

**CASE DIGEST:**     *U.S. EPA, Office of Research & Dev., Ctr. for Env't'l Measuring & Modeling, Gulf Ecosystems Measurement & Modeling Div., Gulf Breeze, Fla., 71 FLRA 1199 (2020)*

The Authority previously granted review of the decision and order of a Federal Labor Relations Authority Regional Director (RD). On review of the merits, the Authority determined that the RD erred in finding that an environmental-toxicologist position appointed under 42 U.S.C. § 209(g) was covered by the Federal Service Labor Management Relations Statute (Statute) and including it in the bargaining unit represented by the Union. The Authority found that § 209(g) granted the Agency the authority to designate fellowships and to prescribe the conditions under which appointed employees hold them. Acting under this authority, the EPA excluded § 209(g) appointees from the coverage of Statute and from the bargaining unit that the Union represents. Accordingly, the Authority found that the RD erred in concluding that the position was eligible for inclusion in the unit.

Member Abbott agreed that the RD erred by finding that the ecological toxicologist position was covered by the Statute. However, Member Abbott wrote separately to address his concerns with the timeliness of the Authority's decision.

Member DuBester dissented, finding that the majority misconstrued 42 U.S.C. § 209(g) and the precedent upon which the majority relied to conclude that the position at issue is excluded from coverage of the Statute.

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.