

CASE DIGEST: *Dep't of VA, Nashville Reg'l Office*, 71 FLRA 322 (2019) (Member Abbott concurring; Member DuBester dissenting)

This case concerned a grievance alleging that the Agency violated the Privacy Act by releasing unredacted performance appraisals of Union representatives, without their consent, to an Agency attorney in connection with the litigation of a grievance (the performance-standards grievance). The Arbitrator held that the Agency violated the parties' agreement and the Privacy Act because the release of the performance appraisals was unauthorized. The Authority found that § 552a(b)(1) of the Privacy Act permitted the release of the appraisals to the Agency's attorney because the attorney needed the unredacted performance appraisals to prepare the Agency's defenses in the performance-standards grievance. Accordingly, the Authority held that the Agency did not violate the Privacy Act and vacated the Arbitrator's award in its entirety.

Member Abbott wrote separately, in concurrence, to note in the circumstances of this case there was no release of information that would trigger the Privacy Act. Further, disputes arising under the Privacy Act do not fall within the meaning of a "grievance" under Section 7103(a)(9)(C)(ii) of the Statute because Privacy Act violations do not affect conditions of employment. Consequently, he would have found that the Arbitrator and the Authority had no jurisdiction over the grievance and that the grievants' only recourse was to utilize the Privacy Act's exclusive remedial scheme.

Member DuBester dissented. Applying the standard of review applicable to contrary-to-law exceptions, he would defer to the Arbitrator's factual findings supporting his conclusion that the Agency's attorney did not need the Union's unredacted performance appraisals to prepare the Agency's defense in the performance-standards grievance. Accordingly, he would deny the Agency's exception that the award was contrary to the Privacy Act, and would consider the Agency's remaining exceptions.

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.