

CASE DIGEST: *U.S. Dep't of Homeland Sec., U.S. Customs & Border Protection, El Paso, Tex., 72 FLRA 7 (2021) (Member DuBester dissenting in part)*

With this case, we clarify the distinction between conditions of employment and working conditions. At issue in this case is whether an inspection memorandum issued by the Agency that required agents to refer specific individual to secondary inspection constituted a change in a condition of employment. On remand from the U.S. Court of Appeals for the District of Columbia Circuit, the Authority found that it was constrained to defer to the Arbitrator's factual findings that the inspection memo constituted a change to a condition of employment because the Agency did not challenge those findings in its arguments before us. Accordingly, the Authority upheld the award.

Member DuBester dissented in part, disagreeing with the majority's decision to narrowly define "working conditions" in the same flawed manner that was rejected by the D.C. Circuit. In Member DuBester's view, the majority failed to provide a plausible reason for discarding Authority precedent broadly defining this term in favor of a standard that will, in all likelihood, significantly restrict the scope of bargaining under 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.