

**74 FLRA No. 85**

INDEPENDENT UNION  
OF PENSION EMPLOYEES FOR  
DEMOCRACY AND JUSTICE  
(Union)

and

PENSION BENEFIT  
GUARANTY CORPORATION  
(Agency)

0-NG-3671

DECISION AND ORDER  
ON NEGOTIABILITY ISSUES

September 30, 2026

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

**I. Statement of the Case**

This matter is before the Authority on a negotiability appeal filed by the Union under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute (the Statute).<sup>1</sup> The petition for review (petition) involves four proposals concerning remote work.<sup>2</sup> For the following reasons, we find Proposal 1(b)(f) (Proposal 1), Proposal 4.1 (Proposal 2), and subsections (1)(a), (1)(c), and (1)(d) of Proposal 4.2 (Proposal 3) are within the duty to bargain. We also find Proposal 4.3 (Proposal 4) and subsection (1)(b) of Proposal 3 are outside the duty to bargain.

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

<sup>2</sup> The petition originally concerned six proposals, but the parties resolved two proposals after the filing of the petition. See Record of Post-Petition Conference (Rec.) at 1. The Union modified the wording of all four remaining proposals at the post-petition conference in this case, without objection from the Agency. See *id.* at 2-3 (Proposal 1), 4-5 (Proposal 2), 8 (Proposal 3), 9-11 (Proposal 4).

<sup>3</sup> 5 C.F.R. § 2424.23. We note the Union filed the petition on June 15, 2023, before revisions to the Authority's Regulations on October 12, 2023, and August 29, 2025, took effect. Therefore,

**II. Background**

The parties are negotiating a new term collective-bargaining agreement (CBA). Until a new agreement is reached, the parties' 2011 CBA remains in effect. The instant dispute arose after the Agency implemented a new remote-work directive (the directive) that applies to employees who are not a part of the bargaining unit. Thereafter, the parties began negotiating over a remote-work agreement that will apply to bargaining-unit employees. The parties agreed that, if they reach a remote-work agreement, then the terms of that agreement will be incorporated into the new CBA the parties are negotiating.

During their remote-work negotiations, the Agency declared several Union proposals nonnegotiable. Subsequently, the Union filed the petition; an Authority representative conducted a post-petition conference (conference) with the parties under § 2424.23 of the Authority's Regulations;<sup>3</sup> the Agency filed a statement of position (statement); the Union filed a response to the statement (response); and the Agency filed a reply to the response (reply).<sup>4</sup>

**III. Preliminary Matter: We do not dismiss the petition under § 2424.30(a) of the Authority's Regulations.**

The Agency argues the Authority should dismiss the petition because it is directly related to a pending unfair-labor-practice (ULP) charge. Under § 2424.30(a) of the Authority's Regulations, where a union files a ULP charge or a grievance alleging a ULP (ULP grievance), and the ULP charge or ULP grievance concerns issues "directly related" to a negotiability petition, the Authority will dismiss the negotiability petition.<sup>5</sup> The dismissal is without prejudice to the union's right to refile the petition after the ULP charge or ULP grievance is resolved administratively.<sup>6</sup> The Authority has stated that "§ 2424.30(a) precludes . . . litigation of identical bargaining[-]obligation claims simultaneously in a negotiability appeal and" a ULP charge or ULP grievance.<sup>7</sup>

the Regulations in effect on the filing date apply throughout this decision. See *id.* § 2424.1 (noting the Authority's current negotiability Regulations apply only "to all petitions for review filed on or after August 29, 2025").

<sup>4</sup> While the Union initially requested a hearing in its petition, Pet. at 8, the Union withdrew its request for a hearing at the conference. Rec. at 13.

<sup>5</sup> 5 C.F.R. § 2424.30(a).

<sup>6</sup> *Id.*

<sup>7</sup> *AFGE, Loc. 1938*, 66 FLRA 1038, 1039 (2012) (*Local 1938*).

In originally adopting § 2424.30(a), the Authority stated: “[T]he Authority’s experience has been that the piecemeal resolution of bargaining[-]obligation and negotiability claims is both inefficient and ineffective. The changes adopted in this rule will reduce duplicative administrative decision making and increase the likelihood that disputes will be resolved more timely.”<sup>8</sup> The Authority also stated that the statutory ULP process and the ULP-grievance process are “better suited [than the negotiability process] to resolving the entire dispute.”<sup>9</sup>

Applying § 2424.30(a), the Authority has found that a pending ULP or ULP grievance concerning an agency’s duty to bargain is directly related to a negotiability proceeding because it could render the negotiability proceeding moot.<sup>10</sup> Similarly, a ULP or ULP grievance is directly related when it expressly addresses issues “currently before” the Authority on a negotiability appeal.<sup>11</sup> By contrast, the Authority has found pending ULP charges or ULP grievances were *not* directly related to negotiability proceedings when the proposals at issue in the two proceedings were not the same,<sup>12</sup> and where there was “no claim, or record evidence, that the ULP proceeding could resolve issues related to” the proposal.<sup>13</sup>

Here, the Union’s ULP charge alleges:

In March [2023], the Agency implemented [r]eturn to [o]perations prior to the completion of [Federal Service Impasses Panel (FSIP)] procedures, causing great harm to employees with disabilities needing [r]easonable [a]ccommodations [(RA)]. The Union had filed a ULP in December [2022] on the Agency’s posting to implement [r]eturn to [o]perations prior to completing negotiations on the topic and telework. In March [2023], the [Federal Labor Relations Authority (FLRA)] investigator insisted upon including

post[-]December happenings, despite my insistence that a new charge should be filed. I provided e-mails and concerns from employees asking for RA for their grave health issues. In December 2022, the [p]arties agreed to negotiate [r]emote [w]ork separately from telework to get an agreement on telework. In March 2023, the Agency announced that a policy on [r]emote [w]ork had been published in late February [2023], and tried to strong arm the Union to negotiate post-implementation. The Union refused. [The Agency relayed] that they would cause problems for employees. The Agency began denying [RA] [r]equests or not providing effective RA requests, and telling employees that they could get [r]emote [w]ork in lieu of RA, putting the health of employees, and employment[,] at risk. In addition, the Agency refused to process certain RA [r]equests. Most recently, in March 2023, it appears that the Agency is attempting to repudiate provisions in the CBA, the article on telework, and the [Agency] policy on telework for medical telework, which allows medical telework where an employee has to be close to home for the care of a close relative, while not actually providing the care during work hours. Employees have contacted the Union with concerns. Again, the FLRA held the Union’s charges causing delays in processing of cases for the Union and causing great harm to employees with disabilities.<sup>14</sup>

The Authority’s Office of Case Intake and Publication issued an order directing the Union to show cause why the Authority should not dismiss the petition

<sup>8</sup> 63 Fed. Reg. 66405, 66410 (Dec. 2, 1998).

<sup>9</sup> *Id.*; see also *Local 1938*, 66 FLRA at 1039; *NTEU*, 62 FLRA 267, 268 (2007) (Chairman Cabaniss dissenting in part on other grounds), *pet. for review granted in part & denied in part on other grounds sub nom. NTEU v. FLRA*, 550 F.3d 1148 (D.C. Cir. 2008).

<sup>10</sup> *AFGE, Council 270*, 73 FLRA 73, 74 (2022) (finding resolution of ULP charge could result in finding no duty to bargain over proposals in negotiability proceeding, thereby rendering the issues raised in negotiability proceeding moot); *NTEU*, 72 FLRA 469, 469-70 (2021) (Member Abbott concurring) (same); *AFGE, Loc. 1502*, 70 FLRA 423, 423 (2018) (same); *NTEU*, 69 FLRA 355, 355-56 (2016) (same).

<sup>11</sup> *AFGE, Council of Prison Locs. 33, Loc. 506*, 66 FLRA 819, 820 (2012) (*Local 506*); see also *NAGE, Loc. R5-168*, 56 FLRA 796, 797 (2000) (finding ULP grievance directly related to

negotiability proceedings because both cases raised issue of whether agency regulations comported with Office of Personnel Management regulations).

<sup>12</sup> *Fed. Educ. Ass’n*, 73 FLRA 262, 262 (2022) (*FEA*) (then-Member Kiko concurring in part and dissenting in part on other grounds) (finding pending ULP grievance, alleging agency refused to bargain over certain proposals not included in negotiability petition, was not directly related to petition); *AFGE, Loc. 3129, SSA Gen. Comm.*, 58 FLRA 273, 273 n.2 (2002) (*Local 3129*) (Chairman Cabaniss concurring on other grounds) (finding pending ULP charge was not directly related to negotiability proceeding because ULP charge did not concern bargaining obligations).

<sup>13</sup> *Local 506*, 66 FLRA at 819-20.

<sup>14</sup> Statement, Ex. 4 (ULP Charge) at 3.

without prejudice, as directly related to the ULP charge, under § 2424.30(a) of the Authority's Regulations.<sup>15</sup>

The Union responded, asserting the ULP charge is not directly related to the petition because: (1) "[t]he charge does not concern whether the Agency has a duty to bargain over any of the proposals at issue in the petition" (the petition proposals);<sup>16</sup> (2) "[n]one of the [petition] proposals . . . address[] Agency implementation of any action prior to completion of FSIP proceedings";<sup>17</sup> (3) the ULP charge "does not assert that the Agency 'tried to strong arm the Union to negotiate [remote work] post-implementation' by asserting that the Agency has *no duty to bargain* [r]emote [w]ork prior to implementation of its policy," but "concerns only whether the Agency 'tried to strong arm the Union to negotiate [remote work] post-implementation' *by means other than asserting no duty to bargain* prior to implementation";<sup>18</sup> (4) the petition proposals are unrelated to "the Agency's treatment of employees with disabilities, the Agency's handling of [RA] requests, or the Agency's alleged repudiation of CBA telework provisions";<sup>19</sup> and (5) in the negotiability case, "the Agency does not argue that it has no duty to bargain [r]emote [w]ork prior to implementation of its [r]emote[-w]ork policy."<sup>20</sup> Thus, the Union asserts, the pending ULP proceedings would not resolve whether the Agency has an obligation to bargain over the petition proposals.<sup>21</sup>

Although the record before us is not perfectly clear, we find it supports a conclusion that this negotiability dispute is not directly related to the ULP charge. As stated above, the petition involves bargaining proposals related to remote work. The part of the ULP charge that appears most relevant to this negotiability dispute alleges the Agency implemented a "policy on [r]emote [w]ork . . . and tried to strong arm the Union to negotiate post-implementation."<sup>22</sup> The ULP charge's plain wording, and the Union's assertions in its response to the show-cause order, indicate the ULP charge concerns various Agency *actions before and during negotiations* on remote work, but not the Agency's *duty to bargain* over

remote work. The ULP charge does not allege the Agency failed to bargain over the petition proposals<sup>23</sup> – in fact, there is no record evidence those proposals were before the Agency pre-implementation.<sup>24</sup>

Therefore, the ULP charge does not appear to present an issue regarding whether the Agency had a duty to bargain over the petition proposals, or to bargain over remote work generally. As a result, it is unlikely that resolving the ULP charge would also resolve whether the petition proposals are within the Agency's duty to bargain.<sup>25</sup> For these reasons, we find the petition is not directly related to the pending ULP charge, and we do not dismiss the petition under § 2424.30(a) of the Authority's Regulations.

#### IV. The Agency's covered-by arguments lack merit.

The Agency argues Proposals 1 and 4 are outside the duty to bargain because they are "covered by" certain provisions of the 2011 CBA.<sup>26</sup> Although the Union argues the covered-by doctrine does not apply here,<sup>27</sup> the Agency disagrees because the 2011 CBA specifies that "the current terms of the [2011 CBA] will remain in effect until superseded by a new [a]greement," which the Agency interprets as meaning a new term agreement.<sup>28</sup>

Under the Authority's covered-by doctrine, a party is not required to bargain over conditions of employment that have already been resolved by bargaining.<sup>29</sup> However, the covered-by doctrine deals only with an agency's statutory duty to bargain during the *term* of a CBA; it does not bar bargaining over issues that arise during negotiations over a new CBA.<sup>30</sup>

It is undisputed that the parties are currently negotiating a new term CBA and that, if they reach an agreement on remote work, then that remote-work agreement will be incorporated into the new CBA.<sup>31</sup> In other words, although the parties are negotiating remote work separately from their term negotiations, any

<sup>15</sup> March 18, 2024 Show-Cause Order at 2; 5 C.F.R. § 2424.30(a).

<sup>16</sup> Apr. 1, 2024 Resp. to Show-Cause Order at 1.

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

<sup>18</sup> *Id.* at 1-2 (quoting Statement Br. at 4-5).

<sup>19</sup> *Id.* at 1.

<sup>20</sup> *Id.* at 2.

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

<sup>22</sup> ULP Charge at 3.

<sup>23</sup> *Id.*

<sup>24</sup> Rec. at 2 ("[I]n February 2023, Agency leadership signed a remote-work directive that applies to the Agency's non-bargaining-unit employees . . . ; the Agency provided the Union notice of the opportunity to negotiate a remote-work policy that would apply to bargaining-unit employees; and . . .

the petition in this case arose from those remote-work negotiations.").

<sup>25</sup> *FEA*, 73 FLRA at 262; *Local 506*, 66 FLRA at 819-20; *Local 3129*, 58 FLRA at 273 n.2.

<sup>26</sup> Statement Br. at 7-9, 28-29.

<sup>27</sup> Resp. at 14-15.

<sup>28</sup> Reply Br. at 7 (quoting Statement, Ex. 6, Collective-Bargaining Agreement (CBA) at 140).

<sup>29</sup> *NTEU*, 68 FLRA 334, 338 (2015) (*NTEU*) (citing *NATCA, AFL-CIO*, 62 FLRA 174, 176 (2007)).

<sup>30</sup> *Id.* (holding that the covered-by "doctrine is inapplicable to resolve duty-to-bargain issues that arise during term negotiations" (citing *U.S. Pat. & Trademark Off.*, 57 FLRA 185, 193 (2001))).

<sup>31</sup> Rec. at 2.

remote-work agreement they reach will become part of their new CBA. As such, the covered-by doctrine does not exclude topics “covered by” the 2011 CBA from the remote-work negotiations at issue here and does not provide a basis for finding Proposals 1 and 4 outside the duty to bargain.<sup>32</sup> Therefore, we find the Agency’s covered-by arguments lack merit.

## V. Proposal 1

### A. Wording

Current bargaining unit employees applying for this program have already been classified under position titles and position descriptions determined to be in the bargaining unit. As such, no remote worker agreement / arrangement, shall in and of itself, change the Bargaining Unit Status of the position titles and position descriptions currently held by these employees. If the Agency determines to change the bargaining unit status of a bargaining unit employee in a bargaining unit position and who is remote working, the Agency will notify the Union prior to making a change. The Agency will follow Article 1, Section 3 of the parties’ 2011 CBA.<sup>33</sup>

### B. Meaning

The parties agree that, in Proposal 1: “current bargaining unit employees” means employees the Union represents; “this program” means a remote-work program; “agreement” and “arrangement” are synonyms; and “agreement / arrangement” in the second sentence refers to a remote-work agreement under the “program” referenced in the first sentence.<sup>34</sup>

However, the parties disagree about the meaning of the phrase “in and of itself,”<sup>35</sup> as well as Proposal 1’s operation as a whole. According to the Union, “in and of itself” means that entering into a remote-work agreement “will not be the *one* condition that leads to a change in an employee’s bargaining-unit status.”<sup>36</sup> In other words, the Union asserts:

[the] change of an employee’s work location to a remote location – in and of

itself, *without any other change of any kind* (such as a change in position classification or work to be performed, or a redetermination of whether, under applicable legal standards, the employee’s position is a bargaining[-]unit position) – shall not change an employee’s [bargaining-]unit status.<sup>37</sup>

By contrast, the Agency contends “in and of itself” means that neither entering into a remote-work agreement nor anything *caused* by entering into a remote-work agreement would allow the Agency to change an employee’s bargaining-unit status, once the employee has entered into the remote-work program.<sup>38</sup> In this regard, the Agency asserts that, under the proposal, even “changes in risk designation of a position or employee, [or] changes to duties[] or work assignments” would preclude the Agency from changing a remote-working employee’s bargaining-unit status.<sup>39</sup>

Where parties disagree over a proposal’s meaning, the Authority looks first to the proposal’s plain wording and the union’s statement of intent.<sup>40</sup> If the union’s explanation comports with the proposal’s plain wording, then the Authority adopts that meaning in determining whether the proposal is within the duty to bargain.<sup>41</sup>

The Union’s explanation of the proposal’s meaning – that the signing of a remote-work agreement will not be the *sole* reason for changing an employee’s bargaining-unit status, and that the proposal does not prevent the Agency from changing employees’ bargaining-unit status for any other reasons – comports with Proposal 1’s plain wording. Therefore, we adopt the Union’s explanation for purposes of assessing Proposal 1’s negotiability.<sup>42</sup>

<sup>32</sup> NTEU, 68 FLRA at 338.

<sup>33</sup> Rec. at 2-3.

<sup>34</sup> Id. at 3.

<sup>35</sup> Id. at 2.

<sup>36</sup> Id. at 3 (emphasis added).

<sup>37</sup> Resp. at 11.

<sup>38</sup> Rec. at 3.

<sup>39</sup> Statement Br. at 6.

<sup>40</sup> IFPTE, Loc. 4, 74 FLRA 59, 60 (2024) (Local 4); AFGE, Loc. 15, 73 FLRA 125, 131 (2022) (Local 15).

<sup>41</sup> Local 4, 74 FLRA at 60; Local 15, 73 FLRA at 131.

<sup>42</sup> Local 4, 74 FLRA at 60; Local 15, 73 FLRA at 131; AFGE, Loc. 1748, Nat’l Council of Field Lab. Locs., 73 FLRA 233, 234 (2022).

### C. Analysis and Conclusions

1. Proposal 1 is not contrary to § 7103(a)(14)(B) of the Statute.

The Agency argues Proposal 1 is contrary to § 7103(a)(14)(B) of the Statute because the proposal would “prohibit the Agency from reclassifying a remote employee’s position for any reason, such as changes in position risk assessment or changes in assigned duties, if that reclassification would change the bargaining[-]unit status of that employee.”<sup>43</sup>

In pertinent part, § 7103(a)(14)(B) of the Statute excludes policies, practices, and matters relating to the classification of any position from the definition of “conditions of employment” and, by extension, the duty to bargain.<sup>44</sup> As discussed above, we have adopted the Union’s explanation of Proposal 1’s meaning as allowing the Agency to reclassify an employee’s position for any reason. Put another way, Proposal 1 does not prevent the Agency from reclassifying an employee for any reason.<sup>45</sup> Rather, Proposal 1 merely prohibits the Agency from changing an employee’s bargaining-unit status based solely on their remote-work status.<sup>46</sup> Because Proposal 1 does not prohibit the Agency from reclassifying employee positions, the Agency’s § 7103(a)(14)(B) argument – which is based on a different interpretation of Proposal 1 – provides no basis for finding the proposal outside the duty to bargain.<sup>47</sup>

2. Proposal 1 is not contrary to § 7106 of the Statute.

The Agency argues Proposal 1 affects management’s rights to direct employees and assign work under § 7106(a)(2)(A) and (B) of the Statute, respectively.<sup>48</sup> Specifically, the Agency argues the “proposal restricts the Agency’s right to assign work to an employee, or assign employees to different positions, if the employee’s bargaining[-]unit status would change as a

result of that exercise of management’s rights, despite the operational necessity of the change.”<sup>49</sup>

The Agency also contends Proposal 1 affects management’s right to determine the Agency’s internal-security practices under § 7106(a)(1) of the Statute.<sup>50</sup> In this regard, the Agency argues the proposal “would prohibit the Agency from changing an employee’s risk[-]level designation once they are a remote worker if the change affects the employee’s bargaining[-]unit status.”<sup>51</sup>

Further, the Agency argues management has the rights “to hire, assign, direct, layoff, and retain employees[,] . . . or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees.”<sup>52</sup> According to the Agency, Proposal 1 “interferes with these rights . . . by prohibiting the Agency’s ability to exercise them once an employee is a remote worker if, in doing so, it would change the employee’s bargaining[-]unit status.”<sup>53</sup>

All of the Agency’s management-rights arguments regarding Proposal 1 are based on the Agency’s position that the proposal would preclude it from changing an employee’s bargaining-unit status for reasons other than that employee’s status as a remote worker – such as operational necessity or changes in the risk designation of the employee’s position. Again, we have adopted the Union’s explanation of Proposal 1’s meaning, which does not limit the Agency’s ability to change employees’ bargaining-unit status based on such considerations. As such, the Agency’s arguments do not demonstrate Proposal 1 is contrary to § 7106 of the Statute.

Accordingly, the Agency has not demonstrated Proposal 1 is outside the duty to bargain.<sup>54</sup>

<sup>43</sup> Statement Br. at 9.

<sup>44</sup> *NTEU*, 64 FLRA 281, 283 (2009).

<sup>45</sup> Resp. at 11 (“Read together, the first and second sentences say that change of an employee’s work location to a remote location – in and of itself, without any other change of any kind (such as a change in position classification or work to be performed, or a redetermination of whether, under applicable legal standards, the employee’s position is a bargaining[-]unit position) – shall not change an employee’s bargain[ing]-unit status.”).

<sup>46</sup> We note that § 7105(a)(2)(A) reserves the right to determine whether a position is included in a bargaining unit to the Authority. See 5 U.S.C. § 7105(a)(2)(A).

<sup>47</sup> See, e.g., *NTEU*, 68 FLRA at 335 (rejecting agency argument where that argument conflicted with union’s explanation of proposal’s meaning that Authority adopted).

<sup>48</sup> Statement Br. at 10.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 10-11.

<sup>51</sup> *Id.* at 11.

<sup>52</sup> *Id.* at 10.

<sup>53</sup> *Id.*

<sup>54</sup> Because we find Proposal 1 is within the duty to bargain, it is unnecessary to address the Union’s request to sever the proposal. 5 C.F.R. § 2424.2(h) (“Severance applies when some parts of the proposal or provision are determined to be outside the duty to bargain or contrary to law.”); see also *AFGE, Loc. 12*, 68 FLRA 1061, 1063-64 (2015) (*Local 12 I*) (Member Pizzella dissenting on other grounds) (finding it unnecessary to address severance requests where the Authority found a proposal negotiable in its entirety).

## VI. Proposal 2

### A. Wording

(a) If the remote worker agreement is terminated by the supervisor because the arrangement no longer meets the business needs of the organization, and the supervisor reassigns the employee to PBGC's principal office, the employee will:

1. Be served with a notice of termination at least 30 days in advance of the agreement termination date, along with instructions for reassignment; and
2. Report to the reassigned official worksite for duty after at least 60 calendar days, but no more than 75 days after the termination effective date for those living and working remotely more than 50 miles outside of the official worksite, or such other later time as agreed upon with the affected employee's supervisor, from the effective date of the remote worker agreement termination date; or
3. Report to the reassigned official worksite for duty after at least 30 calendar days, but no more than 45 days after the termination effective date for those living and working remotely within 50 miles of the official work site, or such other later time as agreed upon with the affected employee's supervisor, from the effective date of the remote worker agreement termination date; and
4. Be entitled to applicable relocation reimbursement prescribed in Federal Travel Regulations (FTR) when relocation to Headquarters in Washington, D.C. is at least 50 miles from the employee's remote work location; and
5. Be eligible for severance pay if removed from Federal service by "involuntary separation" (5 CFR 550.703) for reasons other than inefficiency.
6. Be considered "involuntarily" separated for purposes of this provision if an employee declines to accept reassignment outside their

commuting area if the employee's position description or other written agreement does not provide for such a reassignment; and

7. Continue performing assigned duties at the previously approved worksite until reporting to the reassigned worksite.

(b) If the remote worker agreement is terminated due to the employee's non-acceptance of a management-initiated amendment to the agreement, and the supervisor reassigns the employee to PBGC's principal office, the employee will:

1. Be served with a notice of termination at least 30 days in advance of the agreement termination date, along with instructions for reassignment; and
2. Report to the reassigned official worksite for duty after at least 60 calendar days, but no more than 75 days after the termination effective date for those living and working remotely more than 50 miles outside of the official worksite, or such other later time as agreed upon with the affected employee's supervisor, from the effective date of the remote worker agreement termination date; or
3. Report to the reassigned official worksite for duty after at least 30 calendar days, but no more than 45 days after the termination effective date for those living and working remotely within 50 miles of the official work site, or such other later time as agreed upon with the affected employee's supervisor, from the effective date of the remote worker agreement termination date; and
4. Be entitled to applicable relocation reimbursement prescribed in Federal Travel Regulations (FTR) when relocation to Headquarters in Washington, D.C. is at least 50 miles from the employee's remote work location; and
5. Be eligible for severance pay if removed from Federal service by "involuntary separation" (5 CFR

- 550.703) for reasons other than inefficiency.
6. Be considered “involuntarily” separated for purposes of this provision if an employee declines to accept reassignment outside their commuting area if the employee’s position description or other written agreement does not provide for such a reassignment; and
  7. Continue performing assigned duties at the previously approved worksite until reporting to the reassigned worksite.<sup>55</sup>

#### B. Meaning

The parties agree subsection (a) of Proposal 2 applies only when an Agency supervisor terminates a remote-work agreement and directs the employee’s reassignment because the remote-work agreement no longer meets the Agency’s “business needs” – a term the Agency has the discretion to define.<sup>56</sup> The parties also agree that “PBGC’s principal office” is the Agency’s headquarters office (headquarters), which is currently located in Washington, D.C.<sup>57</sup> In addition, the parties agree that, under subsections (a)(2) and (a)(3), after an employee’s remote-work agreement is terminated, the Agency would permit that employee to continue working remotely during a transition period until the employee reports to headquarters for duty.<sup>58</sup> Further, the parties agree that: “agreement” and “arrangement” are synonymous;<sup>59</sup> “reassigns” means a change in the location where work is performed, a change to the employee’s duty station, or both;<sup>60</sup> management determines the “agreement termination date”;<sup>61</sup> “severance pay” has the definition set forth in 5 U.S.C. § 5595;<sup>62</sup> “applicable relocation reimbursement” refers to reimbursements authorized by the Federal Travel Regulation (FTR), as set forth in Title 41, Chapters 300 to 304 of the Code of Federal Regulations;<sup>63</sup> and “involuntary separation” and “for

reasons other than inefficiency” have the definitions set forth in 5 C.F.R. § 550.703, as it is currently written.<sup>64</sup>

Subsection (b) of Proposal 2 concerns the circumstances surrounding the Agency’s decision to terminate an employee’s remote-work agreement because the employee refuses to accept an Agency-initiated change to the remote-work agreement.<sup>65</sup> The parties agree that, because the wording in subsection (b) is parallel to the wording in subsection (a), the same meanings and operations apply to both subsections of Proposal 2.<sup>66</sup>

However, the parties disagree about whether Proposal 2 would entitle employees to severance pay they are not lawfully entitled to receive. According to the Union, Proposal 2 “incorporate[s] entitlement to severance pay only as authorized by applicable statute and regulations.”<sup>67</sup> By contrast, the Agency argues Proposal 2 would provide severance pay to employees who are not lawfully entitled to receive it because they have not been “involuntarily” separated.<sup>68</sup> Specifically, the Agency asserts that: 5 C.F.R. § 550.703 states a separation is “involuntary” if a “written agreement does not provide for . . . reassignment”;<sup>69</sup> the directive states termination for refusal to accept reassignment for the purposes stated in subsections (a) and (b) is not an involuntary separation;<sup>70</sup> and the current remote-work agreements state employees who sign such agreements agree that reassignment upon termination of the remote-work agreement is voluntary.<sup>71</sup>

As discussed above, where the parties disagree over a proposal’s meaning, the Authority looks first to the proposal’s plain wording and the union’s statement of intent.<sup>72</sup> If the union’s explanation comports with the proposal’s plain wording, then the Authority adopts that meaning in determining whether the proposal is within the duty to bargain.<sup>73</sup>

The Union’s statements regarding severance pay do not conflict with any plain wording in Proposal 2. With regard to the Agency’s reliance on the directive (which, as noted above, applies only to non-bargaining-unit

<sup>55</sup> Rec. at 4-5.

<sup>56</sup> *Id.* at 5.

<sup>57</sup> *Id.* at 5-6.

<sup>58</sup> *Id.* at 6.

<sup>59</sup> *Id.* at 5.

<sup>60</sup> This was the meaning the Agency put forward at the conference. *Id.* at 6. Although the Union disagreed with this meaning during the conference, *id.*, the Union later agreed with it, Resp. at 21.

<sup>61</sup> Rec. at 6.

<sup>62</sup> *Id.* at 7.

<sup>63</sup> This was the meaning the Agency put forward at the conference. *Id.* at 6. Although the Union disagreed with this meaning during the conference, *id.*, the Union later agreed with it, Resp. at 21.

<sup>64</sup> Rec. at 7; 5 C.F.R. § 550.703 (“Involuntary separation means a separation initiated by an agency against the employee’s will . . . for reasons other than inefficiency . . . [including w]hen an employee is separated [for declining] . . . reassignment outside his or her commuting area . . . if the employee’s position description or other written agreement does not provide for such a reassignment.”).

<sup>65</sup> Rec. at 7.

<sup>66</sup> *Id.*

<sup>67</sup> Resp. at 21.

<sup>68</sup> Statement Br. at 15.

<sup>69</sup> *Id.* (quoting 5 C.F.R. § 550.703).

<sup>70</sup> *Id.* at 16.

<sup>71</sup> *Id.*

<sup>72</sup> *Local 4*, 74 FLRA at 60; *Local 15*, 73 FLRA at 131.

<sup>73</sup> *Local 4*, 74 FLRA at 60; *Local 15*, 73 FLRA at 131.

employees) and the current terms of the bargaining-unit employees' remote-work agreements, the Agency does not contend that the terms of those documents – including whether they “provide for . . . reassignment”<sup>74</sup> – are outside the Agency's duty to bargain. In any event, under the Union's explanation of Proposal 2, the employees would only be entitled to severance pay if permitted by 5 C.F.R. § 550.703. Even assuming, without deciding, that the directive and the current remote-work agreements provide for reassignment and, thus, render separations following directed reassignments voluntary, Proposal 2 would not entitle employees to severance pay because such payment could conflict with § 550.703.

We find the Union's explanation of Proposal 2, as permitting severance pay only when such pay would be consistent with applicable statutes and regulations, comports with Proposal 2's plain wording. Therefore, we adopt that explanation for purposes of assessing Proposal 2's negotiability.

#### C. Analysis and Conclusions

1. Proposal 2 is not contrary to 5 U.S.C. § 5595 or 5 C.F.R. § 550.703.

The Agency argues Proposal 2 is contrary to law – specifically, 5 U.S.C. § 5595 and 5 C.F.R. § 550.703 – because the proposal “impermissibly seeks to expand entitlement to severance pay beyond what is authorized by the applicable statute and regulations.”<sup>75</sup> Title 5, § 5595(b)(2) of the U.S. Code states that “an employee who . . . is involuntarily separated from the service . . . is entitled to be paid severance pay in regular pay periods by the agency from which separated.”<sup>76</sup> In turn, 5 C.F.R. § 550.703 defines “involuntary separation,” and states that “when an employee is separated because he or she declines to accept reassignment outside his or her commuting area, the separation is ‘involuntary’ if the employee's position description or other written agreement does not provide for such a reassignment.”<sup>77</sup>

The Authority has held that, where a proposal or provision establishes the same requirements as an applicable law or regulation, the proposal or provision is not inconsistent with that law or regulation.<sup>78</sup> As discussed

above, we have adopted the Union's explanation of the meaning of Proposal 2, as entitling employees to severance pay only to the extent laws and regulations authorize such pay. Consequently, there is no basis for finding Proposal 2 contrary to 5 U.S.C. § 5595 or 5 C.F.R. § 550.703, and we find these Agency arguments lack merit.<sup>79</sup>

2. Proposal 2 is an appropriate arrangement under § 7106(b)(3) of the Statute.

The Agency argues subsections (a)(2)-(3) and (b)(2)-(3) of Proposal 2 affect management's rights to assign employees and assign work under § 7106(a)(2)(A) and (B) of the Statute, respectively.<sup>80</sup> According to the Agency, the disputed subsections of Proposal 2 affect its right to assign employees because “management has the right to reassign the employee to a different position at . . . [h]eadquarters,”<sup>81</sup> and the delays caused by Proposal 2 prevent the Agency from doing so for specified periods of time.<sup>82</sup> Relatedly, the Agency argues the delays caused by Proposal 2 affect its right to assign work because they “interfere with management's right to assign duties and work that must be performed at . . . [h]eadquarters.”<sup>83</sup>

Because, as discussed below, we find the proposal is within the duty to bargain as an appropriate arrangement under § 7106(b)(3), we assume, without deciding, that Proposal 2 affects management's rights to assign employees and assign work.<sup>84</sup>

The Union asserts subsections (a)(2)-(3) and (b)(2)-(3) of Proposal 2 are enforceable “appropriate arrangements” under § 7106(b)(3) of the Statute.<sup>85</sup> In determining whether a proposal is an appropriate arrangement, the Authority applies the two-pronged test established in *NAGE, Local R14-87 (KANG)*.<sup>86</sup>

Under the first prong of the *KANG* test, the Authority determines whether the proposal is intended to be an “arrangement” for employees adversely affected by the exercise of the relevant management right.<sup>87</sup> To establish that a proposal is an arrangement, the union must identify the actual effects, or reasonably foreseeable effects, on employees that flow from the exercise of the

<sup>74</sup> 5 C.F.R. § 550.703.

<sup>75</sup> Statement Br. at 16.

<sup>76</sup> 5 U.S.C. § 5595(b)(2).

<sup>77</sup> 5 C.F.R. § 550.703.

<sup>78</sup> *POPA*, 59 FLRA 331, 348 (2003) (Member Pope concurring in part and dissenting in part on other grounds).

<sup>79</sup> *Id.* (finding a provision that “incorporates and restates the obligation imposed by” a regulation “is not inconsistent with that regulation”).

<sup>80</sup> Statement Br. at 17-18.

<sup>81</sup> *Id.* at 18.

<sup>82</sup> *Id.* at 17-18.

<sup>83</sup> *Id.*

<sup>84</sup> *NAIL, Loc. 5*, 67 FLRA 85, 89 (2012) (assuming, without deciding, that proposal affected management right because proposal was appropriate arrangement); *AFGE, Council of Prison Locs.* 33, 65 FLRA 142, 145 (2010) (same).

<sup>85</sup> Resp. at 23-25, 35.

<sup>86</sup> 21 FLRA 24, 31 (1986).

<sup>87</sup> *Id.*

management right and how those effects are adverse.<sup>88</sup> The alleged arrangement must also be sufficiently tailored to compensate or benefit employees suffering adverse effects attributable to the exercise of management's rights.<sup>89</sup>

If the proposal is an arrangement, then, under the second prong of the *KANG* test, the Authority determines whether the arrangement is "appropriate" because it does not excessively interfere with the stated management right.<sup>90</sup> The Authority makes that determination by weighing "the competing practical needs of employees and managers" in order to ascertain whether the proposal's benefits to employees outweigh the proposal's burdens on the exercise of the stated management right.<sup>91</sup>

The Union asserts the above-cited subsections of Proposal 2 are intended to be arrangements for employees adversely affected by management's decision to terminate an employee's remote-work agreement and reassign them to headquarters.<sup>92</sup> According to the Union, the subsections would allow employees "to make arrangements addressing the life disruptions inherent in making a long[-]distance move."<sup>93</sup> By contrast, the Agency argues the proposals are not arrangements because the terminations of remote-work agreements are not adverse effects flowing from the exercise of a management right; rather, remote work "is a . . . program that an employee voluntarily enters into and benefits from, not an agreement forced upon an employee at the direction of management."<sup>94</sup>

In determining whether a proposal is an arrangement, the Authority has considered the effects that the exercise of management rights may have on employees' lives outside of the workplace.<sup>95</sup> The Authority also has recognized that an agency's unilateral decision to relocate an employee adversely affects the relocated employee.<sup>96</sup> Consistent with these principles, we find that – even though employees may originally enter

into their remote-work arrangements voluntarily – an Agency decision to terminate those arrangements against the employees' will, and direct the employees' reassignment or relocation, adversely affects those employees.<sup>97</sup>

We find Proposal 2 seeks to ameliorate the adverse effects of Agency-initiated terminations of employees' remote-work arrangements. Specifically, Proposal 2 gives employees time to prepare for their relocation to a new duty station that, in at least some cases, could be geographically distant from the employees' previous duty stations. Further, because Proposal 2 applies only when the Agency terminates employees' remote-work agreements against their will based on the business needs of the Agency, we find it is tailored to apply only to employees who are adversely affected by management's exercise of its rights. Therefore, we find that Proposal 2 is an arrangement.<sup>98</sup>

As to the second prong of *KANG*, the Union cites the benefits described above – allowing employees time to make arrangements "addressing the life disruptions inherent in making a long[-]distance move."<sup>99</sup> The Union further asserts the directive "recognizes the need for considerable time to report to [h]eadquarters" following the termination of a remote-work agreement.<sup>100</sup> The Agency asserts the disputed subsections are not appropriate because they would "unreasonably and excessively delay the Agency's ability to assign necessary work or duties to these employees, or assign them to different positions or details at . . . [h]eadquarters,"<sup>101</sup> and would prevent the Agency from "assign[ing] work and duties . . . that can only be done at . . . [h]eadquarters."<sup>102</sup> The Agency argues that, under Proposal 2, it cannot require employees to return to headquarters for up to 105 days (if outside the commuting area) or seventy-five days (if within the commuting area)<sup>103</sup> because the seventy-five- and forty-five-day periods are "on top of the

<sup>88</sup> *NAGE, Loc. R1-134*, 73 FLRA 637, 643 (2023) (*Local R1-134*).

<sup>89</sup> *Id.* at 643-44.

<sup>90</sup> 21 FLRA at 31.

<sup>91</sup> *Local R1-134*, 73 FLRA at 644.

<sup>92</sup> Resp. at 23-24.

<sup>93</sup> *Id.* at 23.

<sup>94</sup> Statement Br. at 19.

<sup>95</sup> *NTEU, Chapter 337*, 74 FLRA 412, 415 (2026) (*Chapter 337*); see also *SSA, Indianapolis, Ind.*, 66 FLRA 62, 65 (2011) (finding provision was an arrangement because, as interpreted by the arbitrator, it mitigated the adverse effects caused by management's exercise of its right to deny leave by addressing the circumstances when the agency could deny leave requests); *AFSCME, Loc. 3097*, 42 FLRA 412, 468-69 (1991) (finding proposal was an arrangement because it benefited adversely affected employees "by not requiring them to disrupt plans made for personal leave, including travel arrangements, or plans made

"to cover personal obligations" . . . when employees travel on [a]gency business").

<sup>96</sup> *Chapter 337*, 74 FLRA at 415; *AFGE, Loc. 3172*, 46 FLRA 322, 330-31 (1992) (*Local 3172*).

<sup>97</sup> See *Chapter 337*, 74 FLRA at 415; *Local 3172*, 46 FLRA at 330-31.

<sup>98</sup> See *Chapter 337*, 74 FLRA at 415.

<sup>99</sup> Resp. at 23.

<sup>100</sup> *Id.* (citing Statement of Position, Agency Ex. 8, Agency Directive (Directive) at 8-9 (providing that, if the Agency terminates a remote agreement for business needs, employee is entitled to "notice of termination at least [thirty] days in advance of the agreement terminate date . . . and must report to the reassigned official worksite for duty within a timeframe acceptable to the supervisor, but not later than [forty-five] calendar days" from termination of the agreement)).

<sup>101</sup> Statement Br. at 20.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 18.

[thirty] days of advanced notice already provided by” the proposal.<sup>104</sup>

By giving bargaining-unit employees time before they must relocate to a new duty station, Proposal 2 provides a significant benefit to those employees, especially given the impact that relocation can have on the employees and their families. However, the extent of this benefit varies between bargaining-unit employees depending on whether the employee lives within fifty miles of the Agency’s headquarters when their remote-work agreement is terminated. In this regard, subsections (a)(2) and (b)(2) of Proposal 2 apply to employees who live and work remotely more than fifty miles from headquarters.<sup>105</sup> The Union notes that it intended these subsections to provide employees with time to make arrangements for “the life disruptions inherent in making a long-distance move.”<sup>106</sup> Accordingly, subsections (a)(2) and (b)(2) of Proposal 2 provide employees with a longer window – sixty to seventy-five days – to account for substantial schedule changes and possible relocations.<sup>107</sup> Because these subsections ameliorate the impact of long-distance relocations by providing adversely impacted employees a sufficient transition period, we find that these subsections undoubtedly provide a significant benefit to employees.

By contrast, subsections (a)(3) and (b)(3) of Proposal 2 apply only to employees who live and work remotely within fifty miles of headquarters. Thus, according to the Union, these subsections provide employees in the commuting area of headquarters with a shorter period for returning to the office because “the time required to make adjustments will probably not need to be as long.”<sup>108</sup> As the Union acknowledges, these employees may not face the same relocation burdens as employees who live more than fifty miles away.<sup>109</sup> Nevertheless, the Agency’s unilateral termination of a remote-work agreement is undoubtedly disruptive. As the Union notes,<sup>110</sup> the directive even contemplates the need for such a transition when the Agency terminates a remote-work agreement for reasons other than performance, misconduct, or employee-initiated termination; in fact, the directive states that the Agency will provide an employee with thirty days’ notice of the termination and up to forty-five additional days before requiring the employee to report to headquarters<sup>111</sup> – the same time frame provided

by subsections (a)(3) and (b)(3).<sup>112</sup> Because these subsections provide employees within the commuting area a transition period to address any personal obligations that are structured around full-time remote work, we find that they provide a meaningful benefit to affected employees.

As to the burdens, Proposal 2 delays the reassignment of bargaining-unit employees to a new duty station for the specified periods of time. However, the Agency’s arguments provide only general descriptions of Proposal 2’s burdens on management’s rights.<sup>113</sup> In this regard, the Agency does not explain what, or how many, positions are assigned solely to headquarters, or what, or how many, duties may be performed only at headquarters. Nor does the Agency explain why it could not temporarily meet its needs with employees already assigned to headquarters. The employees must also continue performing assigned duties at their current approved worksites until reporting to headquarters, which reduces the burden on the Agency’s ability to maintain work operations during the transition period.

In sum, we find that subsections (a)(2)-(3) and (b)(2)-(3) of Proposal 2 provide significant benefits to employees, while any burdens that those subsections impose on management’s rights to assign employees and assign work are less significant. As such, the disputed subsections of Proposal 2 are appropriate arrangements under § 7106(b)(3) of the Statute.<sup>114</sup>

The Agency also claims that Proposal 2’s “severance[-]pay” provisions “cannot be considered appropriate arrangements” because “[p]roposals that conflict with government-wide regulations or are contrary to law do not constitute appropriate arrangements.”<sup>115</sup> However, this argument is premised on the Agency’s claim that Proposal 2 conflicts with 5 U.S.C. § 5595 and 5 C.F.R. § 550.703. As we have rejected that claim above, the Agency’s appropriate-arrangement argument provides no basis for separately finding Proposal 2’s severance-pay provisions outside the duty to bargain.

<sup>104</sup> *Id.* at 17.

<sup>105</sup> *Rec.* at 4-5.

<sup>106</sup> *Resp.* at 23-24.

<sup>107</sup> *Id.*

<sup>108</sup> *Pet.* at 6.

<sup>109</sup> *Id.*

<sup>110</sup> *Resp.* at 23.

<sup>111</sup> *Directive* at 8-9.

<sup>112</sup> *See Rec.* at 4-5.

<sup>113</sup> *Statement Br.* at 20.

<sup>114</sup> *POPA*, 53 FLRA 625, 642-43 (1997) (finding a proposal that placed burdens on the reassignment of employees was an appropriate arrangement, and did not excessively interfere with management’s right to assign employees and work, because “the benefits to examiners of being assured that reassignments . . . can occur only when other alternatives are unavailable, outweighs the burden imposed on the [a]gency’s rights to assign employees and work”).

<sup>115</sup> *Statement Br.* at 20.

For the above reasons, we find Proposal 2 is within the duty to bargain.<sup>116</sup> The Union also argues that subsections (a)(2)-(3) and (b)(2)-(3) of Proposal 2 are negotiable because they enforce an applicable law.<sup>117</sup> Because we find that the relevant subsections of Proposal 2 are appropriate arrangements under § 7106(b)(3), we need not address the Union's claim that the proposal enforces an applicable law.<sup>118</sup>

## VII. Proposal 3

### A. Wording

- (1) If a remote work agreement is terminated due to an employee's request,

(a) The employee will be reassigned to PBGC's principal office worksite. However, if such employee wishes to change remote worksite, other than the principal office worksite, the employee must restart the application process.

(b) If the employee is assigned to a different worksite other than their previous remote worksite, under such circumstances the employee must report to the reassigned official worksite for duty:

- (i) after at least 60 calendar days, but no more than 75 days after the termination effective date for those living and working remotely more than 50 miles outside of the official worksite;
- (ii) after at least 30 calendar days, but

no more than 45 days after the termination effective date for those living and working remotely within 50 miles of the official work site,

(iii) or such other later time as agreed upon with the affected employee's supervisor, from the effective date of the remote worker agreement termination date.

(c) Furthermore, the employee will continue performing assigned duties at the previously approved worksite until reporting to the reassigned worksite.

(d) If the employee does not accept the reassignment and elects to separate, the employee will not be entitled to severance pay.<sup>119</sup>

### B. Meaning

The parties agree Proposal 3 concerns the circumstances where an *employee* requests to terminate a remote-work agreement for any reason.<sup>120</sup> The parties also agree that: "'will' in 'will be reassigned' indicates a requirement";<sup>121</sup> "reassigned" means a change in the location where work is performed, a change to the employee's duty station, or both;<sup>122</sup> "'PBGC's principal office worksite' and 'principal office worksite' mean headquarters";<sup>123</sup> "'change remote worksite' means obtaining approval for a remote worksite other than the employee's previously approved remote worksite (and other than headquarters, which is not a remote worksite)";<sup>124</sup> "'the application process' means the procedure for applying for a remote-work agreement";<sup>125</sup> "'elects to separate' means an employee chooses to leave the Agency's employment";<sup>126</sup> and "'severance pay' has the meaning set forth in 5 U.S.C. § 5595."<sup>127</sup>

<sup>116</sup> Because we find Proposal 2 is within the duty to bargain, it is unnecessary to address the Union's request to sever it. 5 C.F.R. § 2424.2(h) ("Severance applies when some parts of the proposal or provision are determined to be outside the duty to bargain or contrary to law."); see also *Local 12 I*, 68 FLRA at 1063-64 (finding it unnecessary to address severance requests where the Authority found a proposal negotiable in its entirety).

<sup>117</sup> Resp. at 23-25.

<sup>118</sup> See, e.g., *U.S. Dep't of VA Med. Ctr., Kan. City, Mo.*, 65 FLRA 809, 814 n.8 (2011) (finding it unnecessary to address applicable-law claim where union established contract provision was an enforceable appropriate arrangement).

<sup>119</sup> Rec. at 8.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> As discussed in connection with Proposal 2, although the parties originally disagreed on this point, *id.* at 9, the Union ultimately agreed to the Agency's explanation, Resp. at 21.

<sup>123</sup> Rec. at 8.

<sup>124</sup> *Id.* at 8-9.

<sup>125</sup> *Id.* at 9.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

### C. Analysis and Conclusions

1. Subsection (1)(b) of Proposal 3 is outside the duty to bargain because it affects management's right to assign employees and is not an arrangement.

The Agency argues that subsections (1)(b)(i) and (1)(b)(ii) affect management's right to assign employees because they temporarily preclude the Agency from reassigning employees who terminate their remote-work agreements to headquarters.<sup>128</sup> Management's right to assign employees under § 7106(a)(2)(A) of the Statute includes the right to make initial assignments to positions, to reassign employees to different positions, and to make temporary assignments or details.<sup>129</sup> In this case, the subsections temporarily preclude the Agency from reassigning employees to positions at the Agency's headquarters even after the employees voluntarily terminate the remote-work agreements that authorized their current assignment.<sup>130</sup> Because the proposed language directly limits the Agency's right to reassign employees to headquarters, we find that subsections (1)(b)(i) and (ii) affect management's right to assign employees.<sup>131</sup>

The Union argues<sup>132</sup> that, regardless of any effects on management rights, subsections (1)(b)(i) and (ii) are nonetheless within the duty to bargain because they require the Agency to comply with an "applicable law[]" within the meaning of § 7106(a)(2) of the Statute<sup>133</sup> – specifically, § 706(2)(A) of the Administrative Procedure Act (§ 706(2)(A)).<sup>134</sup> Incorporating arguments it made regarding Proposal 2,<sup>135</sup> the Union contends that, by agreeing to allow employees to work remotely,

the Agency, itself, has created a circumstance in which, upon termination of the [remote-work] agreement, it would be arbitrary, capricious, an abuse of discretion, and therefore unlawful under . . .

§ 706(2)(A), to not allow the employee reasonable, considerable time to report for a new assignment or a new work assignment requiring full-time work at [h]eadquarters.<sup>136</sup>

Section 706(2)(A) provides that courts, in reviewing federal agencies' actions, shall "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."<sup>137</sup> Even assuming § 706(2)(A) applies in the context of this case, the Union does not cite any authority supporting the notion that § 706(2)(A) requires the Agency to give employees the amounts of notice subsections (1)(b)(i) and (ii) provide. Although the Union cites *Michigan v. EPA*, that decision held the Environmental Protection Agency interpreted a particular statute unreasonably "when it deemed cost irrelevant to the decision to regulate power plants."<sup>138</sup> Consequently, it has no bearing on the negotiability of subsections (1)(b)(i) and (ii).

Therefore, we find the Union has not demonstrated subsections (1)(b)(i) and (ii) enforce an applicable law within the meaning of § 7106(a)(2) of the Statute.

The Union also asserts subsections (1)(b)(i) and (ii) are appropriate arrangements for the same reasons it claims Proposal 2 is an appropriate arrangement.<sup>139</sup> As stated above, to establish that a proposal is an arrangement, a union must identify the actual effects, or reasonably foreseeable effects, on employees that flow from the exercise of the *management* right, and how those effects are adverse.<sup>140</sup> However, the Union does not explain how subsections (1)(b)(i) and (ii) ameliorate any actual or reasonably foreseeable adverse effects that flow from the exercise of a management right. Unlike Proposal 2 – which concerns *Agency*-initiated terminations of remote-work agreements – subsections (1)(b)(i) and (ii) solely concern an *employee's* decision to terminate their *own* remote-work agreement.<sup>141</sup> Consequently, the Union does not demonstrate that subsections (1)(b)(i) and (1)(b)(ii) constitute arrangements within the meaning of

<sup>128</sup> See Statement Br. at 24 (referencing management-rights arguments made regarding Proposal 2).

<sup>129</sup> *AFGE, Loc. 12*, 61 FLRA 209, 221 (2005) (*Local 12 II*) (Member Pope concurring in part and dissenting in part on other grounds; Member Armendariz concurring in part on other grounds).

<sup>130</sup> *Id.* (finding a proposal that "precludes management from making involuntary reassignments outside the commuting area" affected the agency's management right to assign employees).

<sup>131</sup> See *id.*

<sup>132</sup> See Resp. at 30 (referencing applicable-law arguments made regarding Proposal 2).

<sup>133</sup> 5 U.S.C. § 7106(a)(2).

<sup>134</sup> *Id.* § 706(2)(A).

<sup>135</sup> See Resp. at 30.

<sup>136</sup> *Id.* at 23.

<sup>137</sup> 5 U.S.C. § 706(2)(A).

<sup>138</sup> 576 U.S. 743, 760 (2015).

<sup>139</sup> See Resp. at 31.

<sup>140</sup> *Local R1-134*, 73 FLRA at 643.

<sup>141</sup> See Rec. at 8.

§ 7106(b)(3) of the Statute.<sup>142</sup> As such, we need not address whether subsections (1)(b)(i) and (ii) are “appropriate.”<sup>143</sup>

For the above reasons, we find subsections (1)(b)(i) and (1)(b)(ii) of Proposal 3 are outside the duty to bargain.<sup>144</sup>

#### D. Severance

Section 2424.2(h) of the Authority’s Regulations states that “[s]everance applies when some parts of the proposal or provision are determined to be outside the duty to bargain.”<sup>145</sup> Accordingly, we now consider the Union’s severance request because we have found that subsections (1)(b)(i) and (1)(b)(ii) of Proposal 3 are outside the duty to bargain.

The Union proposes to sever subsections (1)(a), (1)(b)(i), (1)(b)(ii), (1)(b)(iii), (1)(c), and (1)(d) of Proposal 3 – with the introductory wording of (1) attaching to each subsection individually, and with the introductory wording of (b) attaching to (1)(b)(i), (1)(b)(ii), and (1)(b)(iii).<sup>146</sup> According to the Union, “[e]ach of these [subsections] stands alone because each concerns distinct concepts.”<sup>147</sup> Specifically, the Union asserts that: subsection (1)(a) provides for reassignment to headquarters or application for reassignment to another location; subsection (1)(b)(i) delays an employee’s return to the office, for a specified duration, when their remote duty station is more than fifty miles from their new duty station; (1)(b)(ii) delays an employee’s return to the office, for a specified duration, when their remote duty station is within fifty miles from their new duty station; subsection (1)(b)(iii) allows reporting for work at a different worksite within a different deadline; subsection (1)(c) requires the continued performance of previously assigned duties pending reporting to a new worksite; and subsection (1)(d) states that non-election of reassignment disentitles the employee to severance pay.<sup>148</sup>

The Agency agrees that the introductory wording of (1) and (b) applies to each subsection, and that – assuming the Authority grants the Union’s severance request – it is unnecessary for the Union to amend Proposal 3 to repeat this wording in each severed subsection.<sup>149</sup> However, the Agency contends severance is inappropriate because the listed subsections are “inextricably connected to each other” and do not stand alone.<sup>150</sup>

The Authority has held that, if a union supports its severance request with an explanation of how each severed portion may stand alone, and operate, then the Authority severs the proposal and rules on the negotiability of its separate components.<sup>151</sup> Regarding subsections (1)(a), (1)(c), and (1)(d), the Union explains what each subsection, standing alone, would do, and those subsections’ plain wording supports the Union’s explanations. For these reasons, we grant the Union’s severance request and separately consider the negotiability of subsections (1)(a), (1)(c), and (1)(d). Because the Agency does not make any negotiability arguments about subsections (1)(a), (1)(c), and (1)(d) of Proposal 3,<sup>152</sup> we find those subsections are within the duty to bargain.<sup>153</sup>

Conversely, we find the Union does not explain how subsection (1)(b)(iii), as currently worded, would operate independently of subsections (1)(b)(i) and (1)(b)(ii). Subsection (1)(b)(iii) begins with the word “or” and discusses an “other later time.”<sup>154</sup> On its face, subsection (1)(b)(iii) is an alternative to the scenarios described in subsections (1)(b)(i) and (1)(b)(ii). As it is unclear how subsection (1)(b)(iii) would operate independently from the other two subsections in (1)(b), we deny the Union’s request to sever subsection (1)(b)(iii) from Proposal 3.<sup>155</sup>

<sup>142</sup> *AFGE, Nat’l Border Patrol Council*, 51 FLRA 1308, 1317 (1996) (“Although the [u]nion asserts that all of the provisions in this petition constitute appropriate arrangements, it does not explain, and the proposal does not by its terms speak to, the manner in which this sentence would address or compensate for the adverse effect of the exercise of a management right.”).

<sup>143</sup> *Local R1-134*, 73 FLRA at 644.

<sup>144</sup> In view of this determination, it is unnecessary to address the Agency’s claim that these subsections of Proposal 3 also violate management’s right to assign work. See, e.g., *NAGE, Loc. R1-109*, 61 FLRA 593, 597 & n.3 (2006) (where Authority found proposal nonnegotiable due to effect on one management right, unnecessary to address agency’s argument that proposal affected exercise of an additional management right).

<sup>145</sup> 5 C.F.R. § 2424.2(h).

<sup>146</sup> Resp. at 32.

<sup>147</sup> *Id.*

<sup>148</sup> See *id.*; Rec. at 9.

<sup>149</sup> Rec. at 9.

<sup>150</sup> Statement Br. at 26.

<sup>151</sup> *FEA*, 73 FLRA at 266; *Tidewater Va. Fed. Emps. Metal Trades Council*, 58 FLRA 561, 562 (2003).

<sup>152</sup> The Agency states that “[i]f the Authority grants the Union’s severance request for [P]roposal [3],” the Agency’s management-rights arguments apply to subsections (1)(b)(i) and (1)(b)(ii). Statement Br. at 24 n.9.

<sup>153</sup> Cf. *AFGE, Loc. 2058*, 68 FLRA 676, 680-81 (2015) (Member Pizzella dissenting in part) (directing an agency “to rescind its disapproval” of the severed subpart of a provision when the agency made no negotiability arguments regarding that subpart).

<sup>154</sup> Rec. at 8 (emphasis added).

<sup>155</sup> See *AFGE, Loc. 12*, 73 FLRA 603, 605 (2023) (*Local 12 III*) (denying severance request where union did not demonstrate severed portions of proposal could operate independently from each other).

Finally, the Union requests to sever subsections (1)(b)(i) and (1)(b)(ii).<sup>156</sup> Each of these subsections temporarily precludes the Agency from reassigning employees who terminate their remote-work agreements to headquarters. For the reasons discussed above, we find that each of these subsections affect management's right to assign employees and are not "arrangements" within the meaning of § 7106(b)(3). Accordingly, even assuming the Union has demonstrated these subsections would operate independently, severing them would not bring them within the duty to bargain. Therefore, it is unnecessary to grant the Union's request to sever subsections (1)(b)(i) and (1)(b)(ii).<sup>157</sup>

### VIII. Proposal 4

#### A. Wording

(1) If the Agency makes a determination that the remote work arrangement is negatively impacting the employee's performance,

- (a) The Agency may pursue a performance improvement plan remotely at the remote work site versus requiring the employee to work at the PBGC's principal office under the performance improvement plan.
- (b) The periods for performance improvement are outlined in the CBA, Performance Management.
- (c) If the supervisor decides to have the employee to return to the PBGC's principal office and/or terminates the remote worker agreement, under such circumstances the employee will report to the reassigned official worksite for duty:

- (i) after at least 60 calendar days, but no more than 75 days after the termination effective date for those living and working remotely more than 50 miles outside of the official worksite;

- (ii) after at least 30 calendar days, but no more than 45 days after the termination effective date for those living and working remotely within 50 miles of the official work site,

- (iii) or such other later time as agreed upon with affected employee's supervisor, from the effective date of the remote worker agreement termination.

(d) Furthermore, the employee will continue performing assigned duties at the current approved worksite until reporting to the reassigned worksite.

(e) The employee is not entitled to relocation reimbursement. If the employee does not accept the reassignment and elects to separate, the employee will not be entitled to severance pay.

(2) If the Agency proposes to discipline an employee, who is on remote work, for their conduct, the Agency will follow the procedures outlined in the CBA, Disciplinary and Adverse Action. If it is then determined that there is a conduct violation,

(a) The Agency may terminate the remote work agreement. Under such circumstances, the employee will report to the reassigned official worksite for duty:

- (i) after at least 60 calendar days, but no more than 75 days after the termination effective date for those living and working remotely more than 50 miles outside of the official worksite;

<sup>156</sup> Resp. at 32.

<sup>157</sup> See, e.g., *AFGE, Loc. 1164*, 65 FLRA 836, 842 (2011) (finding it unnecessary to resolve severance request involving sentence of proposal that was outside the duty to bargain).

- (ii) after at least 30 calendar days, but no more than 45 days after the termination effective date for those living and working remotely within 50 miles of the official work site,
  - (iii) or such other later time as agreed upon with affected employee's supervisor, from the effective date of the remote worker agreement termination.
- (b) Furthermore, the employee must continue performing assigned duties at the current approved worksite until reporting to the reassigned worksite.
- (c) The employee is not entitled to relocation reimbursement. If the employee does not accept the reassignment and elects to separate, the employee will not be entitled to severance pay.<sup>158</sup>

#### B. Meaning

Subsection (1) of Proposal 4 pertains to the consequences of an Agency determination that remote work is “negatively impacting [an] employee’s performance.”<sup>159</sup> The parties agree that: “arrangement” is synonymous with “agreement”;<sup>160</sup> the procedures for a “performance improvement plan” are set forth in the 2011 CBA;<sup>161</sup> “PBGC’s principal office” and “reassigned official worksite” both mean “headquarters”;<sup>162</sup> subsections (1)(c)(i), (1)(c)(ii), and (1)(c)(iii) have the same meanings as subsections (1)(b)(i), (1)(b)(ii), and (1)(b)(iii) of Proposal 3, respectively;<sup>163</sup> subsection (1)(d) has the same meaning as subsection (1)(c) of Proposal 3;<sup>164</sup> “relocation reimbursement” refers to reimbursements authorized by the FTR, as set forth in Title 41, Chapters 300 to 304 of

the Code of Federal Regulations;<sup>165</sup> and “‘severance pay’ has the meaning set forth in 5 U.S.C. § 5595.”<sup>166</sup>

Subsection (2) of Proposal 4 concerns the effects discipline may have on an employee’s remote-work agreement.<sup>167</sup> The parties agree that: “‘proposes to discipline’ means that an employee receives a notice of proposed discipline”;<sup>168</sup> “discipline . . . for their conduct” has the same meaning as in the 2011 CBA;<sup>169</sup> the date when a “conduct violation” is “determined” is the date that follows the completion of the process in Article 10 of the 2011 CBA;<sup>170</sup> subsections (2)(a)(i), (2)(a)(ii), and (2)(a)(iii) have the same meanings as subsections (1)(c)(i), (1)(c)(ii), and (1)(c)(iii), respectively;<sup>171</sup> and subsections (2)(b) and (2)(c) have the same meanings as subsections (1)(d) and (1)(e), respectively.<sup>172</sup>

- C. Analysis and Conclusions:  
Subsections (1)(c)(i)-(ii) and (2)(a)(i)-(ii) of Proposal 4 are outside the duty to bargain because they excessively interfere with management’s rights to assign employees and assign work.

The Agency argues that subsections (1)(c)(i)-(ii) and (2)(a)(i)-(ii) of Proposal 4 interfere with management’s rights to assign employees and assign work.<sup>173</sup> Specifically, the Agency asserts that the disputed subsections affect its right to assign employees by “significantly” delaying its ability to reassign remote workers to different positions at headquarters.<sup>174</sup> The Agency also argues that subsections (1)(c)(i)-(ii) and (2)(a)(i)-(ii) affect its right to assign work because they “impos[e] unreasonable delays” on its discretion “to assign necessary work or duties . . . that must be performed at Agency [h]eadquarters.”<sup>175</sup> The Agency emphasizes that, after it determines that a remote employee has performance or conduct issues, the Agency is “entitled” to assign that employee work at headquarters so that the Agency “can more effectively monitor and manage such issues” that necessitated the termination of their remote-work agreement.<sup>176</sup> According to the Agency, the disputed subsections would nevertheless “completely bar” it from exercising that management right for an extended

<sup>158</sup> Rec. at 10-11.

<sup>159</sup> *Id.* at 10.

<sup>160</sup> *Id.* at 11.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> As discussed in connection with Proposal 2, the parties initially disagreed about this meaning, *id.*, but the Union later agreed with it, Resp. at 21.

<sup>166</sup> Rec. at 12.

<sup>167</sup> *Id.* at 10-11.

<sup>168</sup> *Id.* at 12.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> Statement Br. at 30.

<sup>174</sup> *Id.* at 18; *see id.* at 30-31 (incorporating arguments made with regard to Proposal 2 and making additional arguments).

<sup>175</sup> *Id.* at 32.

<sup>176</sup> *Id.*

period.<sup>177</sup> The Agency notes that, “[a]s the Union stated during the [conference],” the Disciplinary and Adverse Action article of the parties’ agreement already provides for “30 days[’] advanced written notice of any proposed adverse action on top of a potential 150-day stay from the date of the decision letter before [an] employee [may] be required to report to . . . [h]eadquarters,” for a total of 180 days.<sup>178</sup> The disputed subsections of Proposal 4 would add up to forty-five days to that total for employees within fifty miles of headquarters, and up to seventy-five days for employees more than fifty miles from headquarters.<sup>179</sup>

As stated above, management’s right to assign employees includes the right to make initial assignments to positions, to reassign employees to different positions, and to make temporary assignments or details.<sup>180</sup> Similar to Proposal 3, the disputed subsections of Proposal 4 delay when the Agency may require an employee to report to headquarters and, therefore, temporarily prevent the Agency from assigning or reassigning those employees to positions at headquarters. In fact, subsection (2)(a)(i)-(ii) creates additional delays to management’s ability to exercise its right to assign employees because the Agency cannot terminate the remote-work agreement – and, thus, begin the countdown to return the employee to headquarters – until the Agency has completed the disciplinary process.<sup>181</sup> Therefore, the disputed subsections affect management’s right to assign employees.<sup>182</sup>

The Agency also argues that Proposal 4 affects its right to assign work.<sup>183</sup> Management’s right to assign work encompasses the right to determine the particular

duties to be assigned, when work assignments will occur, and to whom or what positions the duties will be assigned.<sup>184</sup> In some circumstances, a proposal’s or provision’s effect on supervisory methods may implicate the right to assign work because that right includes management’s prerogative to take actions to ensure that the work assigned to employees is accomplished.<sup>185</sup> For example, the Authority has found that agency policies requiring employees to report to their supervisor prior to leaving their work area constitute an exercise of management’s right to assign work.<sup>186</sup> And the Authority has found that “proposals that, in effect, preclude management from auditing employees’ work by the use of unannounced visits and spot checking of employees’ work directly affect management’s right[] . . . to assign work.”<sup>187</sup>

In addition, the Authority has held that proposals or provisions addressing *where* employees perform their duties affect the right to assign work if an agency establishes a relationship – or “nexus” – between the employees’ job locations and their duties.<sup>188</sup> In *NTEU*, the Authority found that discretion over the frequency of telework is inherently part of the management right to assign work.<sup>189</sup> Accordingly, the Authority in *NTEU* found that a proposal concerning expanded telework eligibility affected the right to assign work without examining whether a nexus existed between employees’ duties and job location.<sup>190</sup> Subsequently, the U.S. Court of Appeals for the D.C. Circuit vacated *NTEU* without addressing whether the Authority applied the correct legal standard concerning telework’s effect on the right to assign

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 31.

<sup>179</sup> Rec. at 10-11.

<sup>180</sup> *Local 12 II*, 61 FLRA at 221.

<sup>181</sup> See Rec. at 10-11.

<sup>182</sup> See *Local 12 II*, 61 FLRA at 221 (finding a proposal that “precludes management from making involuntary reassignments outside the commuting area” affected the agency’s management right to assign employees).

<sup>183</sup> Statement Br. at 30.

<sup>184</sup> Chapter 296, 74 FLRA at 300.

<sup>185</sup> *POPA*, 41 FLRA 795, 849 (1991) (*POPA*) (citing *Dep’t of HHS, SSA, Balt., Md.*, 34 FLRA 765, 769 (1990) (*HHS*)) (noting that management exercises the right to assign work “by holding employees accountable for the performance of their work and their use of duty time”); see also *NTEU*, 65 FLRA 509, 511 (2011) (Member Beck dissenting in part on other grounds) (“[P]roposals or provisions that prohibit management from holding employees accountable for work performance affect the right[] to . . . assign work.”).

<sup>186</sup> *POPA*, 41 FLRA at 849 (provision that “would limit the [a]gency’s authority to require employees to report to their supervisors prior to leaving their work areas” affected management’s right to assign work); *HHS*, 34 FLRA at 769 (agency requiring employees to notify their supervisors before they go on breaks was an exercise of management’s right to

assign work); see also *AFGE, AFL-CIO, Loc. 2052*, 30 FLRA 837, 842 (1987) (proposal preventing supervisors from requesting reasons for sick-leave usage affected right to assign work because it “would immunize employees from refusing to account for their work[-]related conduct”).

<sup>187</sup> *AFGE, Loc. 1712*, 62 FLRA 15, 17 (2007) (citing *AFGE, Loc. 2879*, 38 FLRA 244, 247-48 (1990) (*Local 2879*) (provision that “would preclude management from using a particular method of monitoring or sampling employees’ daily work performance, namely, unannounced desk reviews” affected management’s right to assign work); *NFFE, Loc. 1263*, 29 FLRA 61, 63-65 (1987) (*Local 1263*) (proposal preventing agency from conducting unannounced work-station visits in order to obtain a representative sample of daily work performance used to prepare evaluation reports and to identify performance deficiencies affected right to assign work)).

<sup>188</sup> E.g., *U.S. Food & Drug Admin., Detroit Dist.*, 59 FLRA 679, 682-83 (2004) (“The Authority has held that if an agency establishes a relationship between job location and job duties, then a provision addressing job location would violate the right to assign work” (citing *U.S. Dep’t of HHS, Ctrs. for Medicare & Medicaid Servs., Balt., Md.*, 57 FLRA 704, 707 (2002))).

<sup>189</sup> 71 FLRA 703, 707 (2020) (Member DuBester dissenting in part, *dec. vacated & remanded in part sub nom. NTEU v. FLRA*, 1 F.4th 1120, 1128 (D.C. Cir. 2021) (*FLRA*)).

<sup>190</sup> *Id.*

work.<sup>191</sup> Because the parties in *NTEU* later settled their negotiability dispute, the Authority did not further address whether agencies must demonstrate a nexus between in-person work and job duties in order to establish a telework proposal's effect on management's right to assign work.

In *NTEU*, Chapter 296 & 336 (Chapter 296), the Authority found it unnecessary to resolve that issue because, although the proposal concerned the frequency of telework, "the [a]gency ha[d] adequately demonstrated that at least some [a]gency employees' job duties ha[d] a relationship to their job locations."<sup>192</sup> Thus, regardless of whether the "nexus" requirement applied, the proposal affected the right to assign work.<sup>193</sup>

Here, Proposal 4 implicates management's ability to "hold[] employees accountable for the performance of their work"<sup>194</sup> and "ensure that the work assigned to employees is accomplished."<sup>195</sup> Subsections (1)(c)(i)-(ii) and (2)(a)(i)-(ii) only come into play after the Agency has determined that "the remote[-]work arrangement is negatively impacting the employee's performance" or "that there is a conduct violation," respectively.<sup>196</sup> Thus, regardless of the particular job duties at issue, these subsections apply only when the Agency has concluded that in-person supervision or auditing of the employee is necessitated by poor performance or misconduct. Because these employees cannot perform work remotely at a satisfactory performance level or without creating misconduct concerns, we find that the Agency has established a direct relationship, or "nexus," between the employees' job duties and the location of their work. And because the

subsections expressly prevent the Agency from addressing these identified performance or conduct concerns using its chosen supervisory methods for the prescribed periods, the proposal prevents the Agency from taking action to ensure the work assigned to employees is properly accomplished.<sup>197</sup>

Like in Chapter 296, because we find the Agency has demonstrated a nexus between the employees' job duties and their job locations, we do not find it necessary to address whether a nexus between job duties and job location is required in order for proposals concerning the frequency of telework to affect the right to assign work, or whether the frequency of telework is inherently part of the right to assign work.<sup>198</sup> Regardless of which principle we apply, we find that subsections (1)(c)(i)-(ii) and (2)(a)(i)-(ii) affect the right to assign work.<sup>199</sup>

Incorporating by reference arguments it made for Proposal 2, the Union challenges the Agency's contention that Proposal 4 affects the Agency's management rights under § 7106(a)(2) of the Statute. According to the Union, Proposal 4 merely ameliorates the effect that cancelling a remote-work agreement may have on an employee.<sup>200</sup> However, the Union does not address the ways in which Proposal 4 is materially different from Proposal 2.<sup>201</sup> Proposal 2 generally provides transition periods following Agency-initiated termination of remote work based on either Agency-determined business needs, or an employee's refusal to accept an Agency-initiated change to a remote-work agreement. Proposal 4, by contrast, applies only when the Agency has identified employee-specific performance or conduct concerns and seeks to recall the affected employee in response to those

<sup>191</sup> *FLRA*, 1 F.4th at 1128.

<sup>192</sup> 74 FLRA 299, 301 (2025) (Member Wagner concurring).

<sup>193</sup> *Id.* at 300-01.

<sup>194</sup> *POPA*, 41 FLRA at 849.

<sup>195</sup> *Id.*

<sup>196</sup> *Rec.* at 10-11.

<sup>197</sup> See *POPA*, 41 FLRA at 848-49 (finding proposal permitting employees to decide when to inform supervisor they were leaving the work area affected agency's right to ensure the work assigned to employees is accomplished); *Local 2879*, 38 FLRA at 247-51 (provision requiring employees receive one week's advance notice of previously unannounced desk audits excessively interfered with rights to direct employees and assign work due in part to the burden it would place on the agency's ability "to identify deficiencies in employees' day-to-day work procedures and to take corrective action").

<sup>198</sup> See Chapter 296, 74 FLRA at 301 (finding it unnecessary to resolve whether frequency of telework is inherent to right to assign work when provision affected agency's right to assign work by "explicitly prevent[ing] the [a]gency from requiring a remote worker to perform work in-person at the applicable [a]gency job site for ninety days . . . after the [a]gency determines that the employee has some duties that must be performed at an [a]gency job site").

<sup>199</sup> See *NAGE*, *Loc. R1-203*, 55 FLRA 1081, 1092-93 (1999) (*Local R1-203*) (Chair Segal concurring) (finding proposal affected management's right to assign work by requiring agency to delay assigning work to employees); *AFGE*, *Loc. 1164*, 54 FLRA 1327, 1343 (1998) (*Local 1164*) (finding a proposal affected the right to assign work when it "effectively prevent[ed] the assignment of interviewing duties for a prescribed period of time"); *NAGE*, *Loc. R1-109*, 53 FLRA 403, 417-18 (1997) (*Local R1-109*) (finding a proposal affected the agency's right to assign work when it would "delay" "when the work relating to nuclear medicine scans . . . can be performed"); *POPA*, 41 FLRA at 848-49 (finding provision affected the right to assign work because it "would limit the [a]gency's authority to require employees to report to their supervisors prior to leaving their work areas"); *Local 2879*, 38 FLRA at 247-51 (finding provision affected the right to assign work because it "would preclude management from using a particular method of monitoring or sampling employees' daily work performance").

<sup>200</sup> *Resp.* at 22-25; see *id.* at 34-35 (referencing management-rights arguments made regarding Proposal 2).

<sup>201</sup> See *id.* at 22-25; *id.* at 34-35 (referencing management-rights arguments made regarding Proposal 2).

concerns. The Union does not address the ways that Proposal 4 would prevent the Agency, for specified periods, from recalling an employee when the Agency determines that in-person work or supervision is necessary due to performance or conduct concerns.<sup>202</sup> Because Proposal 4 substantially delays the Agency's ability to reassign employees when the Agency determines that reassignment is necessary to address performance or conduct concerns, we find the Union's argument – that Proposal 4 has no effect on management's rights – unpersuasive.

The Union also argues that Proposal 4 is within the duty to bargain, regardless of its effects on management rights.<sup>203</sup> Referring to its earlier arguments concerning Proposal 3,<sup>204</sup> the Union contends that Proposal 4 is negotiable because it requires the Agency to comply with an applicable law, § 706(2)(A), within the meaning of § 7106(a)(2) of the Statute.<sup>205</sup> However, Proposals 3 and 4 concern similar issues, namely, a delay in the date an employee is required to return to in-person work following the termination of a remote-work agreement.<sup>206</sup> As discussed above, even assuming § 706(2)(A) applies here, the Union does not cite any authority establishing that § 706(2)(A) requires the Agency to provide employees the specified periods before requiring them to report to headquarters.<sup>207</sup> Therefore, the Union's arguments in this regard do not demonstrate that subsections (1)(c)(i)-(ii) and (2)(a)(i)-(ii) of Proposal 4 enforce an applicable law within the meaning of § 7106(a)(2) of the Statute.

The Union also asserts subsections (1)(c)(i)-(ii) and (2)(a)(i)-(ii) of Proposal 4 are enforceable "appropriate arrangements" under § 7106(b)(3) of the Statute.<sup>208</sup> As noted above, to determine whether a proposal is an appropriate arrangement, the Authority applies the two-pronged test established in *KANG*.<sup>209</sup> First, the Authority determines whether the proposal is intended to be an "arrangement" for employees adversely affected by the exercise of the relevant management right.<sup>210</sup> If the proposal is an arrangement, then, under the second prong of the *KANG* test, the Authority determines whether the arrangement is "appropriate" because it does

not excessively interfere with the relevant management right.<sup>211</sup> The Authority makes that determination by weighing the benefits afforded to employees under the arrangement against the proposal's burden on the exercise of management's rights.<sup>212</sup>

The parties dispute whether the proposal is an arrangement.<sup>213</sup> However, we assume, without deciding, the proposal is an arrangement because we find it is not appropriate for the following reasons.<sup>214</sup>

As with Proposal 2, the Union argues that Proposal 4 benefits employees by giving them transition time for personal arrangements and possible relocation before reporting to headquarters.<sup>215</sup> The Union also argues that the directive already acknowledges that employees need substantial time to report to headquarters after the Agency terminates a remote-work agreement.<sup>216</sup> Like Proposal 2, Proposal 4 would provide significant benefits to employees.

However, Proposal 4 burdens the Agency's management rights in a manner that is materially different, and much greater, than any burdens imposed by Proposal 2. Unlike Proposal 2, Proposal 4 applies only after the Agency has identified performance or conduct concerns with a remote-working employee, and has determined that the employee's continued remote-work arrangement is no longer appropriate because of those performance deficiencies or misconduct. Despite that determination, the disputed subsections of Proposal 4 would require the Agency to allow the employee to continue working remotely for the specified periods after terminating the remote-work agreement. In a situation where management has found performance deficiencies or misconduct, the periods specified in the proposal – seventy-five days for employees more than fifty miles from headquarters, and forty-five days for employees more than fifty miles from headquarters – substantially burden management's rights to assign employees and assign work. During those periods, the Agency could not assign or reassign the employee to a position at headquarters, or assign the employee duties that must be performed in person at headquarters, even where

<sup>202</sup> See *id.* at 22-25; *id.* at 34-35 (referencing management-rights arguments made regarding Proposal 2).

<sup>203</sup> See *id.* at 23-25; *id.* at 34-35 (referencing management-rights arguments made regarding Proposal 2).

<sup>204</sup> See *id.* at 23-25; *id.* at 34 (referencing applicable-law arguments made regarding Proposal 2).

<sup>205</sup> 5 U.S.C. § 7106(a)(2).

<sup>206</sup> Compare Rec. at 8 (Proposal 3), with *id.* at 10-11 (Proposal 4).

<sup>207</sup> See Resp. at 23-25; *id.* at 34 (referencing applicable-law arguments made regarding Proposal 2).

<sup>208</sup> See *id.* at 23-25; *id.* at 35 (referencing appropriate-arrangement arguments made regarding Proposal 2).

<sup>209</sup> 21 FLRA at 31.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> Chapter 337, 74 FLRA at 414.

<sup>213</sup> See, e.g., Resp. at 23-25, 35 (arguing Proposal 4 is an appropriate arrangement); Statement Br. at 32 (arguing Proposal 4 does not address an "adverse impact caused by the exercise of a management right").

<sup>214</sup> E.g., *AFGE, Council 220*, 74 FLRA 114, 116-17 (2024) (assuming proposal constituted arrangement when it was not appropriate because it excessively interfered with exercise of management right (citing *NFFE, Loc. 1450, IAMAW*, 70 FLRA 975, 976 & n.12 (2018) (same))).

<sup>215</sup> Resp. at 23 & n.8, 35.

<sup>216</sup> *Id.* at 23, 35.

management has determined that there is an urgent need for closer, in-person supervision of the employee. Further, according to the Agency, at least in some circumstances, the seventy-five-day or forty-five-day delay would be *in addition to* the lengthy periods of time established in the Disciplinary and Adverse Action article of the parties' agreement.<sup>217</sup> For these reasons, we find that Proposal 4 significantly burdens the Agency's management rights to assign work and assign employees.<sup>218</sup>

In short, the disputed subsections of Proposal 4 do not merely provide employees with transition time after a change in work location; they require the Agency to maintain a remote-work arrangement, potentially for a substantial period of time, even after the Agency has determined that conduct or performance issues require the employee's return to headquarters. Although increased transition time for affected employees is a significant benefit to those employees, we find that the Agency's need to promptly address performance and conduct issues through in-person supervision, reassignment, or the assignment of headquarters-based duties outweighs the benefits to employees.<sup>219</sup>

Accordingly, even assuming Proposal 4 is an arrangement, we find it is not appropriate because the disputed subsections excessively interfere with the Agency's rights to assign employees and assign work.<sup>220</sup> For the above reasons, we find subsections (1)(c)(i)-(ii) and (2)(a)(i)-(ii) of Proposal 4 are outside the duty to bargain.<sup>221</sup> We address the Union's severance request below.

#### D. Severance

As stated above, § 2424.2(h) of the Authority's Regulations states that "[s]everance applies when some parts of the proposal or provision are determined to be outside the duty to bargain."<sup>222</sup> Accordingly, we now consider the Union's severance request because we have found that subsections (1)(c)(i)-(ii) and (2)(a)(i)-(ii) of Proposal 4 are outside the duty to bargain.

The Union requests to sever subsections (1)(a), (1)(b), (1)(c)(i), (1)(c)(ii), (1)(c)(iii), (1)(d), and (1)(e) of Proposal 4, with the introductory wording of (1) attaching to each subsection individually, and with the introductory wording of (c) attaching individually to subsections (1)(c)(i), (1)(c)(ii), and (1)(c)(iii).<sup>223</sup> The Union also requests to sever subsections (2)(a), (2)(a)(i), (2)(a)(ii), (2)(a)(iii), (2)(b), and (2)(c) of Proposal 4, with the introductory wording of (2) attaching to each subsection individually, and with the introductory wording of (a) attaching individually to subsections (2)(a)(i), (2)(a)(ii), and (2)(a)(iii).<sup>224</sup> Section 2424.25(d) of the Authority's Regulations states that "[t]o accomplish severance, the exclusive representative must identify the proposal or provision that the exclusive representative is severing and set forth the exact wording of the newly severed portion(s)."<sup>225</sup> It further states, "The exclusive representative must support its [severance] request with an explanation of how the severed portion(s) . . . may stand alone, and how [the] severed portion(s) would operate."<sup>226</sup>

At the conference, the Union asserted "these thirteen severed parts would have independent meaning and stand alone."<sup>227</sup> While the Union was directed at the

<sup>217</sup> Statement Br. at 30-32; *accord* Rec. at 10-11 (stating that subsection (2)(a)'s timelines apply only after the Agency "determined there is a conduct violation" by "follow[ing] the procedures outlined in the . . . Disciplinary and Adverse Action" article).

<sup>218</sup> See *Local R1-203*, 55 FLRA at 1092-93; *Local 1164*, 54 FLRA at 1343; *Local R1-109*, 53 FLRA at 417-18.

<sup>219</sup> *Local R1-109*, 53 FLRA at 417-18.

<sup>220</sup> See *Pro. Airways Sys. Specialists*, 64 FLRA 474, 481 (2010) (*Pro. Airways*) (Member Beck concurring in part and dissenting in part on other grounds) (finding a proposal excessively interfered with management's right to assign employees, and was not an appropriate arrangement, because it placed "significant limitation[s] on management's right to assign employees to positions based on the [a]gency's needs"); *Local 12 II*, 61 FLRA at 221 (finding a proposal that "precludes management from making involuntary reassignments outside the commuting area" affected the agency's management right to assign employees); *AFGE, Nat'l Border Patrol Council*, 51 FLRA 1308, 1332-33 (1996) (*Border Patrol Council*) (finding a proposal excessively interfered with management's right to assign employees, and was not an appropriate arrangement, because it "place[d] a significant limitation on the [a]gency's ability to deploy its workforce"); *Fed. Prof'l Nurses Ass'n, Loc. 2707*, 43 FLRA 385, 394 (1991)

(*Local 2707*) (finding a proposal excessively interfered with management's right to assign work, and was not an appropriate arrangement, because it "impose[d] an absolute restriction on the [a]gency's ability to place employees where there is a need for their services"); *Action Emps. Loc., AFSCME*, 31 FLRA 1053, 1057-58 (1988) (*Action Emps. Local*) (finding a proposal excessively interfered with management's right to assign work, and was not an appropriate arrangement, because it "would directly limit the discretion . . . to make such work assignments as are necessary to accomplish the work of any particular office"); *Local 1263*, 29 FLRA at 64-65 (proposal preventing agency from conducting unannounced worksite visits to evaluate performance excessively interfered with management's rights to direct employees and assign work).

<sup>221</sup> See *Pro. Airways*, 64 FLRA at 481; *Border Patrol Council*, 51 FLRA at 1332-33; *Local 2707*, 43 FLRA at 394; *Action Emps. Local*, 31 FLRA at 1057-58.

<sup>222</sup> 5 C.F.R. § 2424.2(h).

<sup>223</sup> Rec. at 12.

<sup>224</sup> *Id.*

<sup>225</sup> 5 C.F.R. § 2424.25(d).

<sup>226</sup> *Id.*

<sup>227</sup> Rec. at 12.

conference to further explain its severance request for Proposal 4 in its response,<sup>228</sup> its response does not address how any severed portion would stand alone or operate.<sup>229</sup> Rather, it appears that the Union mistakenly copied subsections of Proposal 3, for which it previously requested severance, into its severance request for Proposal 4.<sup>230</sup> Further, in its explanation for how each severed portion would operate and stand alone, the Union's response also refers to subsections of Proposal 3.<sup>231</sup> Accordingly, because the Union's severance request for Proposal 4 does not explain how each severed section would operate and stand alone with independent meaning, it fails to comply with the Authority's Regulations, and we deny the request.<sup>232</sup> Because we deny the Union's request for severance, we find Proposal 4 is outside the duty to bargain in its entirety.<sup>233</sup>

## IX. Order

We direct the Agency to bargain over Proposals 1, 2, and subsections (1)(a), (1)(c), and (1)(d) of Proposal 3. In finding those proposals and subsections within the duty to bargain, we make no judgment as to their merits.<sup>234</sup> We dismiss the petition with respect to Proposal 4 and subsection (1)(b) of Proposal 3.

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<sup>228</sup> See *id.* ("The conference holder directed both parties to provide further explanations of their positions on severance in their subsequent filings.").

<sup>229</sup> Resp. at 36-37.

<sup>230</sup> Compare *id.* at 32, with *id.* at 36.

<sup>231</sup> Compare *id.* at 32, with *id.* at 36-37.

<sup>232</sup> See *Local 12 III*, 73 FLRA at 605 (denying severance request where union did not explain how the severed proposals could operate independently from each other).

<sup>233</sup> See, e.g., *Chapter 296*, 74 FLRA at 301-02 n.35 (citing *Fed. Educ. Ass'n, Stateside Region*, 56 FLRA 473, 475 (2000) (dismissing petition where part of unsevered provision was contrary to law)).

<sup>234</sup> *AFGE, Loc. 2031*, 73 FLRA 769, 770 (2023) (Chairman Grundmann concurring on other grounds).

**Member Wagner, concurring:**

As I have previously stated, in my view, a party arguing that a proposal or provision addressing employees' job locations affects management's right to assign work under § 7106(a)(2)(B) of the Federal Service Labor-Management Relations Statute (the Statute)<sup>1</sup> has the burden of demonstrating a relationship between the employees' job locations and their job duties.<sup>2</sup> For the reasons stated in today's decision, I agree that the Agency has satisfied that burden with regard to Proposal 4, and that the proposal is not a negotiable appropriate arrangement under § 7106(b)(3) of the Statute.<sup>3</sup> Therefore, I agree that Proposal 4 is outside the duty to bargain. And I agree with the decision in all other respects.

Accordingly, I concur.

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<sup>1</sup> 5 U.S.C. § 7106(a)(2)(B).

<sup>2</sup> *NTEU, Chapter 296 & 336*, 74 FLRA 299, 309 (2025) (Concurring Opinion of Member Wagner).

<sup>3</sup> 5 U.S.C. § 7106(b)(3).