

74 FLRA No. 88

NATIONAL FEDERATION
OF FEDERAL EMPLOYEES
FEDERAL LODGE 7
(Union)

and

UNITED STATES
DEPARTMENT OF AGRICULTURE
OREGON RURAL DEVELOPMENT
(Agency)

0-NG-3753

ORDER DISMISSING
PETITION FOR REVIEW

October 26, 2026

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

I. Statement of the Case

For the reasons discussed below, we find that the Union's petition for review does not meet the conditions governing review of negotiability issues under § 7117 of the Federal Service Labor-Management Relations Statute (the Statute).¹ Accordingly, we dismiss the petition.

II. Background and Order to Show Cause

The parties executed a new collective-bargaining agreement on February 27, 2026. Twenty-eight days later, on March 27, 2026, an Agency official emailed another Agency official, attaching a memorandum that indicated the Agency head disapproved of the agreement (disapproval memo). Although the Agency did not send a separate copy of the disapproval memo to the Union, a Union representative was cc'ed on the email containing the disapproval memo.

Subsequently, the Union filed a negotiability petition arguing that the disapproval memo was not an effective Agency-head disapproval because the Agency

did not properly serve the Union with that disapproval "by either an in-person delivery or through the mail."² According to the Union, "[n]o representative of the Union has received a hard copy [of the disapproval memo] at any time in March or April of 2026."³

On May 12, 2026, the Authority's Office of Case Intake and Publication issued an order directing both parties to show cause why the petition for review should not be dismissed for failure to meet the conditions governing the review of negotiability appeals (show-cause order). The show-cause order noted that the Authority only permits email service "if the receiving party has agreed to electronic service, . . . [and] it appears that the Union did not consent to electronic service."⁴ Thus, the order directed the parties to "submit any supporting documentation and provide a sufficient explanation to enable the Authority to determine whether the Agency timely served its Agency-head disapproval."⁵ The order also provided examples of relevant supporting documentation, including "copies of emails or other documents addressing whether the Union consented or did not consent to email service, receipts of certified mail, delivery[-]tracking information, or other evidence of service."⁶

Both parties responded to the show-cause order. In its response, the Agency "confirms that the parties had no explicit agreement that [agency-head-review] documents be provided via email."⁷ It argues, however, that "a longstanding understanding . . . that email is the mutually preferred method to transmit [agency-head-review] documents to the Union . . . has established a past practice."⁸ In support of this alleged longstanding understanding, the Agency provides a list of past instances in which the Agency claims that it served disapprovals or approvals on the Union by email. Based on this asserted past practice, the Agency contends that "a literal application of § 2429.27 would result in an unfair outcome."⁹

III. Analysis and Conclusion: The Agency fails to demonstrate that it timely served the Union with Agency-head disapproval of the agreement.

Section 7114(c)(2) of the Statute provides that "the head of the agency shall approve the [collective-bargaining] agreement within [thirty] days from the date the agreement is executed" if the agreement complies with applicable law, rule, and regulation.¹⁰ The

¹ 5 U.S.C. § 7117.

² See Pet. for Rev. at 4.

³ *Id.*

⁴ Show-Cause Order at 2 (citing 5 U.S.C. § 7114(c)(3); 5 C.F.R. § 2429.27(b)(6)).

⁵ *Id.*

⁶ *Id.*

⁷ Agency's Resp. to Order at 1 (Agency Resp.).

⁸ *Id.*

⁹ *Id.* at 2.

¹⁰ 5 U.S.C. § 7114(c)(2).

Authority has held that any disapproval by the agency head must be served on the exclusive representative by this thirty-day deadline in accordance with the procedural requirements of § 2429.27(b) of the Authority's Regulations – or else “the agreement shall take effect and shall be binding on the agency and the [union] subject to the provisions of th[e Statute] and any other applicable law, rule, or regulation.”¹¹ The Authority has also held that, for agency-head disapprovals, “[a]ctual notice has never satisfied the service requirements of [§] 2429.27(b);”¹² instead, “strict adherence to the regulatory requirements for service of a disapproval is necessary in order to determine whether a petition for review meets the statutory filing requirements contained in [§] 7117(c) of the Statute, as well as the procedural requirements set forth in part 2424 of the Authority's Regulations.”¹³

Thus, if an agency fails to properly serve a union with a disapproval, then – consistent with the Statute's plain wording – the agreement “shall take effect and shall be binding on the agency.”¹⁴ Further, “[a] petition for review . . . filed by a union in response to an agency[-]head disapproval which is not timely served on the union does not raise negotiability issues which may be addressed by the Authority under [§] 7117 of the Statute.”¹⁵ In this

connection, § 2424.2(c) of the Authority's Regulations defines a “[n]egotiability dispute,” in pertinent part, as “a disagreement between an exclusive representative and an agency concerning the legality of a . . . provision.”¹⁶ Where a collective-bargaining agreement has already taken effect due to defective service of an agency head's disapproval, the Authority has found no basis to assess, in a negotiability proceeding, the legality of the agreement, and has instead dismissed the union's petition for review.¹⁷

Under § 2429.27(b) of the Authority's Regulations, agencies may serve agency-head disapprovals by certified mail, first-class mail, commercial delivery, or in-person delivery.¹⁸ Additionally, an agency may serve disapprovals on a union by email, “but only when the [union] has agreed to be served by email.”¹⁹

Here, the Union argues that the Agency's email service was improper because the Union never consented to email service.²⁰ The show-cause order directed the Agency to provide evidence that it properly served the Union.²¹ To demonstrate timely service, the Agency could show either that the Union consented to email service or that the Agency provided timely service by another

¹¹ *Id.* § 7114(c)(3); *see also* *U.S. Dep't of the Treasury, BEP*, 44 FLRA 926, 934 (1992) (*Treasury*) (“The Authority has . . . held that when an agency head fails to properly serve the union with the disapproval, the entire collective[-]bargaining agreement becomes effective by operation of law on the [thirty-first] day after execution of the agreement.”).

¹² *Treasury*, 44 FLRA at 935 (citing *AFGE, Loc. 2354*, 40 FLRA 1232, 1233-35 (1991) (*Loc. 2354*); *AFGE Nat'l VA Council*, 39 FLRA 1055, 1058 (1991) (*VA Council*); *AFGE, Loc. 1753*, 8 FLRA 152, 153 (1982) (*Loc. 1753*)).

¹³ *AFGE, Loc. 3172*, 46 FLRA 1515, 1516 (1993) (*Loc. 3172*) (citing *AFGE, Nat'l Mint Council*, 41 FLRA 1004, 1009-10 (1991)).

¹⁴ 5 U.S.C. § 7114(c)(3) (“If the head of the agency does not approve or disapprove the agreement within the [thirty-]day period, the agreement shall take effect and shall be binding on the agency and the [union] subject to the provisions of th[e Statute] and any other applicable law, rule, or regulation.”).

¹⁵ *AFGE, Nat'l Mint Council*, 41 FLRA 220, 221 (1991) (*Mint Council*) (citing *AFGE, AFL-CIO, Loc. 1760*, 28 FLRA 1142 (1987)); *see also* *Wash. Area Metal Trades Council, AFL-CIO*, 5 FLRA 596, 598 (1981) (*Metal Trades*) (holding that, “since the entire agreement, as negotiated and executed by the parties, became effective . . . , the agency's subsequent disapproval raise[d] no dispute concerning the terms of such agreement which [was] cognizable under [§] 7117 of the Statute”).

¹⁶ 5 C.F.R. § 2424.2(c).

¹⁷ *See Loc. 2354*, 40 FLRA at 1233-35 (dismissing negotiability petition where agency improperly served disapproval by “computer message” on the agency's internal computer system); *NFFE, Loc. 1332*, 5 FLRA 599, 600-601 (1981) (dismissing negotiability petition where agency conveyed disapproval by telephone call); *Metal Trades*, 5 FLRA at 597-98 (dismissing petition where agency disapproved of agreement in internal memorandum to agency employees, but did not properly serve the union until after the thirty-day period for agency-head review). We note that dismissal of the petition in those circumstances does not signify that a union is precluded from filing a petition raising the issue of whether an agency head properly disapproved an agreement, as the Union has done here. On the contrary, such a petition requires the Authority to resolve – as a preliminary matter – whether the agency has effectively disapproved of the negotiated agreement or permitted the agreement to take effect. If the Authority finds that an agreement has taken effect without a proper disapproval, then there is not a negotiability dispute properly before the Authority for resolution, and dismissal of the petition is appropriate. *See, e.g., NLRB Pro. Ass'n*, 73 FLRA 20, 20-21 (2022) (dismissing petition where there was no negotiability dispute before the Authority).

Member Wagner notes that she believes that it is more consistent with the Statute to treat the concept of a “negotiability dispute” as encompassing the threshold issue of whether an agency head has properly disapproved an agreement. However, she acknowledges that the current regulatory definition of that term, and extant Authority precedent, support a different conclusion.

¹⁸ *See* 5 C.F.R. § 2429.27(b).

¹⁹ *See id.* § 2429.27(b)(6).

²⁰ *Pet. for Rev.* at 4-5.

²¹ *Show-Cause Order* at 2.

acceptable means.²² In its response to the show-cause order, the Agency does neither. Instead, the Agency “confirms that the parties had no explicit agreement that [agency-head-review] documents be provided via email.”²³ According to the Agency, email service was nonetheless proper because the parties had “established a past practice” of emailing Agency-head approvals and disapprovals.²⁴ However, the Agency cites no authority – such as a statute, a regulation, or Authority precedent – for the proposition that parties may constructively consent to alternative means of service through past conduct. Because the Authority “strict[ly] adhere[s] to the regulatory requirements for service of a disapproval,”²⁵ and the Agency fails to demonstrate that it properly served the Union with the disapproval memo, the parties’ agreement became effective and binding on March 30, 2026 – thirty-one days after its execution.²⁶

Our conclusion that there is no negotiability dispute properly before us does not, of course, mean that any provisions in the agreement which are contrary to the Statute or any other applicable law, rule, or regulation, are thereby enforceable.²⁷ Rather, a question as to the validity of such provisions may be raised in other appropriate proceedings (such as grievance arbitration and unfair-labor-practice proceedings) and, if the agreement provisions are found to be violative of the Statute or any other applicable law, rule, or regulation, they would not be enforceable.²⁸

Accordingly, we dismiss the Union’s petition for review because it does not raise a negotiability dispute that the Authority may address under § 7117 of the Statute.²⁹

IV. Order

We dismiss the Union’s petition.

²² See *id.* (noting that the Agency could enable the Authority to determine whether the Agency timely served its disapproval by providing “copies of emails or other documents addressing whether the Union consented . . . to email service[] [or] receipts of certified mail, delivery[-]tracking information, or other evidence of service”).

²³ Agency’s Resp. at 1.

²⁴ *Id.*

²⁵ *Loc. 3172*, 46 FLRA at 1516.

²⁶ See *id.* at 1517 (finding that the parties’ negotiated agreement “became effective and binding” thirty-one days after it was executed because the agency “failed to establish that it served its disapproval on the [u]nion” in accordance with § 2429.27(b)).

²⁷ *Metal Trades*, 5 FLRA at 598.

²⁸ *Id.*; see also *Loc. 3172*, 46 FLRA at 1517 n.*.

²⁹ See *Mint Council*, 41 FLRA at 222-23 (dismissing petition for review after finding disapproval ineffective where “neither party ha[d] responded to the Authority’s [show-cause o]rder with evidence that the [a]gency head’s disapproval was served on the [u]nion either by certified mail or in person, as required by [§] 2429.27(b)”) ; *VA Council*, 39 FLRA at 1058 (dismissing petition for review where evidence of “service by facsimile transmission” did not “demonstrate[] proper, timely service of the disapproval on the [u]nion” in accordance with § 2429.27(b)); *Loc. 1753*, 8 FLRA at 153 (dismissing petition where agency officials received disapproval letter from agency head and “informed the [u]nion by telephone of its contents”).