

CASE DIGEST: *NTEU and U.S. Dep't of Agric., Food & Nutrition Serv.*, 71 FLRA 703 (2020) (Member DuBester dissenting).

This case concerned the negotiability of a proposal that would allow bargaining-unit employees to report to the office once per week and telework up to eight days per pay period. The issues before the Authority were whether the Telework Enhancement Act of 2010 vests the Agency with sole and exclusive discretion to establish telework frequency, and whether the proposal is contrary to management's rights to assign work and direct employees. The Authority found that the proposal affected management's right to assign work because the proposal would prevent management from determining when an eligible employee may perform his or her duties away from the duty station and when that eligible employee must report to the duty station. The Authority also found that the proposal impermissibly affected management's right to direct employees because it interfered with the Agency's right to choose the method that it deems "most appropriate" for supervising employee performance. The Union did not specifically argue that its proposal constituted a procedure or an appropriate arrangement under § 7106(b) of the Statute. Accordingly, the Authority found that the proposal was outside the duty to bargain and dismissed the petition.

Member DuBester dissented, finding that the proposal did not affect the right to assign work because it merely established a framework under which otherwise eligible employees could request additional telework, while preserving management's discretion to deny such requests. He also found that the Agency failed to argue, or otherwise demonstrate, that the proposal affects management's right to direct employees.

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.