

Case-law Development

FLRA Covered By

U.S. Dept. of Justice, Federal Bureau of Prisons and AFGE Council of Prison Locals, 112 LRP 59342, 67 FLRA 69 (12/12/12). FLRA adopted as the “law of the case” the D.C. Circuit’s decision in *Federal Bureau of Prisons v. FLRA*, 654 F.3d (D.C. Cir 2011) (111 LRP 47977). Circuit Court had overturned the FLRA’s decision stating that it had “embraced an unreasonably narrow view” of what was covered by the contract.

FLRA Compelling Need

Basic Principle: The duty to bargain in good faith extends to matters that are the subject of agency rules and regulations only if the Authority has determined that no compelling need exists for the rule or regulation.

Distinguish government-wide rules and regulations. No duty to bargain over matters inconsistent with such government-wide regulations.

AFGE Local 1401 and Dept. of the Air Force, Joint Base Andrews, Maryland, 112 LRP 55794, 67 FLRA 34 (11/6/12). New AF regulation dealt with training, certification and physical fitness of police and security folks. Union indicated that it would be submitting proposals; Activity says it wouldn’t entertain any due to compelling need for regulation. FLRA says only specific proposals can be found inconsistent with agency regulation.

FLRA Election of Forum

Basic principle: Issues which can be raised under a negotiated grievance procedure may be raised under that procedure as an unfair labor practice but not both.

An employee can raise a matter under a statutory appeals procedure or a negotiated grievance procedure, but not both. Election is made when the employee files a timely notice of appeal or a written grievance, whichever occurs first.

AFGE Local 2096 and Department of the Air Force, 20th Space Control Squadron, Dahlgren Naval Support Facility, 112 LRP 54402, 67 FLRA 30 (10/31/12). Grievance not precluded by prior ULP. ULP alleged that discipline of union officer for violating a direct order was in conflict with the Statute; grievance alleged the same action was a violation of the contract.

National Association of Independent Labor Local 5 and DoD, Defense Logistics Agency, Red River Depot, TX, 113 LRP 110, 67 FLRA 85 (12/20/12). Union filed a negotiability appeal while an unfair labor practice charge regarding the same matter was pending. ULP settled and negotiability appeal went forward as it was no longer related to a pending ULP charge.

Union of Pension Employees and Pension Benefit Guaranty Corporation, 112 LRP 58676, 67 FLRA 63 (12/7/12). The employee initially appealed his denial of a within

grade increase to the MSPB alleging that it was discriminatory reprisal. Employee then filed a grievance on the denial. Arbitrator ruled the matter not arbitrable because employee elected to pursue statutory appeal. FLRA agrees.

FLRA Downsizing – Appropriate Arrangements

Department of the Air Force, Luke AFB v. FLRA, 112 LRP 29883, 680 F.3d 826 (6/1/12). D.C. Circuit upholds FLRA decision finding negotiable a union proposal requiring that management convert excepted service VRA employees to term status, with the terms to expire prior to implementation of the RIF Appropriate arrangement found – increasing availability of bump and retreat positions outweighs impact on management rights.

National Association of Independent Labor Local 5 and DoD, DLA, Red River Depot, TX, 113 LRP 110, 67 FLRA 85 (12/20/12). Union proposal that would require the agency to offer VSIP to employees who had previously been offered VSIP in an earlier buyout excessively interferes with management's right to retain employees. Management has right to limit offer to those in "excess" positions.

FLRA De Minimis

Department of Homeland Security, U.S. Customer and Border Protection and AFGE National Border Patrol Council Local 1929, 112 LRP 56764, 67 FLRA 46 (11/21/12). Employee was reassigned to administrative duties during pendency of an investigation into potential misconduct. Computer access was taken away without notice to the union. Although access not needed for work, and could compromise security, change was more than de minimis because system used for other info as well.

FLRA Authority to Settle

Social Security Administration, Office of Disability Adjudication and Review and Association of Administrative Law Judges, IFPTE, 112 LRP 37801, 66 FLRA 787 (7/17/12). Agency had policy delegating certain line managers as having settlement authority. Counsel assigned to litigate arbitration settled case – not designated managers. No ULP when agency refused to execute the agreement

Arbitration Exception Reminders

Arbitration Exceptions Abrogation test applies in reviewing management rights claims (and nothing gets found to totally abrogate). Raise it or lose it (raise everything, including arguments about appropriate remedy, before the arbitrator). If there are separate and independent bases supporting the award need to except to all of them

FSIP: Office Space

Dept. of Education, Region 7, Kansas City and Local 3892, AFGE, 113 LRP 19254, 13 FSIP 40 (5/1/13). Issues: # of private offices; size of cubicles; break rooms; sound masking system. Status quo from prior office space adopted for # of private offices (mgt. had wanted less; union more). Panel finds ER proposal to have private offices just for supervisors and managers to be unfair.

FSIP: Office Space

Dept. of the Treasury, Office of the Comptroller of the Currency, New York and NTEU, 13 FSIP 43 (5/7/13). Issues: Method for determining employee seating priority (definition of seniority); office selection priority for full time vs. part time. Management, as the party looking to change the status quo in the local office, did not meet burden of supporting need for change. Doesn't matter that almost all other offices followed Mgt. proposed process.

FSIP: Office Space

EPA Region 7, Kansas City and NTEU Chapter 294, 112 LRP 39702 and 112 LRP 39724, 12 FSIP 129 and 133 (8/3/12); EPA Region 7 and AFGE Local 907, 112 LRP 39724, 12 FSIP 130 and 134 (8/3/12). Panel ordered use of higher partitions in cubicles to maximize employee privacy. Change in status quo re: height justified by move to smaller office that results in more congestion and smaller cubicle size.

FSIP: Office Space

Department of Homeland Security, U.S. Coast Guard, Washington, D.C. and Local 3313, AFGE, 113 LRP 2096, 12 FSIP 157 (1/11/13). Panel orders that agency maintain shuttle service from the old locations to the new one during the transition period. Employees to meet with supervisors to discuss annual leave, credit hours, or making up time caused by increased commute. Panel orders union office equal in size to prior one. Selection of work stations to be within organizational work unit; after supervisors bargaining unit employees to choose prior to non-bargaining unit employees; SCD as tie breaker rather than grade and then SCD. Major relocation militates against maintenance of status quo. Members of carpools or vanpools with members at both locations to receive 45 minutes administrative leave.

FSIP: Awards

Federal Election Commission, Washington D.C. and NTEU, 113 LRP 3148, 12 FSIP 140 (1/16/13). Parties agreed to use of fact finder who made recommendations. Panel issues show cause why fact finder's recommendations should be changed. Fact finder recommended mandatory cash awards for various performance levels, for distinguished service awards, and for on-the-spot awards. Despite history of NOT ordering mandatory awards, Panel finds that management did not present sufficient reasons for not adopting fact finder's recommendations. Fact finder found that there was need for greater equity

between bargaining unit and non-bargaining unit awards. Long history of decisions to the contrary.

FSIP: Flexible and Compressed Work Schedules

Department of Justice, Bureau of Prisons, Mendota, CA and Local 1237, AFGE, 113 LRP 14895, 13 FSIP 11 (3/29/13). Panel reiterates that it is the agency's burden to **prove** why a compressed work schedule (4X10 in this instance) is likely to cause an adverse agency impact. Very tough standard to prove. Must show a reduction of productivity, diminished level of services, or increase in cost of operations.

Dept. of Labor, Washington, D.C. and Local, AFGE, 113 LRP 3153, 12 FSIP 104 (1/8/13). Union sought to change core hours of employees working flexible work schedule. Parties agreed to use of private fact finder. Panel issues show cause order. Union and agency fail to convince Panel to change fact finder's recommendation. Mostly status quo.

Dept. of the Air Force, 305th Air Mobility Wing, Joint Base McGuire-Dix-Lakehurst and Local 1778, AFGE, 112 LRP 50969, 12 FSIP 84 (10/9/12). Panel orders adoption of trial 4X10 work schedule with the parties to compile data during this period to determine whether the schedule should be made permanent. Data to be shared with negotiations after 6 months.

FSIP: Official Time

Dept. of Labor, Washington, D.C. and Local 12, AFGE, supra. The union sought to increase the number of employees on 100% official time. Fact finder recommended maintenance of the status quo. Union did not establish a justification to change the recommendation. Alleged similarly situated bargaining units were not real comparators.

Dept. of the Air Force, Hanscom AFB and Local 1384, NFFE, 113 LRP 14888, 13 FSIP 13 (4/4/13). Union proposed 100% official time for union president in new collective bargaining agreement. Panel found that changed circumstances don't support need and orders 50% official time (management proposal). 100% time for other base union not persuasive. Insufficient justification for changing status quo procedures for requesting official time.

FSIP: Dress Code

Dept. of Veterans Affairs, Quillen Medical Center, Tallent Outpatient Clinic and Local 2400. AFGE, 112 LRP 36721, 12 FSIP 66 (7/10/12). Despite management arguments regarding professional appearance, Panel finds insufficient basis to change the status quo permitting the wearing of jeans in the work place. Agreement regarding jeans was the result of a partnership council agreement. Jeans not ok if on travel to facility that bans them.