

**CASE DIGEST:**     *NLRB*, 72 FLRA 80 (2021) (Member Abbott dissenting in part)

The Arbitrator found that a grievance concerning the Union's 2019 information request for the Agency's fiscal year (FY) 2019 budget materials was not barred by an earlier-filed unfair-labor-practice (ULP) charge concerning the Union's 2018 information request for the Agency's FY 2018 budget materials under 5 U.S.C. § 7116(d). The Agency filed exceptions to the award on nonfact and contrary-to-law grounds. The Authority found that the Agency did not demonstrate that the award was based on a nonfact. And because the grievance and the earlier-filed ULP charge did not arise from the same factual circumstances, the Authority found that the charge did not bar the grievance under § 7116(d). Accordingly, the Authority denied the exceptions.

Member Abbott dissented in part. Member Abbott agreed with the majority that the Agency's interlocutory exceptions warranted review because the Agency demonstrated extraordinary circumstances. Member Abbott also agreed that the award was not based on nonfacts. However, Member Abbott disagreed with the majority's contrary-to-law analysis and wrote separately to urge the Authority to further revise the standard for evaluating whether a grievance or ULP is barred by § 7116(d) of 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.