

CASE DIGEST: *NLRB*, 72 FLRA 226 (2021) (Member Abbott concurring;
Chairman DuBester dissenting in part)

The Arbitrator found that the Agency violated a contractual duty to bargain because it changed a condition of employment by terminating the health services contract which provided employees with access to health service units at their workplace. The Arbitrator also found that the Agency violated the parties' agreement by cancelling the health services contract.

The Authority found that the Agency did not have a contractual duty to bargain because the elimination of the health service units did not change a condition of employment. The Authority also found that the Arbitrator's finding of a separate contractual violation drew its essence from the parties' agreement because she properly used a past practice to find that the parties' agreement required the Agency to provide employees with access to the health service units. However, the Authority vacated the remedy requiring reimbursement of the employees' medical expenses because it did not reasonably and proportionally relate to the Agency's violation of the parties' agreement. Therefore, the Authority vacated the award, in part.

Member Abbott concurred, emphasizing that a health service unit is a convenience and that the Federal Service Labor-Management Relations Statute does not make such a convenience a condition of employment that must be funded by taxpayers.

Chairman DuBester dissented in part, finding that the Agency's provision of health care services to its employees affects their working conditions and that the remedy directed by the Arbitrator was not contrary to law. Moreover, he noted that the majority's application of the new standard for determining whether a change affects employees' working conditions improperly limits the scope of bargaining because the new standard lacks a plausible rationale.

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.