a general statement of policy or guidance), *and OPM*, 71 FLRA at 572 (overruling previous general statement of policy or guidance when issuing new statement). We likewise deny the Union's request to "hold [§] 2429.19 to be unenforceable, and simultaneously commence rulemaking to rescind [§] 2429.19," Resp. Br. at 17, for the reasons stated above as well as those set forth in the Authority's recent determination not to revise or rescind *OPM* or § 2429.19. Withdrawal of Proposed Rescission, 91 Fed. Reg. at 10774-75.
[100] *See, e.g.*, *NTEU, Chapter 296 & 336*, 74 FLRA 299, 301-02 n.35 (2025) (citing *Fed. Educ. Ass'n, Stateside Region*, 56 FLRA 473, 475 (2000) (dismissing petition where part of unsevered provision was contrary to law)).

Member Arrington, concurring:

I agree with the majority and write separately to emphasize practical considerations that reinforce today's decision. As I have previously stated, the Federal Service Labor-Management Relations Statute (the Statute) should be interpreted in a manner that "safeguard[s] the public interest" and promotes an "effective and efficient Government."[1] In doing so, we must equally consider the interests of agencies, labor organizations, and *employees*.[2]

My experience as an employee, union official, management official, and supervisor has allowed me to view federal labor relations from multiple perspectives. Those experiences reinforce a simple principle: an employee's decision whether to financially support a labor organization should not be unnecessarily difficult in either direction. Section 7102 of the Statute protects an employee's right "to form, join, or assist any labor organization," while equally protecting the employee's right "to refrain from any such activity."[3] Section 7115(a) of the Statute should be interpreted consistently with either choice – that is whether or not to authorize dues withholding.

As the majority notes, the provision here effectively reverts to prior erroneous interpretations of § 7115(a) that prohibited employees from ending dues withholdings unless they acted during specific annual windows.[4] The Union's position essentially locks the employee into a timeshare – easy to join; hard to get out. I cannot agree that this is the function Congress intended when it passed the Statute.[5] This is further exemplified if we consider the reverse of the provision before us. Suppose a negotiated agreement permitted a newly hired employee to begin dues withholding only during a narrow annual window. An employee who missed that window could be forced to wait nearly a year before financially supporting the union. Such a restriction would plainly burden the employee's choice to assist a labor organization. I see little reason to treat the opposite choice differently by interpreting § 7115(a) to impose unduly burdensome restrictions on an employee seeking to end dues withholding. As noted by the majority, the previous interpretations of § 7115(a) did just that.[6]

Congress required employees who authorize dues withholding to honor that decision for one year.[7] It did not expressly require employees to navigate recurring annual revocation windows thereafter. Labor organizations have legitimate interests in financial stability, agencies have legitimate administrative interests, and *employees* have legitimate interests in exercising their statutory rights.[8] In my view, today's decision appropriately balances those interests without imposing restrictions that Congress did not enact.

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[1] *Ass'n of Admin. L. Judges, IFPTE*, 74 FLRA 325, 334 (2026) (*IFPTE*) (Concurring Opinion of Member Arrington) (quoting 5 U.S.C. § 7101).

[2] *See id*. ("In order to safekeep the taxpayer's interests and fulfill the Authority's mission, we must weigh the interests of every group who has a vested interest in labor relations.").

[3] 5 U.S.C. § 7102.

[4] Majority at 4, 7.

[5] *See* 5 U.S.C. § 7102.

[6] Majority at 10-11.

[7] *See OPM*, 71 FLRA 571, 572-73 (2020) (Member DuBester dissenting).

[8] *See IFPTE*, 74 FLRA at 334 (Concurring Opinion of Member Arrington).

Member Wagner, concurring in part and dissenting in part:

I agree that the Union has not demonstrated that a hearing is warranted in this case. I also agree that the provision conflicts with § 2429.19 of the Authority's Regulations.[1] However, as I have previously stated,[2] I would rescind § 2429.19, along with the Authority's related general statement of policy or guidance (policy statement) in *OPM*.[3]

As the majority notes, in 2022, the National Treasury Employees Union (NTEU) filed a petition, under § 2429.28 of the Authority's Regulations,[4] to amend § 2429.19. On December 21, 2022, a majority of the Authority – with then-Member (and current Chairman) Kiko dissenting – issued a *Federal Register* notice granting NTEU's petition, and proposing to: (1) either amend or rescind § 2429.19, and (2) rescind the policy statement in *OPM*.[5] However, on March 5, 2026, the current majority of the Authority – over my dissent – issued a *Federal Register* notice (the 2026 notice) withdrawing the proposed amendment/revision to § 2429.19 and the proposed rescission of *OPM*.[6]

It is worthwhile to restate here the reasoning underlying my dissent from the 2026 notice. To begin, § 7115 of the Federal Service Labor-Management Relations Statute (the Statute), titled "Allotments to representatives," addresses how federal employees in appropriate bargaining units may, through written assignments, authorize federal agencies to deduct union dues from their pay – and how the employees may later withdraw those assignments. Section 7115(a) pertinently provides that, with certain exceptions, those assignments "may not be revoked for a period of [one] year."[7]

In 1981 – early in the Authority's history – the Authority addressed the meaning of the above-quoted wording "in the context of relevant legislative history and [f]ederal labor[-]relations policy."[8] Specifically, in *U.S. Army, U.S. Army Materiel Development & Readiness Command, Warren, Michigan* (*Army*), the Authority noted that, before the Statute's enactment, "procedures for payroll deduction for direct payment of employees' union dues were governed by [§] 21 of Executive Order 11491, as amended" (E.O. 11491).[9] Section 21 of E.O. 11491 – entitled "Allotment of dues" – pertinently provided: "When a labor organization holds formal or exclusive recognition [of employees], and the agency and the [labor] organization agree in writing to this course of action, an agency may deduct the regular and periodic dues of the organization from the pay of members of the organization in the unit of recognition who make a voluntary allotment for that purpose, and shall recover the costs of making the deductions."[10] In addition, E.O. 11491 stated: "Such an allotment is subject to the regulations of the Civil Service Commission [(CSC)], which shall include provision for the employee to revoke his authorization at stated six-month intervals."[11] Under E.O. 11491, "an agency could charge a union a service fee for making payroll dues deductions for the union's members."[12]

In *Army*, the Authority stated that, under E.O. 11491, "[a]lthough voluntary and dependent upon a written agreement between the parties, a dues[-]withholding provision operated as a union[-]security measure designed to foster stability in labor-management relations."[13] The Authority noted that, unlike E.O. 11491, § 7115(a) of the Statute "does not make dues assignments dependent upon a written agreement between the parties[,] but rather permits an employee in an appropriate unit to authorize dues allotments if he so desires."[14]

Looking to the Statute's legislative history, the Authority in *Army* found that § 7115(a)'s wording "is identical to that contained in [§] 7115(a) of H.R. 11280 as passed by the House," which "was unchanged from that reported by the House Committee on Post Office and Civil Service."[15] The Authority noted that the House Committee Report stated that § 7115 "reflects a compromise between two sharply contrasting positions which the committee considered: no guarantee of [dues] withholding for any unit employee and mandatory payment [of dues] by all unit employees ('agency shop'). The committee believes [§] 7115 to be a fair resolution for agencies, labor organizations, and employees."[16] The Authority noted that the House Committee Report stated the following with respect to § 7115(a):

[1] 5 C.F.R. § 2424.19.
[2] Miscellaneous and General Requirements, 91 Fed. Reg. 10774, 10775-80 (March 5, 2026) (Dissenting View of Member Wagner).
[3] 71 FLRA 571 (2020) (Member Abbott concurring; Member DuBester dissenting).
[4] 5 C.F.R. § 2429.28.
[5] Miscellaneous and General Requirements, 87 Fed. Reg. 78014 (Dec. 21, 2022).
[6] 91 Fed. Reg. at 10774.
[7] 5 U.S.C § 7115(a).
[8] *U.S. Army, U.S. Army Materiel Dev. & Readiness Command, Warren, Mich.*, 7 FLRA 194, 196 (1981).
[9] *Id.*
[10] Labor-Management Relations in Federal Service, E.O. 11491, 34 Fed. Reg. 17605, 17614 (Oct. 29, 1969).
[11] *Id.*
[12] *Army*, 7 FLRA at 198 n.15 (citing *AFGE, Loc. 1749*, 6 FLRC 525, 535-37 (1978)).
[13] *Id.* at 196.
[14] *Id.*
[15] *Id.* at 197.
[16] *Id.* (internal quotation marks omitted).

> Subsection (a) provides that if an employee in an exclusively represented unit presents to the agency a written assignment authorizing the agency to deduct the labor organization's dues from the employee's pay each pay period, the agency must honor the assignment and must deduct the dues. The decision to pay, or not to pay is solely the employee's. If the employee decides to have dues withheld, the agency must honor that decision. The allotments are to be made at no cost to the employees or to the labor organization. Assignments normally are to be irrevocable for one year.[17]

The Authority noted that, by contrast, the Senate version of the bill: (1) provided that assignments of dues allotments "shall be revocable at stated intervals of not more than [six] months";[18] (2) made agencies' obligations to deduct dues "dependent upon the agency's agreement to do so as part of a negotiated agreement";[19] and (3) was silent with respect to who would bear the cost of making dues allotments.[20] The Authority noted that the Conference Committee rejected the Senate version and adopted the House version unchanged.[21] However, the Authority also determined that, in its report, the Conference Committee "did not address the revocability of assignments of dues allotments."[22]

The Authority then stated:

> In the Authority's view, the language of [§] 7115(a) of the Statute and the legislative history cited above support the conclusion that [§] 7115(a) is intended to provide a more effective form of union security than previously existed, without going so far as to authorize an "agency shop." This conclusion is evidenced by the legislated change from a dues[-]withholding provision under [E.O. 11491] which was contingent upon a negotiated written agreement to a statutorily mandated procedure for dues allotments, as well as by the fact that under the Statute, unlike under [E.O. 11491], dues allotments are required to be made at no cost to the union. In the Authority's view, consistent with this conclusion, Congress intended in [§] 7115(a) of the Statute to maintain the procedure for revocation of assignments set forth in [E.O. 11491] (i.e., only upon stated intervals of time), and to expand that interval under the Statute to a period of one year. That is, the language in [§] 7115(a) that "any such assignment may not be revoked for a period of [one] year" *must be interpreted to mean that authorized dues allotments may be revoked only at intervals of [one] year.* The Authority's conclusion in this regard is consistent with the statutory purpose of providing a greater measure of union security, thereby fostering stability in labor-management relations.[23]

The Authority noted that this conclusion also was consistent with guidance that the CSC – the predecessor to the Office of Personnel Management (OPM) – provided to agencies near the time of the Statute's enactment. That guidance advised agencies to inform employees that, "after the next available six-month revocation date established by the applicable collective[-]bargaining agreement, any future revocation can only be at *one-year intervals* from that date."[24]

The Authority applied the *Army* interpretation of § 7115(a) – allowing revocations only at one-year intervals – consistently for nearly four decades.[25] The Authority also held that "parties may define through negotiations the procedures for implementing" § 7115, as long as those negotiated procedures do not infringe on employees'

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[17] *Id.*
[18] *Id.* (internal quotation marks omitted).
[19] *Id.* at 198.
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.* at 198-99 (emphasis added).
[24] CSC Bulletin 711-48, Special Bulletin #10, at 4 (Dec. 28, 1978) (emphasis added).
[25] *See United Power Trades Org.*, 62 FLRA 493, 495 (2008); *AFGE, AFL-CIO*, 51 FLRA 1427, 1433 n.5 (1996) (*AFGE*); *NAGE, SEIU, AFL-CIO*, 40 FLRA 657, 688-89 (1991); *AFGE, AFL-CIO, Dep't of Educ. Council of AFGE Locs.*, 34 FLRA 1078, 1080-82 (1990); *AFGE, AFL-CIO, Loc. 1931*, 32 FLRA 1023, 1029 (1988); *Dep't of the Navy, Portsmouth Naval Shipyard, Portsmouth, N.H.*, 19 FLRA 586, 589 (1985) (*Portsmouth*); *Veterans Admin., Lakeside Med. Ctr., Chi., Ill.*, 12 FLRA 244, 246 (1983); *Dep't of HHS, SSA, Off. of Program Serv. Ctrs. & Ne. Program Serv. Ctr.*, 11 FLRA 618, 620 (1983); *Dep't of HHS, SSA, Bureau of Field Operations (N.Y.C., N.Y.)*, 11 FLRA 600, 602-03 (1983).

rights, including the right under § 7115 to revoke their dues assignments annually.[26]

Then, in 2019, OPM asked the Authority to issue a policy statement regarding "the applicability of the First Amendment principles that the U.S. Supreme Court clarified in *Janus v. AFSCME, Council 31* (*Janus*),[27] to the revocation of federal employees' union-dues assignments under § 7115(a)."[28] In 2020, a majority of the Authority – with Member DuBester dissenting – responded to OPM's request by issuing the policy statement in *OPM*. The majority rejected *Army*'s analysis and found that § 7115(a) "neither compels, nor even supports, the existing policy on annual revocation windows."[29] Instead, the majority found that "[t]he most reasonable way to interpret the phrase 'any such assignment may not be revoked for a period of [one] year' is that the phrase governs only the first year of an assignment," and that, "[e]xcept for the limiting conditions in § 7115(b), which § 7115(a) explicitly acknowledges, nothing in the text of § 7115(a) expressly addresses the revocation of dues assignments after the first year."[30] The Authority then stated:

> In our view, it would assure employees the fullest freedom in the exercise of their rights under the Statute if, after the expiration of the initial one-year period during which an assignment may not be revoked under § 7115(a), an employee had the right to initiate the revocation of a previously authorized dues assignment at any time that the employee chooses.[31]

However, the majority expressly declined to consider the legislative history that the unanimous Authority had discussed at length in *Army*, on the ground that § 7115(a)'s pertinent wording "is not ambiguous."[32] The Authority majority stated that it intended to commence related notice-and-comment rulemaking.

Subsequently, on March 19, 2020, a majority of the Authority – with Member DuBester dissenting – did just that, publishing in the *Federal Register* a proposed rule with request for comments, with a very short comment period.[33] Then, on July 9, 2020, a majority of the Authority – again, with Member DuBester dissenting, and a mere two months after the close of the comment period – published § 2429.19 as a final rule in the *Federal Register*.[34] As relevant here, § 2429.19 provides that, after the expiration of the one-year period following an employee's allotment, the employee "may initiate the revocation of a previously authorized assignment at any time that the employee chooses."[35]

The rule had an effective date of August 10, 2020, but stated that it would apply only to "the revocation of assignments that were authorized" on or after August 10, 2020, and would "not apply to the revocation of assignments that were authorized prior to" that date.[36] The rule also stated that, "[l]ike all government[-]wide regulations, the rule [would] be subject to the constraints of [§] 7116(a)(7) of the Statute," so "currently effective agreements [would] not be destabilized if they contain[ed] negotiated provisions that conflict[ed] with the rule."[37] In this regard, § 7116(a)(7) of the Statute provides that it is an unfair labor practice (ULP) "to enforce any rule or regulation (other than a rule implementing [5 U.S.C. § 2302] which is in conflict with any applicable collective[-]bargaining agreement if the agreement was in effect before the rule or regulation was prescribed."[38]

As noted above, NTEU later filed a petition to amend § 2429.19, and a majority of the Authority – with then-Member (and current Chairman) Kiko dissenting – issued a *Federal Register* notice granting NTEU's petition.[39] In that notice, the Authority majority proposed to: (1) rescind the policy statement in *OPM*; and (2) either revise § 2429.19 to provide that dues revocations may be processed only at one-year intervals or rescind § 2429.19 in its entirety. The notice solicited, and received, comments on these proposals. But, earlier this year, the Authority's current majority – over my dissent (my March 2026 dissent) – issued a *Federal Register* notice withdrawing the proposal to amend/rescind § 2429.19 and to rescind *OPM*.[40]

My March 2026 dissent summarized the comments that the Authority had received. According to some comments, § 7115(a)'s legislative history – as discussed in *Army* and summarized above – supports a conclusion that Congress intended dues revocations to occur only at annual intervals. Some comments cited the fact that CSC guidance, issued shortly after the Statute's enactment, advised agencies that future revocations could only be made at one-year intervals. Further, some comments emphasized that the Authority followed *Army*

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[26] *NTEU*, 64 FLRA 833, 838 (2010) (quoting *AFGE*, 51 FLRA at 1433) (internal quotation mark omitted).
[27] 585 U.S. 878 (2018).
[28] *OPM*, 71 FLRA at 571 (footnote omitted).
[29] *Id.* at 573.
[30] *Id.* at 572 (quoting 5 U.S.C. § 7115(a)).
[31] *Id.* at 573.
[32] *Id.* at n.23.
[33] 85 Fed. Reg. 15742, 15742 (Mar. 19, 2020) (requiring that comments be received on or before April 9, 2020).
[34] 85 Fed. Reg. 41169 (July 9, 2020).
[35] 5 C.F.R. § 2429.19.
[36] 85 Fed. Reg. at 41169.
[37] *Id.* at 41170.
[38] 5 U.S.C. § 7116(a)(7).
[39] 87 Fed. Reg. 78014.
[40] 2026 Notice, 91 Fed. Reg. 10774.

for nearly forty years, with no intervening congressional action. Additionally, some comments noted that union membership in the federal sector – and signing OPM's Standard Form (SF)-1187, to authorize dues deductions – is voluntary, as the terms of the SF-1187 and the SF-1188 (the form to withdraw dues-deduction authorizations) confirm. Consequently, some comments contended that *Janus* has no bearing on federal-sector dues allotments. In this connection, some comments asserted that the proposed amendment to § 2429.19 would respect employee rights under § 7102 of the Statute[41] because employees would remain free to refrain from joining or assisting a union, as § 7102 guarantees.[42]

In addition, some comments supported amending or rescinding § 2429.19 because doing so would allow parties to bargain over dues-revocation arrangements, rather than prohibiting any such arrangements that conflict with § 2429.19. Moreover, some comments asserted that amending or rescinding § 2429.19 would not upset reliance interests, because the rule established by § 2429.19 had taken effect in only a limited number of bargaining units, given the Authority's statement that it applies only to bargaining units where collective-bargaining agreements with conflicting provisions have expired, and only to dues assignments authorized on or after the rule's effective date of August 10, 2020.

Further, some comments argued that either rescinding or amending § 2429.19 is necessary to restore unions' financial security and predictability, enhance unions' bargaining postures, and honor employee choice. Relatedly, some comments contended that strengthening unions' finances benefits employees by allowing unions to better serve the employees they represent. Additionally, one comment stated that complaints about the dues-revocation process being too cumbersome or complicated are a "red herring," and that arrangements in parties' collective-bargaining agreements are workable if the parties understand the process and communicate it to employees.

Many of the comments arguing for amendment or rescission of § 2429.19 also made similar arguments in favor of rescinding *OPM*. Additionally, some comments asserted that *OPM* is inconsistent with § 7115(a)'s plain language, which contains no wording that either: (1) requires that dues assignments become revocable at will after an employee's first year of union membership; or (2) bars the negotiation of yearly dues-revocation intervals. Further, some comments contended that *OPM* ignores that § 7115(a)'s purpose is to effectuate unions' ability to collect dues through withholding arrangements.

In my March 2026 dissent, after considering those comments, and after great deliberation, I concluded that *Army* correctly held that § 7115(a) must be interpreted as allowing employees to revoke their voluntary authorizations only at annual intervals (unless an exception in § 7115(b) applies). Nothing that the majority finds today persuades me otherwise.

Specifically, § 7115(a) does not state that a dues assignment may not be revoked "for one year"; it says the assignment may not be revoked "for a *period* of [one] year."[43] While a "period" of time may denote "a length or portion of time," it also may denote "[a] length of time characterized by regular recurrence or some cyclical process."[44] And "a period of [one] year" can mean "annual" or an interval. "Th[is] is a distinction without a difference, as the words 'annual' and 'a year' have the same meaning."[45] "Of course, 'Annual' is defined as, 'Of, relating to, or involving a period of one year.'"[46]

In my view, the use of "period" in § 7115(a) means "[a] length of time characterized by regular recurrence or some cyclical process," not a singular "length or portion of time."[47] This is particularly true given § 7115's legislative backdrop. As discussed above, *Army* carefully analyzed § 7115(a)'s legislative history and found that history supported a conclusion that Congress intended § 7115(a) "to provide a more effective form of union security" than existed under E.O. 11491, "without going so far as to authorize an 'agency shop.'"[48] "[C]onsistent with this conclusion," the Authority found that

> Congress intended in [§] 7115(a) of the Statute to maintain the procedure for revocation of assignments set forth in [E.O. 11491] (i.e., only upon stated intervals of time), and to expand that interval under the Statute to a period of

[41] 5 U.S.C. § 7102.
[42] *See id.* (providing, in relevant part, that "[e]ach employee shall have the right to . . . refrain" from forming, joining, or assisting a labor organization).
[43] *Id.* § 7115(a) (emphasis added).
[44] *See Period*, Black's Law Dictionary (12th ed. 2024).
[45] *Boschan v. Steinmetz*, No. 19 Civ. 6481 (LAP), 2020 WL 2475848, at *3 (S.D.N.Y. May 13, 2020) (alteration in original) (quoting *Annual*, Black's Law Dictionary (11th ed. 2019) (defining "annual" as "[o]ccurring once every year" or "involving a period of one year")).
[46] *Stover v. United States*, No. 5:22-CV-05074-CBK, 2023 WL 2763817, at *2 (D.S.D. Mar. 31, 2023) (quoting *Annual*, Black's Law Dictionary (11th ed. 2019)).
[47] *See Period*, Black's Law Dictionary (12th ed. 2024).
[48] 7 FLRA at 198.

> one year. That is, the language in [§] 7115(a) that "any such assignment may not be revoked for a period of [one] year" must be interpreted to mean that authorized dues allotments may be revoked only at intervals of [one] year.[49]

As noted, the Authority also found this conclusion consistent with the guidance that the CSC gave federal agencies near the time of the Statute's enactment.[50]

I continue to find *Army*'s reasoning persuasive. The pre-Statute regime, governed by E.O. 11491, had a framework similar to the one described in *Army*: revocation intervals. *Army* interpreted the Statute as superseding that regime only insofar as the Statute imposes one-year, rather than six-month, intervals. Although the House Committee Report for H.R. 11280 stated that "[a]ssignments normally are to be irrevocable for one year," it did not state that they are irrevocable for *only* one year.[51] Further, that wording could simply reflect Congress's decision to increase the revocation *intervals* from six months to one year. Under § 7135(b) of the Statute, "[p]olicies, regulations, and procedures established under and decisions issued under [E.O.] 11491 . . . shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of [the Statute] . . . or decisions issued pursuant to [the Statute]."[52] In other words, Congress intended the pre-Statute regime to continue unless it was specifically superseded.[53] In effect, § 7135(b) creates a presumption that practices under E.O. 11491 should be preserved unless there is some clear statutory indication to the contrary. Thus, "'decisions issued under [E.O.] 11491' supply critical guidance regarding the FLRA's jurisdiction today."[54] In that way, legislative history plays a significant role in interpreting the Statute. And, based on that legislative history and the Statute's wording, I would find that the Statute did not clearly supersede E.O. 11491's interval framework, even though it extended the intervals from six months to one year.

Further, the Authority decided *Army* relatively shortly after the Statute's enactment, giving extra weight to the interpretation in that decision.[55] Moreover – and significantly, in my view – the *Army* framework of annual revocation periods existed for nearly forty years without congressional action to change it. This is true despite the fact that Congress has amended the Statute in other ways since 1981.[56] And, while no court has expressly held that § 7115(a) requires annual intervals, no court has held to the contrary either – and courts have applied the *Army* framework without critique.[57]

Moreover, this interpretation of § 7115(a) is consistent with § 7101(a) of the Statute, which states that "labor organizations and collective bargaining in the civil service are in the public interest,"[58] as well as with legislative history indicating that the Statute was "intended to serve a variety of purposes," including "strengthen[ing] the position of employee unions in the federal service."[59]

Additionally, if Congress' intent was to provide a greater measure of union security than what existed under E.O. 11491, then it would be counterintuitive for Congress to move from a system where employees could revoke their allotments only at intervals – even six-month intervals – to a system where the employees could revoke them *any time* after a single year.

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[49] *Id.* at 198-99.
[50] *Id.* at 199 n.16.
[51] H.R. Rep. No. 95-1403, at 48 (1978).
[52] 5 U.S.C. § 7135(b).
[53] *Cf. Warden, Lewisburg Penitentiary v. Marrero*, 417 U.S. 653, 659 n.10 (1974) ("But only if § 1103(a) can be said by fair implication or expressly to conflict with § 109 would there be reason to hold that § 1103(a) superseded § 109.").
[54] *Ohio Adjutant Gen.'s Dep't v. FLRA*, 598 U.S. 449, 460 (2023).
[55] *Libr. of Cong. v. FLRA*, 699 F.2d 1280, 1285 (D.C. Cir. 1983) ("[D]eference to an agency's interpretation of its enabling legislation . . . is especially appropriate when . . . the administrative practice at stake involves a contemporaneous construction of a statute by the persons charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new." (citation modified)).
[56] *Jackson v. Modley*, 949 F.3d 763, 773 (D.C. Cir. 2020) ("recogniz[ing] the limited value of congressional acquiescence as an interpretive tool," but finding "Congress's inaction for over forty years particularly significant" in the circumstances of that case).
[57] *See NTEU v. FLRA*, 647 F.3d 514, 518 (4th Cir. 2011) ("While the union and an agency may bargain for the specific procedures for implementing § 7115, the negotiated procedures may not infringe on the employees' right to 'remain free to revoke their dues authorizations at annual intervals.'" (quoting *AFGE*, 51 FLRA at 1433)); *AFGE, AFL-CIO, Loc. 1843 v. FLRA*, 843 F.2d 550, 553 n.3 (D.C. Cir. 1988) ("Except as provided in § 7115(b), an employee may revoke his dues withholding allotment only annually, at the time of the year when the allotment was originally authorized." (citing 5 U.S.C. § 7115(a))).
[58] 5 U.S.C. § 7101(a).
[59] *DOD, Army-Air Force Exch. Serv. v. FLRA*, 659 F.2d 1140, 1145 (D.C. Cir. 1981); *see also Bureau of Alcohol, Tobacco & Firearms v. FLRA*, 464 U.S. 89, 107 (1983) ("In passing the [Statute], Congress unquestionably intended to strengthen the position of federal unions and to make the collective-bargaining process a more effective instrument of the public interest than it had been under the Executive Order regime.").

Furthermore, despite some comments that we received to the contrary, the *Army* framework is wholly consistent with *AFGE, Council 214, AFL-CIO v. FLRA* (*Council 214*).[60] In discussing § 7115(a) of the Statute, the U.S. Court of Appeals for the D.C. Circuit in *Council 214* stated, "The [S]tatute clearly was designed for the primary benefit and convenience of the employee."[61] However, that statement must be read in context. In *Council 214*, an agency erroneously continued to deduct union dues from employees' paychecks for a short time following the employees' promotions to supervisory positions. When the error was discovered, management reimbursed those employees, and deducted the amounts from the remittance to the union of dues withheld from employees in a subsequent period. The union challenged those deductions as a ULP. The Authority rejected that challenge, finding that an agency may reduce remittances to a union of dues withheld from employees in order to compensate for the agency's previous overpayments to the union.

However, the court reversed the Authority. The court interpreted § 7115(a) "as imposing an absolute duty on the [agency] to turn over to the union all funds deducted."[62] The court found that "the withheld dues are [not] union property until they are actually delivered to the union."[63] In *that* context, the court stated:

> The [S]tatute clearly was designed for the primary benefit and convenience of the employee. The employee has the right to decide whether to opt for withholding and to control the disposition of the funds so withheld. The [agency] acts as the agent of the employee with respect to the withheld funds. In the words of the [S]tatute, the [agency] "shall honor the assignment."[64]

The court then "agree[d] with the [U.S. Court of Appeals for the] Second Circuit that 'shall honor' indicates a 'mandatory intent'; the [agency's] obligation to honor the dues check-off is 'nondiscretionary.'"[65]

Put simply, *Council 214* focused on employees' right to have the dues they have authorized delivered to the union, without agency interference. It did not involve dues revocations, and it provides no basis for finding that the *Army* framework of annual revocation intervals would conflict with employees' rights. In addition, although some comments supporting § 2429.19 and *OPM* cited private-sector precedent, *Council 214* noted that § 7115 has no counterpart in the National Labor Relations Act or the Labor Management Relations Act.[66] Therefore, precedent under those acts does not dictate how § 7115 should apply.

Moreover – again, despite some comments to the contrary – the *Army* rule does not conflict with *Janus*, the First Amendment, or § 7102 of the Statute. *Janus* involved the constitutionality of agency-fee payments required of state employees who chose not to join unions. In the federal sector, the decision to join, or provide financial support to, a union is voluntary. *Janus* itself acknowledged the voluntary nature of union membership in the federal sector, stating that state governments could "follow the model of the [f]ederal [g]overnment" by "keep[ing] their labor-relations systems exactly as they are," so long as they do not "force nonmembers to subsidize public-sector unions."[67] Courts have held that *Janus* does not apply to voluntary membership agreements; that dues assignments are voluntary, binding contracts; and that requiring employees to honor those assignments until the next annual revocation period does not force them to join or assist a union.[68] The SF-1187 clearly and expressly states that "[c]ompleting this form is

[60] 835 F.2d 1458 (D.C. Cir. 1987).
[61] *Id.* at 1460.
[62] *Id.*
[63] *Id.*
[64] *Id.* (quoting 5 U.S.C. § 7115(a)).
[65] *Id.* (quoting *AFGE, AFL-CIO, Loc. 2612 v. FLRA*, 739 F.2d 87, 89 (2d Cir. 1984)).
[66] *Id.* at 1461.
[67] *Janus*, 585 U.S. at 928 n.27.

[68] *See, e.g.*, *Bennett v. Council 31 of the AFSCME, AFL-CIO*, 991 F.3d 724, 732 (7th Cir. 2021) (finding that union and employer did not violate employee's First Amendment rights by continuing to deduct union dues from her paycheck, where she "freely chose to join a union and voluntarily authorized the deduction of union dues"); *Belgau v. Inslee*, 975 F.3d 940, 950-51 (9th Cir. 2020) (finding that employees who willingly joined union and voluntarily authorized union dues to be deducted from their pay for one year could be held to their "contractual obligation" and did not have a First Amendment right to withdraw); *Int'l Ass'n of Machinists Dist. Ten v. Allen*, 904 F.3d 490, 506 (7th Cir. 2018) ("Dues-checkoff authorizations are optional payroll[-]deduction contracts between employers and individual employees, similar to health insurance premium payroll deductions or retirement savings arrangements."); *Kumpf v. N.Y. State United Tchrs. Fed'n*, 642 F. Supp. 3d 294, 312 (N.D.N.Y. 2022) ("As every court to consider this issue has found, once Plaintiff consented to pay dues to the union, regardless of the status of her membership, Plaintiff did not fall within the sweep of *Janus*'s waiver requirement.") (citation modified)).

voluntary."[69] Further, there is no basis for finding annual revocation intervals conflict with § 7102 of the Statute. I note, in this regard, that the ULP process remains available for employees to challenge any restrictions on dues revocation that unduly interfere with their § 7102 rights.[70]

Additionally – despite some comments to the contrary – the *Army* framework does not conflict with the Fifth Amendment's Takings Clause. As noted above, employees voluntarily sign authorizations for dues deductions, and none of the authorities cited in the comments support a conclusion that holding employees to their voluntary actions to enter into a binding contract, at least for some period of time, would be an unconstitutional "taking."[71]

For these reasons, I continue to believe that *Army* correctly held that § 7115(a) must be interpreted as requiring that employees may not revoke their authorizations except at annual intervals (unless an exception in § 7115(b) applies). Thus, in my view, the former Authority majority erred when it promulgated § 2429.19 and issued *OPM*, and the current majority perpetuated that error by withdrawing the proposed amendment/rescission of § 2429.19 and proposed rescission of *OPM* earlier this year. For the same reasons, I believe that the majority errs today, by rejecting the Union's request that we rescind § 2429.19 and *OPM*.[72]

Further, if the majority's interpretation of § 7115(a) is correct – a point that I do not concede – then § 7115(a) does not address, in any way, what happens after the first year of dues withholding. As such, the majority cannot rely on § 7115(a) as the statutory basis for § 2429.19 – a substantive rule that is entirely about what happens after the first year of a dues authorization, and that dictates what parties may or may not do, and may or may not bargain over and agree to, after that first year. If there

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[69] OPM, SF-1187, Request for Payroll Deductions for Labor Organization Dues, www.opm.gov/forms/pdf_fill/sf1187.pdf (on file with the Federal Labor Relations Authority) (last visited Sept. 10, 2026).

[70] *See, e.g.*, *AFGE*, 51 FLRA at 1438 (finding union committed a ULP by interfering with employees' right to revoke their dues-withholding authorizations); *Portsmouth*, 19 FLRA at 589-90 (finding certain limitations on employees' ability to revoke dues-withholding authorizations were unlawful restrictions on employees' § 7102 rights to refrain from joining or assisting a labor organization).

[71] *See Cedar Point Nursery v. Hassid*, 594 U.S. 139, 154, 162 (2021) (finding state regulation granting labor organizations a "right to take access" to an agricultural employer's property in order to solicit support for unionization was a "taking" requiring just compensation under the Fifth Amendment's Takings Clause); *Brown v. Legal Found. of Wash.*, 538 U.S. 216, 240 (2003) (finding that a state law that required client funds that could not otherwise generate net earnings for the client to be deposited in an Interest on Lawyers Trust Account was not a "regulatory taking," but stating that "[a] law that requires that the interest on those funds be transferred to a different owner for a legitimate public use . . . could be a per se taking requiring the payment of 'just compensation' to the client"); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164-65 (1980) (finding that,

> under the narrow circumstances of th[e] case – where there [was] a separate and distinct state statute authorizing a clerk's fee "for services rendered" based upon the amount of principal deposited; where the deposited fund itself concededly [was] private; and where the deposit in the court's registry [was] required by state statute in order for the depositor to avail itself of statutory protection from claims of creditors and others – [a c]ounty's taking unto itself, under [state laws], the interest earned on [an] interpleader fund while it was in the registry of the court was a taking violative of the Fifth and Fourteenth Amendments).

[72] To be clear, I would have rescinded § 2429.19 and *OPM* as part of the prior rulemaking process, and then decided this case based on the state of the law at the time of decision. I note that the Union's request that we rescind § 2429.19 and *OPM* was filed on December 7, 2021, *see* Resp. Br. at 18-19, long before the 2026 notice. I also note that, to the extent that the majority finds it inappropriate for a party to *request* rescission of a regulation in a filing in an adjudication before the Authority, *see* Majority at 12 n.99, that is unsupported by Authority precedent. *See U.S. Dep't of the Army, U.S. DOD, Fort Detrick, Md.*, 62 FLRA 407, 410 (2008) (considering, but rejecting, petition to amend Regulations that was included in an application for review in a representation case).

is another statutory grounding for § 2429.19, the majority has not said what it is.

Separate from the proper interpretation of § 7115(a), two additional considerations support returning to the *Army* framework.

First, doing so would not significantly upset any reliance interests. Because the *Army* framework was in place for nearly forty years, innumerable existing collective-bargaining agreements have dues-revocation provisions that were negotiated under that framework. Additionally, as noted above, § 2429.19 does not apply to assignments that were authorized before the Regulation's effective date of August 10, 2020, or to collective-bargaining agreements that were in effect on that date. As a result, returning to the *Army* framework would not significantly disrupt the status quo.

Second, some of the policy arguments raised in the comments that the Authority received support returning to the *Army* framework. Specifically, as some comments state, prohibiting revocations except at annual intervals can allow unions to better estimate the dues revenue that they would receive over the course of a year, which can assist them in planning their budgets and give them the financial continuity that would encourage them to invest resources in representational activities that benefit unit employees, rather than holding off due to uncertainty regarding future funding. It also could assist unions in complying with legal requirements governing the election of local union officers. Some comments note that, under the Labor-Management Reporting and Disclosure Act, unions must finalize a list of members in good standing who are eligible to participate in union elections in advance of any election.[73] Allowing unions to rely on members' dues-withholding commitments could assist the unions in preparing and maintaining accurate lists.

Therefore, before resolving this case, I would have rescinded § 2429.19 and the policy statement in *OPM*, and returned to the *Army* regime. Then I would decide this case and find that, because the Agency's only argument regarding the provision is that it is contrary to § 2429.19,[74] the provision is not contrary to law. And, as the provision as a whole is not contrary to law, I would find it unnecessary to resolve the Union's request to sever the provision.[75]

Accordingly, I concur in part and dissent in part.

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[73] 29 U.S.C. § 481(b) ("Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.").
[74] Agency's Statement of Position at 5-9.
[75] *See, e.g.*, *Antilles Consol. Educ. Ass'n*, 73 FLRA 282, 284 n.18 (2022) (finding it unnecessary to address severance request where proposal as a whole was negotiable).