65 FLRA No. 176

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1164
(Union)

and

SOCIAL SECURITY ADMINISTRATION
AUBURN DISTRICT OFFICE
AUBURN, MAINE
(Agency)

0-NG-3094

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DECISION AND ORDER
ON NEGOTIABILITY ISSUES

May 25, 2011

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Before the Authority: Carol Waller Pope, Chairman, and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This matter is before the Authority on a negotiability appeal filed by the Union under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute (the Statute), and concerns the negotiability of two proposals. The Agency filed a statement of position (SOP), the Union filed a response, and the Agency filed a reply.

For the reasons that follow, we find that Proposal 1 is within the duty to bargain, and that Proposal 2 is outside the duty to bargain. Accordingly, we dismiss the petition with regard to Proposal 2, and direct the Agency to bargain over Proposal 1.

II. Proposal 1

A. Wording

> Additional adjudication time will be provided to all employees per the following procedure. All employees will be placed on a roster according to seniority by service computation date (SCD), with the most senior employee at the top of the roster. Each workday, the employee at the top of the roster will be given an adjudication day, and that employee's name goes to the bottom of the roster. If the top employee is not present that day, the next highest available employee will have an adjudication day and will then go to the bottom of the roster. The absent employee will remain at the top of the roster until present for the adjudication day. This rotation can be suspended for operational needs.
>
> Adjudication time provided under this procedure will be in addition to existing adjudication time procedures, such as the existing service representative rotation and the claims representatives' Wednesday duty rotation. Any changes to existing adjudication time procedures, arrangements, practices, and policies are subject to advance notice to the Union, consultation, and bargaining in accordance with 5 U.S.C. 71.

Petition at 1-2.

B. Meaning

In interpreting a disputed proposal, the Authority looks to its plain wording and any union statement of intent. If the union's explanation of the proposal is consistent with the proposal's plain wording, then the Authority adopts that explanation for the purpose of construing what the proposal means and, based on that meaning, deciding whether the proposal is within the duty to bargain. *See, e.g., NAGE, Local R1-144, Fed. Union of Scientists & Eng'rs*, 65 FLRA 552, 554 (2011) (*NAGE*). Where a proposal is silent as to a particular matter, the Authority will adopt a union's statement clarifying the matter if that statement is otherwise consistent with the wording of the proposal. *See, e.g., AFSCME, Local 2830*, 60 FLRA 671, 671 (2005) (*Local 2830*).

The parties agree that Proposal 1 would establish a rotational roster under which one employee per day would be selected to work an "adjudication day" during which the employee would work without interruption on adjudication "desk work" and not conduct interviews with members of the public. Record of Post-Petition Conference (Record) at 1-2. The parties also agree that employees would be listed on the roster in order of seniority, and that the "adjudication day" would be in addition to any "adjudication time" or "desk work" time that the employee is currently allotted. *Id.*

In addition, the Union explains, and the Agency does not dispute, that the statement in Proposal 1 that the "rotation can be suspended for operational needs[,]" Petition at 2, enables the Agency to "suspend the rotation for business reasons[,]" Record at 2. Although the Agency asserts that the wording of the proposal implies that such suspensions must be "in advance[,]" SOP at 10, nothing in the plain wording of "[t]his rotation can be suspended for operational needs[,]" Petition at 2, or the Union's statement of the proposal's meaning, prohibits the Agency from suspending the rotation for operational needs at any point during the work day. Accordingly, we interpret Proposal 1 as permitting the Agency to suspend the rotation for business reasons at any point during the work day.

Further, Proposal 1 requires the Agency to provide "all employees" with "[a]dditional adjudication time" by placing them on the roster. *Id.* at 1. In this regard, the Agency argues that "the only sensible way to interpret the [proposal] is by its clear statement that Proposal 1 applies to *all* employees." Reply at 2 (emphasis added). However, the Union explains that, for purposes of the roster described in Proposal 1, "all employees" means all of "those employees who have been assigned by the Agency to perform claims-related work, including adjudication of the claims." Response at 3. The Union's explanation is a reasonable interpretation of the proposal, as it is logical that the only employees who would be placed on a roster providing additional time for adjudication work would be those employees who perform that type of work. As the Union's explanation is consistent with the plain wording of the proposal, we adopt this interpretation. *See, e.g., NAGE*, 65 FLRA at 554; *Local 2830*, 60 FLRA at 671.

Finally, the Agency argues that the last sentence of Proposal 1 – "Any changes to existing adjudication time procedures, arrangements, practices, and policies are subject to advance notice to the Union, consultation, and bargaining in accordance with 5 U.S.C. 71[,]" Petition at 2 – expands the Agency's future bargaining obligation "well beyond the requirements of the Statute[,]" SOP at 10-11. However, the Union explains that the sentence is intended to mean only that "where the Agency is otherwise required to notify the Union under the Statute of changes to conditions of employment, it would not be relieved of that requirement by operation of [the last sentence of Proposal 1]." Response at 3. As the Union's explanation is consistent with the plain wording of the proposal, we interpret the pertinent sentence as a restatement – not an expansion – of the Agency's bargaining obligations under the Statute. *See, e.g., NAGE*, 65 FLRA at 554; *Local 2830*, 60 FLRA at 671.

C. Positions of the Parties

1. Agency

The Agency contends that Proposal 1 affects the Agency's right to assign work under § 7106(a)(2)(B) of the Statute.[1] SOP at 3. In this regard, the Agency asserts that all of the employees who would be included in the proposal's roster are responsible for both "interviewing the public and adjudicating the public's claims[.]" *Id.* Because "the idea of adjudication time is to provide uninterrupted desk time where the employee is not interrupted by having to take interviews or answer the telephone[,]" the Agency asserts that Proposal 1 prohibits the Agency from assigning interviewing duties to the employee selected to work an adjudication day pursuant to the roster without regard to the number of members of the public who are waiting to be interviewed. *Id.* at 4. For support, the Agency cites: *AFGE, Local 1164*, 54 FLRA 1327 (1998) (*Local 1164*); and *AFGE, Local 2879*, 49 FLRA 279 (1994) (*Local 2879*). *See* SOP at 4-7.

Additionally, the Agency argues that "Proposal 1 does not qualify as an arrangement" under § 7106(b)(3) of the Statute because "[t]he Union has not shown that Proposal 1 addresses adverse [e]ffects flowing from the exercise of a management right." *Id.* at 10. In this regard, the Agency contends that "employees . . . have sufficient time to perform adjudication duties[,]" *id.*, particularly if they take advantage of available flexible work schedules and adjudicate claims during hours when there is no interview work because the office is not open to the public, *id.* at 4. The Agency also contends that the "negligible" adverse effects of its assignment of work "impact different job positions and work assignments differently[,]" and, thus, the proposal's requirement that the Agency place all employees on the adjudication roster without consideration of the differences in "work units" and "job duties" demonstrates that Proposal 1 is not sufficiently tailored. *Id.* at 10.

1. Section 7106(a)(2)(B) of the Statute provides, in pertinent part, that "nothing . . . shall affect the authority of any management official of any agency . . . to assign work[.]"

In addition, the Agency asserts that Proposal 1 is not an "[a]ppropriate" arrangement under § 7106(b)(3), *id.* at 7 (emphasis omitted), because it "excessively interferes with the Agency's ability to get its job done[,]" *id.* at 10. In this regard, the Agency claims that "the unpredictable nature of day to day interviewing needs" and the fact that "removing employees from an office's interviewing schedule can lead to a serious break down in service to the public" demonstrate that Proposal 1's institution of mandatory non-interviewing time excessively interferes with management's rights. Reply at 2.

2. Union

The Union argues that Proposal 1 is an appropriate arrangement under § 7106(b)(3). Petition at 3; Response at 4-9. In support of its argument that Proposal 1 is an arrangement, the Union asserts that the Agency's exercise of its right to assign interview work during time that would otherwise be set aside for adjudication has resulted in employees having insufficient "uninterrupted" adjudication time. Response at 7. In this regard, the Union emphasizes that, currently, whenever the office is open to the public, employees are subject to being assigned interviews by management. *See id.* According to the Union, the Agency's work-assignment policies increase employees' "job stress," and adversely affect their "performance" and "performance appraisal[s]," and Proposal 1 would ameliorate these effects by assuring employees of "[at] least a day at a time to catch up on adjudication of claims, on a recurring basis[.]" Petition at 3. The Union also asserts that Proposal 1 is sufficiently tailored because it applies only to employees who both conduct interviews and adjudicate claims. Response at 6.

In determining whether Proposal 1 is an "[a]ppropriate" arrangement, *id.* at 6 (emphasis omitted), the Union argues that the Authority should apply the standard that it applied in *National Weather Service Employees Organization*, 64 FLRA 569, 571 (2010) (*NWS*) (Member Beck dissenting), and find that Proposal 1 would not "significantly hamper the ability of the agency to get its job done[,]" but, rather, would provide employees the "uninterrupted" time necessary to perform an "essential component" of the Agency's work, Response at 7. The Union further asserts that the proposal is an appropriate arrangement because it: (1) preserves the Agency's right to determine the duties of any position; (2) applies only to employees who have been assigned adjudication work by the Agency; and (3) does not limit the factors that the Agency may consider when determining whether an "operational need" to suspend the rotation exists. *Id.* at 8. Finally, the Union requests that the Authority sever the fourth, fifth, sixth, seventh, and/or eighth sentences of the proposal if the inclusion of any of those sentences renders Proposal 1 outside the duty to bargain. *Id.* at 2; Petition at 4; Record at 2.

D. Analysis and Conclusions

1. Proposal 1 affects management's right to assign work under § 7106(a)(2)(B) of the Statute.

Where a union does not respond to an agency argument that a proposal affects a management right under § 7106 of the Statute, the Authority finds that the union has conceded that the proposal affects the claimed management right. *See, e.g., AFGE, Local 1367*, 64 FLRA 869, 870 (2010) (*Local 1367*) (Member Beck dissenting in part). As the Union did not respond to the Agency's assertion that Proposal 1 affects management's right to assign work, the Union concedes that the proposal affects that right.

2. Proposal 1 is an appropriate arrangement under § 7106(b)(3) of the Statute.

In determining whether a proposal is an appropriate arrangement within the meaning of § 7106(b)(3) of the Statute, the Authority applies the analysis set forth in *NAGE, Local R14-87*, 21 FLRA 24 (1986) (*KANG*).[2] Under that analysis, the Authority first determines whether the proposal is intended to be an arrangement for employees adversely affected by the exercise of a management right. *Id.* at 31. To establish that a proposal is an arrangement, a union must identify the effects or reasonably foreseeable effects that flow from the exercise of management's rights and demonstrate how those effects are adverse. *Id.* Additionally, the claimed arrangement must be sufficiently tailored to compensate those employees suffering adverse effects attributable to the exercise of management's

2. In this regard, we note that the *NWS* standard cited by the Union was set forth by a reviewing court and applied by the Authority as the non-precedential "law of the case[,]" not adopted by the Authority as an alternative standard for determining whether a proposal constitutes an appropriate arrangement. *See NWS*, 64 FLRA at 571. We also note that, in decisions subsequent to *NWS*, the Authority has continued to apply the *KANG* standard, not the *NWS* standard. *See, e.g., AFGE, Council of Prison Locals 33*, 65 FLRA 142, 146 (2010).

rights. *AFGE, Local 1164*, 55 FLRA 999, 1001 (1999).

The Authority has recognized "employee stress" as an adverse effect, and has found that a proposal that sought to mitigate work-related stress resulting from management's exercise of its right to assign work was an arrangement. *See Local 1367*, 64 FLRA at 871. Although the Agency disputes employees' need for additional uninterrupted adjudication time, the Agency does not dispute that its current work-assignment policies have caused the adverse effects alleged by the Union with respect to employees' stress levels, performance, and performance appraisals. By providing one day of uninterrupted adjudication time on a rotating basis, Proposal 1 would reduce employees' stress and enable them to more efficiently perform the adjudication component of their job duties. In these circumstances, we find that the Union has demonstrated that Proposal 1 ameliorates the adverse effects of the Agency's exercise of its right to assign work. Accordingly, this case is distinguishable from the decisions cited by the Agency, in which the unions failed to either adequately identify the adverse effects flowing from the exercise of management's rights, or explain how the proposals would mitigate those effects. *See Local 1164*, 54 FLRA at 1333-34, 1342; *Local 2879*, 49 FLRA at 291, 295.

In addition, as discussed above, the employees who would be placed on Proposal 1's roster providing additional uninterrupted time for adjudication work are those whose job duties include both interviewing the public and adjudicating claims. *See* Response at 3, 6; SOP at 3. Accordingly, the proposal applies only to employees who potentially could suffer the adverse effects that result from insufficient uninterrupted adjudication time, and, thus, we find that Proposal 1 is sufficiently tailored. Consistent with the foregoing, we find that Proposal 1 is an arrangement.

If the Authority finds a proposal to be an arrangement, then the Authority will determine whether it is appropriate or whether it is inappropriate because it excessively interferes with management's rights. *KANG*, 21 FLRA at 31. In doing so, the Authority weighs the benefits afforded to employees under the arrangement against the intrusion on the exercise of management's rights. *Id.* at 31-33.

With respect to the benefits that Proposal 1 would afford employees, the Union argues that the proposal would mitigate the adverse effects of management's exercise of its right to assign interview work during time that would otherwise be spent adjudicating claims by affording employees "[at] least a day at a time to catch up on adjudication of claims, on a recurring basis[.]" Petition at 3. In this regard, the Union emphasizes that employees cannot effectively serve the mission of the Agency without sufficient uninterrupted adjudication time because "claims [are not] complete until [they are] adjudicated[.]" Response at 7. Thus, Proposal 1 would benefit employees by giving them additional uninterrupted adjudication time, which could reduce employee stress and result in better job performance and performance appraisals.

With respect to the burdens on management's right to assign work under § 7106(a)(2)(B) of the Statute, that right includes the right to determine the particular duties and work that will be assigned and the particular employees or positions to which the duties and work will be assigned. *See AFGE, Local 3509*, 46 FLRA 1590, 1598 (1993). That right also includes the right to determine the particular qualifications and skills needed to perform the work and to make a judgment as to whether a particular employee meets those qualifications. *Id.* The Agency asserts that the proposal "will expose the Agency to situations, with some frequency, where it will be unable to provide service to the public" because it "place[s] severe restrictions on the Agency's ability to deal with an interviewer shortage[,]" Reply at 3, 2, and that such shortages often arise unexpectedly due to heavy "walk-in traffic" and/or employees taking unanticipated sick or annual leave, SOP at 10. However, as discussed above, under Proposal 1, the Agency would retain the ability to suspend the rotation at any point in the work day for "operational needs[,]" Petition at 2, which are defined broadly as "business reasons[,]" Record at 2. In this regard, the flexibility retained by the Agency to deviate from the roster under Proposal 1 lessens the proposal's intrusion on the exercise of management's right to assign work. Further, although the Agency correctly argues that Proposal 1 would limit its ability to assign interviewing duties to the employee selected for an "adjudication day" according to the roster: (1) this limitation would be limited to one employee per day; (2) "the Agency would still decide . . . which employees are qualified to perform adjudication duty[,]" *id.* at 2; and (3) the employee selected by the roster would only be uninterrupted in performing work already assigned to him or her by the Agency, barring an "operational need[]" to suspend the roster, Petition at 2.

Weighing the benefits to employees against the burdens on the right to assign work, we find that the benefits to employees outweigh the relatively limited burdens on management's right to assign work. Therefore, we find that Proposal 1 is an appropriate arrangement within the meaning of § 7106(b)(3) of the Statute.[3]

With regard to the Agency's claim that the last sentence of Proposal 1 expands the Agency's future bargaining obligation "well beyond the requirements of the Statute[,]" SOP at 10-11, as stated previously, that sentence does not expand the Agency's bargaining obligations beyond those imposed by the Statute. Accordingly, to the extent that the Agency is claiming that Proposal 1 is outside the duty to bargain because it requires bargaining that the Statute does not require, this argument provides no basis for finding that Proposal 1 is outside the duty to bargain.

For the foregoing reasons, we find that Proposal 1 is within the duty to bargain.

III. Proposal 2

A. Wording

> In order to improve and maintain consistent service quality for both the Auburn and Rumford Service Areas and to mitigate the adverse impact (stress, backlogs, performance, etc.) on Auburn bargaining unit employees as a result of the increased workloads, Management will increase staff in the Auburn office by two bargaining unit positions. This increase will be in addition to any vacancies in Auburn existing prior to or during the negotiation of this Agreement.

Petition at 2.

B. Meaning

Proposal 2 refers to the Agency's decision to transfer work from one field office in Rumford, Maine (Rumford) to another field office in Auburn, Maine (Auburn). *See* SOP at 13-14. The parties agree that Proposal 2 would require the Agency to add two bargaining unit positions to Auburn by hiring or transferring two employees. Record at 2.

C. Positions of the Parties

1. Agency

The Agency contends that Proposal 2 affects the Agency's right to determine its organization under § 7106(a)(1) of the Statute,[4] its rights to hire, assign, and direct employees under § 7106(a)(2)(A),[5] and its right to determine the number of employees assigned to an organizational subdivision under § 7106(b)(1).[6] SOP at 14. In this regard, the Agency asserts that because the Agency is already "one person over its staffing allocation" for the region, *id*. at 13, Proposal 2 would require the Agency to reassign two employees from other offices in order to add two positions to Auburn, *id*. at 17, 18.

Additionally, the Agency argues that Proposal 2 is not an arrangement under § 7106(b)(3) of the Statute. *Id*. at 17-18. In this regard, the Agency contends that "[w]hatever . . . adverse [e]ffects there may [be], they [are] not related to an insufficiency of staff[.]" *Id*. at 17. The Agency also contends that the proposal's requirement that the Agency add two employees to "unspecified positions" is not sufficiently tailored. *Id*. at 18. Finally, the Agency asserts that Proposal 2 excessively interferes with management rights – and, thus, is not an "appropriate" arrangement – because it would require the Agency to reassign employees from other offices, thereby severely hampering the ability of the Agency to fulfill its mission in the offices being deprived of staff. *Id*.

2. Union

The Union argues that Proposal 2 is an appropriate arrangement under § 7106(b)(3). Petition at 3; Response at 9-12. In arguing that Proposal 2 is an "arrangement[,]" the Union contends that the Agency's exercise of its right to "consolidate

3. Because we find that Proposal 1 in its entirety constitutes an appropriate arrangement, it is unnecessary to address the Union's severance requests pertaining to this proposal.

4. Section 7106(a)(1) provides, in pertinent part, that "nothing . . . shall affect the authority of any management official of any agency . . . to determine the . . . organization . . . of the agency[.]"

5. Section 7106(a)(2)(A) provides, in pertinent part, that "nothing . . . shall affect the authority of any management official of any agency . . . to hire, assign, [and] direct . . . employees in the agency[.]"

6. Section 7106(b)(1) provides, in pertinent part, that "[n]othing . . . shall preclude any agency and any labor organization from negotiating . . . at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision[.]"

workloads and determine its organization" has resulted in "increased stress[,]" "increased difficulty in getting leave approved[,]" and "more difficulty in meeting performance expectations" for employees. Response at 10. The Union asserts that Proposal 2 would ameliorate these adverse effects "because there would be additional workers among whom to allocate the work, thereby easing the stress of performing more work, collectively; making the approval of leave requests more likely; and improving each employee's ability to achieve performance expectations." *Id.* at 10-11. The Union also asserts that Proposal 2 is sufficiently tailored because it applies specifically to "employees in the office to which the Agency has decided to transfer the Rumford workload[.]" *Id.* at 10. In determining whether Proposal 2 is an "appropriate" arrangement, the Union again argues that the Authority should apply the *NWS* standard, and asserts that Proposal 2 would not significantly hamper the ability of the Agency to process claims in Auburn because its provision of additional staff would "promote[] performance of the effective and efficient processing of claims by making more staff available to perform that work." *Id.* at 11 (citing *NWS*, 64 FLRA at 571). Finally, the Union requests that the Authority "sever sentence two from the first sentence of Proposal 2 – and thus address only sentence one – if the Authority determine[s] that the inclusion of sentence two would render Proposal 2 nonnegotiable." Record at 2.

D. Analysis and Conclusions

1. Proposal 2 affects management's right to determine its organization under § 7106(a)(1) of the Statute.

As discussed above, where a union does not respond to an agency argument that a proposal affects a management right under § 7106 of the Statute, the Authority finds that the union has conceded that the proposal affects the claimed management right. *See, e.g., Local 1367*, 64 FLRA at 870. As the Union did not respond to the Agency's assertion that Proposal 2 affects management's right to determine its organization, the Union concedes that the proposal affects that right.

2. Proposal 2 is not an appropriate arrangement under § 7106(b)(3) of the Statute.

As set forth above, in determining whether a proposal is an appropriate arrangement within the meaning of § 7106(b)(3) of the Statute, the Authority applies the analysis set forth in *KANG*, 21 FLRA at 31-33.[7] As relevant here, if the Authority finds the proposal to be an arrangement, then the Authority will determine whether it is appropriate or whether it is inappropriate because it excessively interferes with management's rights. *Id.* at 31. In doing so, the Authority weighs the benefits afforded to employees under the arrangement against the intrusion on the exercise of management's rights. *Id.* at 31-33. Applying this standard, the Authority has found that a proposal that "absolutely require[s]" that a management right be exercised in a particular manner, without "any provision for exceptions or the weighing of individual circumstances[,]" and without "allow[ing] [the agency to] assess[] the effect of the proposal's requirements on the [a]gency's ability to conduct its operations effectively and efficiently[,]" places a "significant burden on the [a]gency." *Overseas Educ. Ass'n*, 39 FLRA 153, 161 (1991) (*OEA*). Even assuming that Proposal 2 constitutes an arrangement, for the following reasons, we find that it is not appropriate because it excessively interferes with management's right to determine its organization.

With respect to the benefits that Proposal 2 would afford employees, the Union argues that the addition of two employees would mitigate the adverse effects of the workload transfer on employees' stress levels, performance, performance appraisals, and leave requests by providing more employees to share the burden of the increased workload, thereby "making the approval of leave requests more likely . . . and improving each employee's ability to achieve performance expectations." Response at 10-11.

With respect to the degree of intrusion on the exercise of management's right to determine its organization under § 7106(a)(1) of the Statute, this right encompasses the right to determine the administrative and functional structure of the agency, including the distribution of responsibilities. *See AFGE, Local 3807*, 54 FLRA 642, 647 (1998) (*Local 3807*). In other words, this right includes the authority to determine how an agency will structure itself to accomplish its mission and functions. *Id.* Here, the first sentence of Proposal 2 "absolutely require[s]" that a management right be exercised in a particular manner without "any provision for exceptions or the weighing of individual circumstances[,]" *OEA*, 39 FLRA at 161, thereby

7. As noted previously, the Authority does not apply *NWS*, 64 FLRA 569, to determine whether a proposal is an appropriate arrangement within the meaning of § 7106(b)(3) of the Statute.

substantially restricting the Agency's ability to structure itself to accomplish its mission and functions, *see Local 3807*, 54 FLRA at 647. In addition, the Agency asserts, and the Union does not dispute, that because of a fixed regional staffing allocation, Proposal 2 would require the Agency to reassign two employees from other offices in order to add two positions to Auburn. SOP at 17, 18. According to the Agency, this would result in the overstaffing of Auburn while "severely hamper[ing] the ability of the [A]gency to get its job done in the locations having to give up staff." *Id.* at 18. Balancing the parties' respective interests, we find that the benefits to employees do not outweigh the significant burdens that Proposal 2 places on management. Accordingly, we find that Proposal 2 excessively interferes with the Agency's right to determine its organization under § 7106(a)(1) and, thus, is not an appropriate arrangement within the meaning of § 7106(b)(3) of the Statute.

The Union asks that the Authority "sever sentence two from the first sentence of Proposal 2 – and thus address only sentence one – if the Authority determine[s] that the inclusion of sentence two would render Proposal 2 nonnegotiable." Record at 2. In other words, in the event that the Authority finds Proposal 2 is outside the duty to bargain on the basis of the proposal's second sentence, the Union asks the Authority to consider the negotiability of the proposal's first sentence standing alone. However, as discussed above, the first sentence's requirement that the Agency "increase staff in the Auburn office by two bargaining unit positions[,]" Petition at 2, without "any provision for exceptions or the weighing of individual circumstances[,]" *OEA*, 39 FLRA at 161, excessively interferes with the Agency's right to determine organization. Thus, we find that Proposal 2's first sentence, standing alone, is outside the duty to bargain without regard to the second sentence. Accordingly, even assuming, without deciding, that the Union has sufficiently supported its severance request, severing the second sentence would not provide a basis for finding the proposal within the duty to bargain. Therefore, it is unnecessary to determine whether severance would be appropriate.

Accordingly, we find that Proposal 2 is outside the duty to bargain.[8]

IV. Order

The Agency shall, upon request, or as otherwise agreed to by the parties, negotiate over Proposal 1.[9] The petition for review as to Proposal 2 is dismissed.

8. In view of this finding, it is unnecessary to address the Agency's remaining assertions regarding Proposal 2. *See, e.g., NAGE, Local R1-109*, 61 FLRA 593, 597 & n.3 (2006) (where proposal violated right to assign work under § 7106(a)(2)(B) of the Statute, Authority found it unnecessary to address agency's claims that proposal also violated its right to determine its budget and concerned tours of duty under § 7106(a)(1) and § 7106(b)(1), respectively).

9. In finding this proposal within the duty to bargain, we make no judgment as to its merits.