

71 FLRA No. 92

U. S. DEPARTMENT OF AGRICULTURE
OFFICE OF THE GENERAL COUNSEL
(Petitioner)

0-PS-45

DECISION ON
REQUEST FOR GENERAL STATEMENT
OF POLICY OR GUIDANCE

December 23, 2019

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

I. Statement of the Case

On November 1, 2019, the U.S. Department of Agriculture (Department) requested the Authority to issue a policy statement on the following topic:

To clarify that collective bargaining agreements (agreement) formally expire when the basic term or rollover period of the agreement concludes, *irrespective of contract language*, and renewal of the agreement through a “rollover” provision constitutes a new agreement that does not bar the implementation of government-wide rules or regulations.¹

II. Background

In its request, the Department surveyed a lengthy history of the Authority’s caselaw that considered the often intertwined issues of the expiration of term agreements and the implementation of new government-wide rules and regulations. The historical survey emphasized over twenty years of arbitration award decisions, focusing on a 1991 decision, *U.S. Department of the Army, Headquarters III Corps & Fort Hood, Fort Hood, Texas (Fort Hood)*.² The Department noted that different arbitrators have interpreted similar language differently, and, because no agencies “know” how any particular arbitrator will rule, agencies do not know “when” to implement new government-wide rules or regulations.³

The Department requests that the Authority issue a general statement of policy clarifying that, for the purposes of § 7116 (a)(7) of the Federal Service Labor-Management Relations Statute,⁴ agreements would expire when the agreements’ “basic” term or rollover period concludes, with any rollover term legally considered a new agreement that would not bar the implementation of (new) government-wide rules or regulations, and that those agreements being “indefinitely” rolled-over while the parties negotiate a (new) term agreement are expired and do not bar the implementation of government-wide rules or regulations.⁵

III. Discussion

The Authority has carefully considered this request and has determined that the request does not satisfy the standards governing the issuance of general statements of policy and guidance set forth in § 2427.5 of the Authority’s Regulations.⁶ The guidance sought by the Department can be more appropriately resolved by a case in controversy⁷ and there is no likelihood that the issuance of an Authority statement would prevent the proliferation of cases involving the same or similar question.

Therefore, we find this request to be dependent upon the circumstances of the case at issue, so much so, that this issue of law and policy must be developed more fully in the context of an actual dispute.

IV. Decision

The request by the Department for a general statement of policy or guidance is denied.

¹ Department Request (Request) at 1 (emphasis added).

² 40 FLRA 636 (1991).

³ Request at 2.

⁴ 5 U.S.C. § 7116 (a)(7).

⁵ Request at 3.

⁶ 5 C.F.R. § 2427.5.

⁷ See generally *U.S. Dep’t of Commerce, Patent & Trademark Office*, 65 FLRA 817, 819 (2011) (noting the arbitrator found the parties’ agreement had expired, and so, new regulation now applied).