

CASE DIGEST

U.S. Dep't of State, Passport Servs., 71 FLRA 362 (2019) (Member DuBester concurring) (Chairman Kiko dissenting), **0-AR-5432**

In this case, the Arbitrator rejected the Agency's argument that it was faced with an "emergency" situation that allowed it to make changes to employee workstations before bargaining pursuant to the parties' agreement. On exceptions, the Agency asserted that the award was based on nonfacts because the Arbitrator misconstrued the evidence and also raised both essence and contrary-to-law arguments. The Authority denied the Agency's nonfact arguments because it failed to demonstrate the Arbitrator's alleged misstatements were central facts and because the Agency merely disagreed with the Arbitrator's evaluation of the evidence. The Authority also denied the Agency's essence and contrary-to-law arguments because they largely constituted disagreements with the Arbitrator's factual findings, which the Authority upheld.

Member DuBester concurred in the decision to deny the Agency's exceptions, noting that the award permitted the Agency to take interim safety measures while it fulfilled its bargaining obligations.

Chairman Kiko dissented. The Chairman found that the award – requiring the Agency to maintain bins that were falling on, and injuring, employees – precluded the Agency from (1) independently assessing whether an emergency existed, and (2) deciding what actions were needed to address the emergency. Accordingly, she would have set the award aside as excessively interfering with the Agency's right, under 5 U.S.C. § 7106(a)(2)(D), to take whatever actions may be necessary to carry out the Agency's mission during emergencies.

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.