

71 FLRA No. 87

FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C.

UNITED STATES DEPARTMENT OF VETERANS
AFFAIRS
(Petitioner)

0-PS-42

DECISION ON REQUEST
FOR GENERAL STATEMENT
OF POLICY OR GUIDANCE

December 13, 2019

Before the Authority: Colleen Duffy Kiko, Chairman,
and Ernest DuBester and James T. Abbott, Members

I. Statement of the Case

Pursuant to § 2427.2 of the Authority's Regulations,¹ the Petitioner requests that the Authority issue a general statement of policy or guidance clarifying the meaning of the phrase "adversely affected" in § 7106(b)(3) of the Federal Service Labor-Management Relations Statute (the Statute).²

II. Background

Under § 7106(b)(3) of the Statute, parties must bargain over "appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials."³ According to the Petitioner, the Authority has expansively interpreted "adversely affected," which results in "extensive and time-consuming negotiations before agencies can exercise [the] management rights"⁴ set forth in § 7106(a) of the Statute.⁵

The Petitioner acknowledges that the Authority uses the long-established analysis set forth in *NAGE, Local R-14-87*⁶ to determine whether a proposal is

within the duty to bargain under § 7103(b)(3). However, the Petitioner asks the Authority to change its analytical framework to create a "rebuttable presumption" that the exercise of a management right under § 7106(a) of the Statute does not "adversely affect" employees.⁷ The Petitioner explains that, under its proposed standard, a labor organization could only rebut the presumption by presenting evidence – rather than merely asserting – that any proposal is a response "to actual adverse effects directly caused by the exercise of [a] management right[]." ⁸ The Petitioner posits that the Authority's adoption of such a requirement would permit agencies to exercise their management rights "immediately" without bargaining.⁹

III. Discussion

Upon careful consideration of the Petitioner's request, we find that it is not appropriate for resolution through the issuance of a general ruling.¹⁰ These questions would most appropriately be addressed in the context of the facts and circumstances presented by parties involved in an actual dispute.¹¹ Accordingly, we deny the request.

IV. Order

We deny the Petitioner's request.

¹ 5 C.F.R. § 2427.2.

² Petitioner's Request (Request) at 1.

³ 5 U.S.C. § 7106(b)(3).

⁴ Request at 2.

⁵ 5 U.S.C. § 7106(a).

⁶ 21 FLRA 24 (1986).

⁷ Request at 4.

⁸ *Id.* at 5.

⁹ *Id.*

¹⁰ 5 C.F.R. § 2427.5.

¹¹ *E.g., Gen. Counsel*, 51 FLRA 409, 412 (1995) (citing *Order Denying Request for Gen. Ruling*, 14 FLRA 757, 758 (1984); *Order Denying Request for a Gen. Ruling*, 9 FLRA 823, 824 (1982)).