72 FLRA No. 9

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
COUNCIL 119
(Union)

and

UNITED STATES
DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
(Agency)

0-NG-3479

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DECISION AND ORDER
ON NEGOTIABILITY ISSUE

January 22, 2021

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Before the Authority: Ernest DuBester, Chairman, and Colleen Duffy Kiko and James T. Abbott, Members
(Member Abbott dissenting in part)

I. Statement of the Case

In this case, we resolve several disputes that arose between the parties during negotiations for a new collective-bargaining agreement (CBA). 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] The petition for review (petition) involves three proposals. For the reasons that follow, we find that all three proposals are outside the duty to bargain. Accordingly, we dismiss the Union's petition.

II. Background

During the negotiations for a new CBA, the parties reached an agreement that was submitted to the Union's membership for a ratification vote. In early December 2019, the Union's membership voted against ratifying that agreement. Consequently, the parties began to renegotiate certain matters. On January 23, 2020, the Agency declared three of the Union's proposals to be nonnegotiable after the Union requested a written declaration of nonnegotiability. Thereafter, the Union filed the instant petition with the Authority on January 25, 2020. At issue in the petition are three proposals concerning the implementation of pilot programs, the compensability of loading/unloading files necessary to fulfill duty requirements, and details offered to bargaining-unit employees (BUEs).[2]

An Authority representative conducted a post-petition conference (PPC) with the parties pursuant to § 2424.23 of the Authority's Regulations.[3] The Agency subsequently filed a statement of position (statement) and the Union filed a response to the statement (response).

III. Proposal 1

A. Wording of Proposal 1

> Prior to implementation of a pilot program, the Agency will provide notice of proposed pilot program to the Union, at either the National or Local levels, of all pilot programs and their purpose(s) within their jurisdiction. The Agency will bargain with the Union to create a basic MOA template for the pilot program, including the start and end dates of the pilot program, and the initial impact on bargaining unit employees, and means for sharing information gathered. Bargaining over the implementation of a permanent change resulting from a pilot program will be pursuant to the procedures in section (a) above.[4]

B. Meaning of Proposal 1

The parties agreed that the Agency has historically been the sole initiator for pilot programs.[5] Furthermore, the Union explained that it often disagrees with the Agency's assessment of whether a pilot program affects a BUE's conditions of employment.[6] Therefore, the parties agreed that the Union initiated the proposal so that it would require the Agency to notify the Union of all proposed pilot programs and to commit to the effects of any proposed pilot program through MOA

[1] 5 U.S.C. § 7105(a)(2)(E).

[2] A detail is a temporary change of a job assignment for a specified time period.

[3] 5 C.F.R. § 2424.23.

[4] Pet. at 4; *see also* Record of PPC (Record) at 2 ("The parties agreed to amend the first sentence in Proposal 1, which would be included in Article 9 of the parties' eventual term agreement. As amended, the first sentence states, 'Prior to implementation of a pilot program, the Agency will provide notice of proposed pilot program to the Union, at either the National or Local levels, of all pilot programs and their purpose(s) within their jurisdiction.'").

[5] Record at 2.

[6] *Id.*

negotiations[7]—even if the pilot program has a de minimis effect on BUEs.[8]

With regard to the notice requirements of Proposal 1, the parties agreed that a pilot program affecting BUEs at only one local would require notice at the local level and that a pilot program affecting BUEs in more than one local would require notice at the national level.[9] Additionally, the parties agreed that the last sentence of the proposal imposed a separate bargaining obligation if the Agency decides to permanently adopt changes from a pilot program.[10] If the Agency permanently adopts any changes from a pilot program, then the parties agreed that the proposal requires the Agency to give notice of the permanent change and to bargain as required by Article 9, Section (a) of the parties' agreement.[11] However, the parties dispute the meaning of "notice" in the first sentence of the proposal.[12] The Union argued that the proposal requires the Agency to, at a minimum, notify the Union of the "start and end dates of the pilot program, and the initial impact on bargaining unit employees, and means for sharing information gathered."[13] The Agency argues that all notice requirements must only comply with Article 9, Section (a).[14]

Where the parties disagree over a proposal's meaning, or to resolve other meaning issues, the Authority looks first to the proposal's plain wording and the union's statement of intent.[15] If the union's explanation of the proposal's meaning comports 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.[16] Here, the plain wording of the proposal requires the Agency to notify and bargain with the Union over the "start and end dates of the pilot program, and the initial impact on bargaining unit employees, and means for sharing information gathered."[17] Contrary to the Agency's assertion, the first sentence of the proposal does not make any reference to the bargaining obligation in Article 9, Section (a) of the parties' agreement.[18] Therefore, we adopt the Union's statement of the meaning of the proposal to determine its negotiability.

C. Analysis and Conclusion

The Agency argues that Proposal 1 is non-negotiable because it requires bargaining over all pilot programs and is, therefore, contrary to management's right to assign and direct employees.[19] Additionally, the Agency asserts that the proposal is outside the duty to bargain because it requires the Agency to bargain over matters that do not affect a BUE's conditions of employment.[20] In particular, the Agency argues that the proposal requires it to notify the Union of all pilot programs and to substantively negotiate the implementation of any pilot program even if the program does not affect an employee's condition of employment.[21]

For the reasons below, resolving the Agency's management rights objection fully disposes of Proposal 1, so we need not address the Agency's remaining arguments.

The Authority has previously held that the right to assign work includes the right to determine the particular duties to be assigned, when work assignments will occur, and to whom or what positions the duties will be assigned.[22] The Union also does not dispute that

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[7] The parties agreed that "MOA" stands for "memorandum of agreement." *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.* at 3.
[11] *Id.* Article 9, Section (a) of the parties' agreement requires the Agency to give the Union notice of all changes that are more than de minimis. Statement, Attach. 1 at 1. In those instances, the Agency must notify the Union of the following information:

(A) The nature and scope of the proposed change;
(B) Identification of the employees impacted by the proposed change;
(C) A description of the change;
(D) An explanation of the initiating Party's plans for implementing this
change;
(E) An explanation of why the proposed change is necessary;
(F) The proposed implementation date;
(G) The initiating Party's Point of Contact.
(H) Any other relevant information that is necessary to facilitate
bargaining, as required by law.

Id.
[12] Record at 2.
[13] Pet. at 4; Record at 2.
[14] Record at 2.
[15] *AFGE, Nat'l Council of EEOC Locals No. 216*, 71 FLRA 603, 606 (2020) (*EEOC Locals*) (then-Member DuBester dissenting in part) (citing *NTEU*, 70 FLRA 691, 692 (2018)).
[16] *Id.*; *NAGE, Local R-109*, 66 FLRA 278, 278-79 (2011); *NAGE, Local R1-100*, 61 FLRA 480, 480-81 (2006) (*Local R1-00*) (Member Armendariz concurring).
[17] Record at 2; Pet. at 4; *see EEOC Locals*, 71 FLRA at 606 ("Further, the proposal's use of the word 'may' is consistent with the Union's statement of intent.").
[18] Record at 2; Pet. at 4.
[19] 5 U.S.C. § 7106(a)(2)(B).
[20] Statement at 10-12.
[21] *Id.*
[22] *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Big Spring, Tex.*, 70 FLRA 442, 443 (2018) (then-Member DuBester concurring);

Proposal 1 affects the Agency's right to assign work and direct employees.[23] Moreover, § 2424.25 of the Authority's Regulations requires the Union to set forth its arguments and authorities supporting any assertion that a proposal falls within an exception to management rights under § 7106(b).[24] Here, the Union does not make any argument that Proposal 1 falls within an exception to management rights under § 7106(b).[25] Accordingly, the Union fails to state how Proposal 1 is an exception to management's rights under § 7106(b), as required by § 2424.25.[26] Therefore, we dismiss the petition as to Proposal 1.[27]

IV. Proposal 2

A. Wording of Proposal 2

> (3) Transportation of work. Employees will be considered in duty status for the purpose of loading/unloading files and government equipment which they are required to transport to their alternate work site in order to fulfill duty requirements.[28]

B. Meaning of Proposal 2

In its petition, the Union stated that the proposal operates in the context of teleworking BUEs.[29] The Union further explained that the objective of the proposal is for BUEs—who are all nonexempt under the Fair Labor Standards Act (FLSA)—to obtain compensation for the activities described in Proposal 2.[30] Specifically, the Union explained that an "alternate work site" is the employee's home when they telework and that BUEs should receive compensation for transferring the necessary files and equipment to complete unit work at their alternative work site.[31] The Agency agreed with the Union's explanation of the meaning and operation of the proposal.[32]

C. Analysis and Conclusion

The Agency argues that the proposal is contrary to Office of Personnel Management (OPM) regulations that implement the FLSA[33] and the Portal-to-Portal Act in the federal sector.[34] Specifically, the Agency argues that Proposal 2 is contrary to 5 C.F.R. § 551.412 because preliminary and postliminary activities are not compensable.[35] Therefore, because the primary duties of BUEs is to adjudicate applications for immigration benefits, the Agency claims that the proposals directly conflict with 5 C.F.R. § 551.412.[36]

The Authority will find that a proposal is outside the duty to bargain when it is contrary to law.[37] Additionally, § 2424.32(a) of the Authority's regulations state that unions bear the "burden of raising and supporting arguments that the proposal or provision is within the duty to bargain . . . or not contrary to law . . . ."[38] Section 2424.32(c)(2) of the Authority's Regulations also provides that a "[f]ailure to respond to an argument or assertion raised by the other party will, where appropriate, be deemed a concession to such argument or assertion."[39] While the Union's petition asserts that BUEs should be compensated for transporting necessary files and equipment to their alternative work sites, it does not otherwise explain how Proposal 2 is in compliance with OPM regulations that implement the FLSA and the Portal-to-Portal Act.[40] Moreover, the Union's response does not address *any* of the arguments made by the

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NFFE, IAMAW, Fed. Dist. 1, Fed. Local 1998, 69 FLRA 586, 591-92 (2016) (Member Pizzella concurring in part and dissenting in part).

[23] *See* Pet. at 3-5; Resp. at 1-3.

[24] 5 C.F.R. § 2424.25(a).

[25] *See* Pet. at 3-5.

[26] *NTEU*, 71 FLRA 703, 708 (2020) (then-Member DuBester dissenting in part).

[27] *See AFGE, Local 997*, 66 FLRA 499, 500-01 (2012) (where the union did not "specifically argue" that its proposal fell within an exception to management's rights, the Authority found that the union "fail[ed] to state whether and why the proposal enforces an applicable law, as required by § 2424.25"); *see also AFGE, Local 2058*, 68 FLRA 676, 683-84 (2015) (Member Pizzella dissenting in part) (Authority does not consider whether a proposal that affects a management right constitutes an exception to management's rights under § 7106(b) if the union does not make that argument).

[28] Pet. at 5.

[29] *Id.*

[30] Record at 3-4.

[31] *Id.* at 4.

[32] *Id.*

[33] 29 U.S.C. §§ 201-219.

[34] *Id.* §§ 251-262.

[35] Statement at 13.

[36] *Id.* at 13-14. The Agency also argues that "to the extent the proposal would require compensation for time spent in travel between the office and alternative worksite, i.e., time spent commuting, it is contrary to 5 C.F.R. § 551.422(b)." *Id.* at 14.

[37] *See NTEU*, 71 FLRA 307, 309-10 (2019) (then-Member DuBester concurring); *AFGE, Local 2058*, 68 FLRA 676, 685-86 (2015) (Member Pizzella concurring in part and dissenting in part). While the Agency claims that there is a bargaining-obligation dispute with regard to Proposal 2, Statement at 13, the Agency only claims that the proposal is contrary to an OPM regulation. *Id.* at 13-14. Therefore, we will only resolve the Agency's negotiability dispute.

[38] 5 C.F.R. § 2424.32(a).

[39] *See id.* § 2424.32(c)(2); *Nat'l Nurses United*, 70 FLRA 306, 307 (2017).

[40] Pet. at 5.

Agency in its statement of position with regard to Proposal 2 and 5 C.F.R. § 551.412.[41]

The Authority has previously held that "when a union does not respond to a statement of position, and the petition for review does not contest certain assertions in the statement of position, the Authority will find that the union concedes those assertions . . . ."[42] Consequently, because the Union's petition does not address how Proposal 2 otherwise complies with applicable laws, the Union's failure to respond to the Agency's arguments—with regard to Proposal 2—resulted in a concession of the Agency's claims.[43] Therefore, we find that Proposal 2 is outside the duty to bargain.[44]

V. Proposal 3

A. Wording

(3) Employees will not be mandated to details which require work outside the scope of their position description or job classification.

(4) Details for USCIS employees outside of USCIS must be negotiated with the Union prior to opening the detail for volunteers or assignment.[45]

B. Severance

The Union requests to sever sentences (3) and (4) of Proposal 3 into two separate proposals.[46] Additionally, the Agency does not oppose the Union's severance request.[47] At the PPC, the Union explained that sentence (3) is intended to prevent the Agency from mandating details in the Agency that are outside of either a BUE's position description or job classification.[48] The Union also explained that sentence (4) was proposed so that the Agency would have to negotiate with the Union on all details that are outside the Agency.[49] Because the Union has established that both sentences of Proposal 3 operate independently from one another, we grant the Union's severance request.[50] Therefore, we will separately address sentence (3) as Proposal 3a and sentence (4) as Proposal 3b below.

C. Meaning

Regarding Proposal 3a, the parties agreed that it only applies to details within the Agency.[51] However, the parties disagreed about the meaning of the phrase "work outside the scope of [an employee's] position description or job classification."[52] The Union argues that the phrase means that the Agency may not mandate an employee to a detail unless the duties of that detailed position appear in *either* the employee's present position description or job classification.[53] According to the Agency, the phrase prohibits the Agency from mandating a detail unless the duties of a detailed position appear in *both* the employee's present position description and job classification.[54] In the instant case, the plain wording of the proposal states that the detail must not mandate work outside of an employee's present position description "*or*" job classification.[55] Therefore, because the Union's explanation of Proposal 3a's meaning comports with its plain wording, we adopt the Union's explanation of Proposal 3a.[56]

Regarding Proposal 3b, the parties agreed that it only applies to details regarding positions in other agencies. However, the parties disagreed about the meaning of the phrase "[d]etails . . . must be negotiated with the Union."[57] The Union argues that the phrase requires the Agency to negotiate the procedures for disclosing information to employees—to ensure that they are fully informed about potential adverse consequences of being detailed—and that the Agency must bargain over the selection procedures for the details.[58] The Agency argues that the phrase requires it to substantively bargain over the working conditions of positions to which employees would be detailed in other agencies.[59] When a

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[41] Resp. at 2-3.
[42] *Nat'l Nurses United*, 70 FLRA at 307 (alterations omitted).
[43] *Id.* Because we find that Proposal 2 is outside the duty to bargain, it is unnecessary to address the Agency's other arguments. *See Laborers Int'l Union of N. Am.*, 70 FLRA 392, 396 (2018) (then-Member DuBester dissenting); *NTEU*, 70 FLRA 100, 105 (2016).
[44] Member Abbott notes that the wording of Proposal 2 is susceptible to several interpretations. For example, this provision could be read as requiring compensation even when the employee is transporting multiple "files" on a flash drive. Pet. at 5. Therefore, he reiterates his request for the parties to carefully consider the meaning of this proposal when they return to the bargaining table.
[45] Pet. at 6.
[46] Record at 4-5; *see* 5 C.F.R. §§ 2424.22(c) (when a union requests severance in its petition for review, the union "must support its request with an explanation of how each severed portion of the proposal or provision may stand alone, and how such severed portion would operate"), 2424.25(d) (same requirements for severance requests in union's response).
[47] Record at 4; Statement at 17.
[48] Record at 4-5.
[49] *Id.* at 5.
[50] *EEOC Locals*, 71 FLRA at 608.
[51] Record at 4.
[52] *Id.*
[53] *Id.*
[54] *Id.* at 5.
[55] Pet. at 6 (emphasis added).
[56] *EEOC Locals*, 71 FLRA at 606-07.
[57] Record at 5.
[58] *Id.*
[59] *Id.*

union's statement is not consistent with the wording of the proposal the Authority does not adopt it for the purpose of determining whether the proposal is within the duty to bargain.[60] Here, Proposal 3b does not describe, in any detail, the bargaining and notice obligation that the Agency must satisfy prior to assigning BUEs to details outside the Agency.[61] While Proposal 3b certainly requires the Agency to bargain over the matters described by the Union, the general wording of Proposal 3b connotes a general bargaining obligation that is not limited to the Union's proposed meaning of Proposal 3b.[62] Therefore, we do not adopt the Union's explanation of Proposal 3b and we will rely on its plain wording.[63]

D. Analysis and Conclusion

The Agency argues that Proposal 3a excessively interferes with management's right to assign work and direct employees under § 7106(a)(2) of the Statute.[64] Specifically, the Agency argues that Proposal 3a is contrary to § 7106(a)(2) because it impermissibly limits the Agency's ability to assign employees to details that are outside an employee's position description or job classification.[65] The Agency also argues that it does not have a duty to bargain over Proposal 3b because it "seeks to bargain conditions of employment for employees who are on detail outside the bargaining unit" and the Agency.[66]

1. Proposal 3a affects management's right to assign work under § 7106(a)(2)(B) of the Statute.

The right to assign work under § 7106(a)(2)(B) of the Statute encompasses the right to determine the particular duties to be assigned, when work assignments will occur, and to whom or what positions the duties will be assigned.[67] Furthermore, the Authority has held that proposals which prevent management from assigning specific duties to particular individuals—when that individual's position description does not include the assigned duties—affects management's right to assign work under § 7106(a)(2)(B).[68] With regard to Proposal 3a, the Union acknowledges that the proposal precludes the Agency from mandating a BUE to a detail if any of the duties of the detailed position do not also appear in the BUE's present position description or job classification.[69] The proposal also precludes the Agency from mandating a BUE to a detail regardless of the circumstances which caused the Agency to mandate the detail.[70] Consequently, we find that Proposal 3a affects the Agency's right to assign work.[71] And as the Union makes no claim that Proposal 3a constitutes either a negotiable procedure under § 7106(b)(2) or an appropriate arrangement under § 7106(b)(3), we find that Proposal 3a is outside the duty to bargain.[72]

2. The Agency does not have a duty to bargain over conditions of employment that are outside the bargaining unit.

The Agency argues that Proposal 3b is not negotiable because the Agency does not have a duty to bargain over conditions of employment that are outside the bargaining-unit.[73] In response, the Union claims "that it is within its rights to negotiate the . . . working conditions of all employees detailed to positions outside of" the Agency.[74] The plain wording of Proposal 3b imposes a general bargaining obligation that requires the Agency to substantively bargain with the Union prior to announcing a detail that is outside the Agency.[75] Also, the Union concedes that Proposal 3b solely concerns details that are outside the Agency.[76] The Authority has

[60] *See AFGE, Local 12*, 60 FLRA 533, 537 (2004) (Member Armendariz concurring); *Ass'n of Civilian Technicians, N.Y. State Council*, 56 FLRA 444, 446-47 (2000).
[61] Pet. at 6.
[62] *Id.*
[63] *See supra* note 60.
[64] Statement at 16.
[65] *Id.*
[66] *Id.*
[67] *Local R1-100*, 61 FLRA at 481; *AFGE, Local 1345*, 48 FLRA 168, 174-75 (1993) (*Local 1345*).
[68] *Local R1-100*, 61 FLRA at 481; *Local 1345*, 48 FLRA at 175.
[69] Record at 4-5.
[70] *Id.*; *see Local 1345*, 48 FLRA at 174-75 (finding that "timing is an integral part of the right to assign work" that would be affected where the proposal would prohibit assigning any task not listed in the position description because "although it may be possible, in some situations, to effect amendments to position descriptions before completion of the disputed work is required, in other situations it may not be possible to do so").
[71] *Local R1-100*, 61 FLRA at 480 (The Authority found that even in circumstances which did not constitute medical emergencies, requiring the agency to amend [position descriptions] before assigning work could effectively prohibit such assignments, and therefore the proposal affected management's right to assign work under § 7106(a)(2)(B).); *Local 1345*, 48 FLRA at 175 ("Accordingly, even in circumstances which do not constitute medical emergencies, requiring the agency to amend position descriptions before assigning work could effectively prohibit such assignment. For all these reasons, we conclude, in this case, that the last sentence of Proposal 1 directly interferes with the Agency's right to assign work.").
[72] *See, e.g.*, *AFGE, Local 1164*, 65 FLRA 924, 926 (2011); *Local R1-100*, 61 FLRA at 481.
[73] Statement at 16.
[74] Resp. at 3.
[75] Pet. at 6.
[76] Record at 5. In this regard, the Union concedes that the detail positions – and the employees in those positions – are outside the bargaining unit. *See id.*

previously held that agencies do not have a duty to bargain over proposals that concern conditions of employment outside the bargaining unit.[77] Therefore, because Proposal 3b requires the Agency to bargain over the conditions of employment for BUEs while they are outside the bargaining-unit, we find that Proposal 3b is outside the duty to bargain.[78]

VI. Order

We dismiss the Union's petition.

[77] *AFGE, Local 1827*, 58 FLRA 344, 349 (2003) (Member Armendariz dissenting) (finding proposals outside the duty to bargain because "there is nothing in the proposals having a significant and material effect on the working conditions of unit employees *while they are unit employees*") (emphasis added).

[78] Chairman DuBester notes that the Union's response did not rebut the Agency's assertion that the plain wording of Proposal 3b would create a duty to bargain over the working conditions outside the bargaining unit. Therefore, he concurs that the Union has not demonstrated that Proposal 3b is negotiable.

Member Abbott, dissenting in part:

I join the majority in finding that there is not a duty to bargain over Proposal 1.[1] I also agree that Proposal 2 is outside the duty to bargain because the Union conceded the Agency's contrary to law objections.[2] However, I write separately because I do not agree with the majority's decision to consider the Union's severance request with regard to Proposal 3.

Former Member Pizzella previously noted that he was "troubled by how readily the Authority severs into separate parts provisions that are proposed as a whole, even when the severed parts no longer resemble the union's original proposal."[3] Consequently, the Authority should review proposals only as they were originally presented to the Agency.[4]

I reiterate, as I have pointed out before, that severance is not called for in the Federal Service Labor-Management Relations Statute (the Statute) and the proposing party controls the wording and scope of its proposal. If a party wants a proposal to be separated into different parts, then that party should make that decision *before* the proposal is presented to the Authority for a negotiability review.

Whether or not sections or sentences should be evaluated as a whole or independently is a decision for the proposing party to make when the proposal is made, not after. Thus, the language should be evaluated—whether it is negotiable or not negotiable—exactly as it is presented. I hope that the Authority's soon to be published negotiability regulations will not permit this procedure to continue.[5] Instead, I hope that the regulations will hold parties to the language that they proposed.

The Authority should not consider the Union's severance request. I would review the entirety of Proposal 3 because the Agency raises both a bargaining-obligation dispute and a negotiability dispute regarding Proposal 3.[6] Additionally, I would conclude that Proposal 3 is outside the duty to bargain because it excessively interferes with management's right to assign work and direct employees under § 7106(a)(2) of the Statute.[7] Therefore, while I concur that Proposal 3a is contrary to § 7106(a)(2)(A) of the Statute, I dissent from the majority's decision to separately consider sentence (4) as Proposal 3b.

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[1] Majority at 4-5.
[2] *Id.* at 5-6.
[3] *AFGE, Local 2058*, 68 FLRA 676, 688 (2015) (Separate Opinion of Member Pizzella); *see also AFGE, SSA Gen. Comm.*, 68 FLRA 407, 415 (2015) (*SSA Gen. Comm.*) (Dissenting Opinion of Member Pizzella) ("But without its ultimate section, the result is more akin to an existentialist play.").
[4] *See SSA Gen. Comm.*, 68 FLRA at 415 ("Rather than assume that the [u]nion intended the health-and-safety committee to take responsibility over requests that it can neither decide nor dispose of, I would find that the [u]nion's severance request fails to comply with the regulatory requirements.").
[5] *See* Negotiability Proceedings, 84 Fed. Reg. 70,439, 70,439-40 (proposed Dec. 23, 2019) (to be codified at 5 C.F.R. § 2424.22)
[6] 5 C.F.R. § 2424.2(d); *see* Majority at 9-10.
[7] 5 U.S.C. § 7106(a)(2).