

CASE DIGEST: *U.S. DHS, U.S. CBP*, Case No. 0-AR-5897, 74 FLRA 545 (2026) (Chairman Kiko concurring in part and dissenting in part)

The Arbitrator issued an award finding the Agency violated the parties' agreement by failing to follow Customs and Border Protection rules or regulations that require the Agency to assign agricultural specialists to only agricultural inspection activities. The Agency excepted to the award on contrary to law and nonfact grounds. The Authority dismissed some of the Agency's contrary to law arguments because the Agency could have raised those arguments before the Arbitrator, but failed to do so. The Authority denied the Agency's remaining exceptions because they failed to demonstrate any deficiencies in the award.

Chairman Kiko dissented in part because she would find the Arbitrator erred as a matter of law in treating a 2007 letter from the then-Secretary of Homeland Security to U.S. Senator Dianne Feinstein, as well as a related memorandum, as "regulations" that governed the Agency's conduct over fifteen years later. Additionally, she would find the Arbitrator erred in concluding that these purported Agency regulations prohibited the Agency from assigning agricultural specialists to target "all threats," not only agricultural threats.

This case digest is a summary of a decision issued by the Federal Labor Relations Authority, with a short description of the issues and facts of the case. Descriptions contained in this case digest are for informational purposes only, do not constitute legal precedent, and are not intended to be a substitute for the opinion of the Authority.