CASE DIGEST: *U.S. DOD, Domestic Elementary & Secondary Sch.*, 71 FLRA 236 (2019) (Member Abbott concurring; Member DuBester dissenting)

The parties' collective-bargaining agreement requires the party invoking arbitration to do so "within twenty . . . days following the conclusion of the last stage in the grievance procedure." The last stage was mediation, and the Union did not attempt to move the dispute to arbitration until almost two years after mediation concluded. Nevertheless, the Arbitrator found the grievance procedurally arbitrable because the Union attempted to invoke arbitration *before* mediation. However, the Arbitrator failed to cite any authority or contractual wording that allowed him to disregard the agreement's explicit twenty-day invocation period. Thus, the Authority concluded that the Arbitrator's procedural-arbitrability determination failed to draw its essence from the parties' agreement.

Member Abbott concurred in the decision. He noted that all parties involved in the grievance-arbitration process would be well served to remind themselves that the Federal Service Labor-Management Relations Statute intends for grievances to be resolved expeditiously.

Member DuBester dissented. Applying the deferential standard owed to arbitrators when analyzing essence challenges, Member DuBester would have found that the Arbitrator properly interpreted the parties' agreement when the Arbitrator found that the Agency had acquiesced to the Union's actions to move the grievance to arbitration and had not shown that the Union's invocation of arbitration was untimely. Thus, Member DuBester would have denied the essence exception and reached the Agency's remaining exceptions.