

CASE DIGEST: *U.S. Dep't of Commerce, Nat'l Inst. of Standards & Tech.*, 71 FLRA 199 (2019) (Member DuBester dissenting)

This case concerned a new senior corporal policy (policy) that entailed additional tasks for the most senior corporal when no supervisor was on shift. The Arbitrator sustained the grievance, finding that the Agency made a change to conditions of employment that was more than de minimis when it implemented the policy before properly notifying and bargaining with the Union. He determined that a status-quo-ante (SQA) remedy was appropriate. The Authority found that the Arbitrator did not properly apply the *FCI* factors and the SQA remedy would be a costly waste of government resources, and, as such, would disrupt and impair the efficiency and effectiveness of the Agency's operations. Accordingly, the Authority concluded that an SQA remedy is not appropriate or necessary, and modified the award to eliminate the SQA remedy and ordered the Agency to engage in post-implementation bargaining.

Member DuBester dissented. He agreed that the Arbitrator should have articulated and applied the *FCI* factors, but disagreed that the record supported the majority's conclusion that the remedy would disrupt or impair the efficiency and effectiveness of the Agency's operations. Instead, he would find that there was sufficient record evidence to sustain the Arbitrator's SQA remedy.

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.