

CASE DIGEST: *U.S. DHS, U.S. CBP, 71 FLRA 243 (2019) (Member Abbott concurring)*

This case concerned the Arbitrator's finding that the Agency violated the parties' collective-bargaining agreement when it required an employee to undergo medical examinations without a Union representative present. The Arbitrator directed the Agency to establish procedures to inform bargaining-unit employees and independent medical examiners of an employee's right to have a Union representative present during such examinations. The Authority rejected the Agency's contrary-to-law, public-policy, and nonfact exceptions, finding that the award did not require the Agency to exercise control over the medical examiners. The Authority found that, to the extent that the award applied to individuals other than the grievant, the Arbitrator exceeded his authority, and clarified the remedy accordingly.

Member Abbott concurred with the Authority's disposition of the exceptions and noted that the Agency's contrary-to-law and public-policy exceptions were inconsistent with concessions made by the Agency and that the Agency's nonfact exception failed to dispute a central fact. Therefore, he noted that the Agency could have obviated the need for its exceptions if it negotiated with the Union by solely focusing on the exceeds-authority exception.

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.