

CASE DIGEST: *DOD, Domestic Dependent Elementary & Secondary Sch., Fort Buchanan, P.R.*, 71 FLRA 127 (2019) (Member DuBester dissenting)

This case concerned an agency's refusal to implement a successor collective-bargaining agreement with the Charging Party (the Union), despite a decision from the Federal Service Impasses Panel (the Panel) directing the Agency to adopt that agreement. An FLRA Administrative Law Judge (the Judge) recommended finding that the Agency committed the unfair labor practices (ULPs) alleged in the complaint because the Panel's decision was lawful and the Agency refused to obey it.

The Authority found, as an initial matter, that, in all future cases, the General Counsel must plead the negotiability of the matters in Panel decisions to avoid a procedural dismissal in these types of disputes under 5 U.S.C. § 7116(a)(6). Regarding a provision of the successor agreement that the Authority found prevented the Agency from deciding *when* employees performed one of the hours of their workday, the Authority found the provision unenforceable because it interfered with management's right to assign work under 5 U.S.C. § 7106(a)(2)(B). Consistent with the parties' requests, the Authority ordered further bargaining on work hours and compensation. In addition, the Authority found that the Panel exceeded its jurisdiction – and, thus, acted unlawfully – when it ordered the parties to incorporate into their successor agreement all of the tentative agreements that they had reached before the Union filed its request for Panel assistance. Nevertheless, the Authority found that the deficiencies in some portions of the Panel's decision did not excuse the Agency from complying with all of the Panel's decision. Accordingly, the Authority ordered the Agency to comply with the lawful portions of the Panel's decision, to resume negotiations with the Union, and to post and electronically distribute a notice acknowledging the ULPs. Therefore, the Authority granted the Agency's exceptions, in part, and denied them, in part; and the Authority denied the Union's exceptions regarding attorney fees and interest on backpay.

Member DuBester dissented, finding that the Judge correctly concluded that a provision of the successor agreement did not preclude the Agency from deciding *when* employees performed one of the hours of their workday, and was enforceable because it did not prevent the Agency from assigning work under § 7106(a)(2)(B). Further, finding that the Judge properly relied on record evidence of the parties' intent that the Panel resolve all matters encompassing the successor agreement when resolving the impasse, Member DuBester determined that the Judge correctly concluded that the Agency failed and refused to comply with the Panel's Decision and Order to implement the successor agreement, including all tentative agreements. Additionally, Member DuBester found that the Authority's pleading standards in future § 7116(a)(6) disputes should remain unchanged. Further, he would have granted a Union exception to amend the remedial order to include interest on backpay.

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.