

73 FLRA No. 16

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
COUNCIL 270
(Union)

and

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
INTERIOR REGION 1,
NORTH ATLANTIC–APPALACHIAN
PHILADELPHIA, PENNSYLVANIA
(Agency)

0-NG-3599

DECISION AND ORDER
ON NEGOTIABILITY ISSUES

June 16, 2022

Before the Authority: Ernest DuBester, Chairman, and
Colleen Duffy Kiko and Susan Tsui Grundmann,
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 (Statute).¹ For the reasons that follow, we find that the Union filed unfair labor practice (ULP) charges that concern issues directly related to the Union's petition for review (petition). Accordingly, we dismiss the petition without prejudice.

¹ 5 U.S.C. § 7105(a)(2)(E).

² Pet., Attach. 1, Agency Submission to the Federal Service Impasses Panel (Allegation) at 2.

³ *Id.* at 19.

⁴ *Id.*

⁵ Statement of Position (Statement), Attach. 3, ULP charges at 1-3 (First ULP), 7-9 (Second ULP). The third ULP charge filed by the Union concerned information requests. *Id.* at 4-6.

⁶ 5 U.S.C. § 7116(a)(1), (5), (8).

⁷ On January 4, 2022, the Union filed a supplemental submission affirming that it had filed its petition and the attached documents. We do not consider the Union's supplemental submission because it failed to request leave to file that submission as required by § 2429.26 of the Authority's Regulations. 5 C.F.R. § 2429.26; *U.S. Dep't of VA, Veterans Benefits Admin.*, 71 FLRA

II. Background

The dispute in this case arose from negotiations of the parties' first collective-bargaining agreement for a new consolidated bargaining unit. When the parties' tentative agreement failed Union ratification, the Union notified the Agency that it "would like to return to the bargaining table and begin bargaining a new [c]ontract in its entirety."² The parties continued to bargain, and reached agreement on several articles. In November 2021, the Agency sought assistance from the Federal Service Impasses Panel (the Panel) to resolve the alleged dispute over the remaining articles, which included Article 18 – the proposal at issue here.³ In a November 29, 2021 filing with the Panel, the Agency asserted that portions of Article 18 are nonnegotiable.⁴ On December 2, 2021, the Union filed several ULP charges,⁵ two of which alleged that the Agency violated § 7116(a)(1), (5), and (8) of the Statute by failing to bargain in good faith.⁶ Then, on December 13, 2021, the Union filed the instant petition concerning the proposal.⁷

Subsequently, the Agency filed its statement of position (statement), and the Union filed a response to the Agency's statement (response).⁸ The Agency did not file a reply to the Union's response. An Authority representative conducted a post-petition conference with the parties pursuant to § 2424.23 of the Authority's Regulations.⁹

III. Analysis and Conclusion: The Authority's Regulations require dismissal of the petition.

In its statement, the Agency indicated that there are currently two pending ULP charges related to this case.¹⁰ Consequently, the Authority's Office of Case Intake and Publication issued an order on March 1, 2022 (order) directing the Union to show cause why the petition should not be dismissed because it may be directly related

1113, 1114 n.11 (2020) (Chairman Kiko dissenting on other grounds).

⁸ Based on the apparent date that the Union filed its response, the Authority's Office of Case Intake and Publication issued an order on March 31, 2022 directing the Union to show cause why the response should not be dismissed as untimely. March 31, 2022 Order to Show Cause at 1. Because we dismiss the Union's petition on the basis that it is "directly related" to the pending ULPs and consideration of the Union's response would not alter this decision, we need not resolve whether the response is timely. *See U.S. EPA*, 57 FLRA 648, 650 n.5 (2001) (declining to decide whether documents were properly before the Authority in light of the disposition of the case, which did not require reliance on the documents).

⁹ 5 C.F.R. § 2424.23.

¹⁰ Statement at 6.

to pending ULP charges.¹¹ In its response to the order, the Union concedes that it filed two ULP charges, but argues that they are not directly related to the petition because “the subject matter in Article 18 . . . was not explicitly mentioned in a ULP.”¹²

Section 2424.30(a) of the Authority’s Regulations provides, in relevant part, that where a union files a ULP charge and the charge concerns issues “directly related” to a petition for review in a negotiability case, the Authority will dismiss the petition for review, without prejudice to the union’s right to refile the petition after the resolution of the ULP charge.¹³

Here, the first ULP charge alleges that “[t]he Agency acted in bad faith when[it] failed to respond to post-ratification [U]nion proposals for the [parties’ agreement], alleging the E[xecutive Order (EO)] 14003[] did not require [it] to bargain permissive topics retroactively.”¹⁴ The second ULP charge states that “[t]he Agency acted in bad faith and in violation of the [S]tatute and EO 14003, when [it] failed to withdraw all Trump EOs[] influence and guidance [in] its proposals related to post-ratification bargaining.”¹⁵ In the second charge, the Union stated that “[a] simple solution would be for the Agency to return to the table and bargain.”¹⁶

The ULP charges therefore concern whether the Agency properly engaged in bargaining over the proposals at issue after the Union’s failed ratification vote. Although the charges do not expressly cite Article 18, the proposals referenced include Article 18.¹⁷ It follows that the pending ULP proceedings could resolve whether the Agency has an obligation to bargain over the proposal presented in the petition, thereby rendering issues raised in the Union’s negotiability appeal moot. Consequently, we find that the petition and the ULP charges are directly related.¹⁸

Accordingly, we dismiss the Union’s petition without prejudice to the Union’s right to refile the petition at a later time if it is able to meet the conditions governing the Authority’s review of negotiability issues.¹⁹

IV. Decision

We dismiss the petition without prejudice.

¹¹ Order at 1-2 (citing 5 C.F.R. § 2424.30(a)).

¹² Mar. 15, 2022 Resp. to Order at 2.

¹³ 5 C.F.R. § 2424.30(a).

¹⁴ First ULP at 2.

¹⁵ Second ULP at 2.

¹⁶ *Id.*

¹⁷ See Allegation at 3-4 (quoting Union email stating that Article 18 failed ratification), 19.

¹⁸ *NTEU*, 72 FLRA 469, 470-71 (2021) (Member Abbott concurring) (finding grievance involving ULP charge directly

related to proposals where grievance could render issue moot); *AFGE, Loc. 1502*, 70 FLRA 423, 424 (2018) (finding ULP charge directly related to proposals where ULP proceeding could render issue moot); *NTEU*, 69 FLRA 355, 356 (2016) (same).

¹⁹ The Union requested that several sections of the proposal be severed (Record at 1; Pet. at 9), but because we dismiss the Union’s petition on the basis that it is “directly related” to the foregoing pending ULPs, we need not resolve the Union’s severance request.