

**CASE DIGEST:** *U.S. Dep't of VA, Veterans Benefits Admin. and AFGE, Nat'l VA Council #53*, 71 FLRA 1113 (2020) (Chairman Kiko dissenting in part)

The Agency filed exceptions challenging an award in which the Arbitrator found that the Agency violated the parties' collective-bargaining agreement when it ceased providing ninety-day performance improvement plans as a prerequisite for performance-based removals. The Authority concluded that it had jurisdiction under 5 U.S.C. § 7122(a) because the issue at arbitration related to a violation of the parties' collective-bargaining agreement, not a removal under 38 U.S.C. § 714 – which, like removals under 5 U.S.C. §§ 4303 and § 7512, are appealable to the Merit Systems Protection Board and, in turn, to the United States Court of Appeals for the Federal Circuit. On the merits, the Authority found that the Agency failed to demonstrate that the award was deficient as contrary-to-law, exceeds-authority, or essence grounds. Accordingly, the Authority dismissed the exceptions.

Chairman Kiko dissented in part because she would have found that the award was contrary to the plain wording and intent of 38 U.S.C. § 714.

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.