

CASE DIGEST: *U.S. Dep't of Energy, W. Area Power Admin.*, 71 FLRA 111 (2019)
(Member DuBester dissenting)

The Union filed a grievance on behalf of a group of dispatchers who alleged that they were not receiving the prevailing rate of premium pay for holiday work. The Arbitrator found the grievance arbitrable and concluded that the Agency should have paid the dispatchers a higher pay rate. On exceptions, the Authority noted that federal law granted the Agency with sole and exclusive discretion to establish a compensation system for dispatchers, and the Agency had exercised that discretion by establishing a rate of holiday premium pay. By filing a grievance contesting the individual *application* of that pay rate, the Union obtained an award that directed the Agency to change its rate of holiday pay – effectively overriding the Agency's statutorily provided pay-setting discretion. Accordingly, the Authority overruled precedent that distinguished between establishing and applying compensation systems in the context of sole and exclusive discretion. And, applying that rule, the Authority set aside the award as contrary to law.

Member DuBester dissented, relying on the precedent that the majority overturned, and finding that the Federal Service Labor-Management Relations Statute's wording, legislative history, and purpose supported the grievability of the Union's allegation. He reasoned that this authority did not intend to remove misapplication of a law establishing pay rates from the scope of the negotiated grievance procedure. Therefore, he would not have set aside the award.

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.