ORAL ARGUMENT WAS HELD ON SEPTEMBER 22, 2023

No. 22-1220

United States Court of Appeals

For the District of Columbia Circuit

FEDERAL EDUCATION ASSOCIATION STATESIDE REGION,

Petitioner,

v.

FEDERAL LABOR RELATIONS AUTHORITY,

Respondent.

On Appeal from the Federal Labor Relations Authority in No. FLRA-0-AR-5590

RESPONSE TO PETITIONER'S COMBINED PETITION FOR PANEL REHEARING AND REHEARING *EN BANC* ON BEHALF OF RESPONDENT

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Dated: August 26, 2024

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The petition for rehearing turns exclusively on whether the panel decision conflicts with *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2273 (2024), which overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Pet., at 1-4. The petition's limited scope leaves much of the panel's decision undisturbed. On the narrow question presented, even without *Chevron* deference, the Federal Labor Relations Authority ("FLRA" or "Authority") and the panel's construction is the correct statutory construction, which accords with the text, its context, and the statutory structure.

I. STATEMENT OF THE CASE

Petitioner focuses on the Authority's interpretation of "executed" in section 7114(c)(2) of The Federal Service Labor-Management Relations Statute ("Statute"), 5 U.S.C. §§ 7101–7135, in an order that set aside an arbitration award in Petitioner's favor. Petitioner disagreed with the FLRA's Federal Service Impasses Panel ("FSIP")'s resolution of a bargaining impasse and vaguely contended that Petitioner needs to bargain on additional issues. Pet., at 6. The Authority set aside an award that agreed with Petitioner, and the panel denied the petition for review.

In its petition for rehearing, Petitioner does not dispute the panel's conclusion that the Authority correctly determined the arbitrator "lacked authority to review the FSIP order." Pet. at 10; *Fed. Ed. Assn. Stateside Reg. v. Fed. Lab. Rel. Auth,* 104 F.4th 275, 283 (D. C. Cir. 2024) (*"FEA-SR*"). Indeed, "[t]he Statute

provides for no direct review of FSIP orders, whether by an arbitrator, the FLRA or a court." *Id.* The panel agreed with the Authority that, as a matter of fact-finding, no substantive issues remained for further action after FSIP resolved the parties' dispute. *Id.* at 286 ("the parties needed to take no further action"). The panel also ruled that the only way to collaterally attack the validity of FSIP's resolution is through an unfair labor practice charge against Petitioner, which did not happen. *Id.* at 285. Now, Petitioner does not (and cannot) challenge the FSIP-imposed resolution of the bargaining impasse and the fact that FSIP's resolution left no further action for the parties.

The petition thus raises only one argument: even though Petitioner cannot challenge FSIP's resolution and no substantive issues remain for negotiation, Petitioner should be able to "forestall[ ]" the implementation of a FSIP-ordered resolution just by *refusing* to sign an agreement with FSIP's imposed terms. *See* Pet., at 12; *FEA-SR,* 104 F.4th at 286. In furthering this argument, Petitioner conflates two points: (1) whether the parties' ground rules required the parties' signatures before implementing FSIP-imposed agreements, see Pet., at 14; and (2) whether the Statute's section 7114 required the parties' signatures to "execut[e]" FSIP-imposed agreements, Pet., at 12.

The former (1) does not involve statutory interpretation and thus has nothing to do with *Loper Bright*. There are ample reasons why the Authority and the panel

did not consider the ground rules dispositive as mandating signatures for FSIP-imposed agreements.[1] Nor is this case-specific question about a particular set of ground rules worthy of *en banc* review. *See U.S. v. Lynch*, 690 F.2d 213 & n.22 (D.C. Cir. 1982).

As to the statutory issue, Petitioner argues that section 7114(c)(2)'s reference to an "executed" agreement requires parties to sign all agreements, even ones imposed by FSIP, and any party can negate FSIP's resolution of an impasse by simply not signing. *See, e.g.,* Pet., at 12, 14-15. What "executed" requires is the only question of statutory construction that Petitioner argues is based on the *Chevron* framework. *See* Pet., at 10-11. The plain text and correct reading of section 7114(c)(2), however, do not specifically require the parties' *signatures* to execute an agreement. Thus, while reciting the *Chevron* standard, the panel actually described FLRA's interpretation as *correct*, not just reasonable or permissible. *FEA-SR.*, 104 F.4th at 283 ("Because the FLRA orders *correctly* interpret[s] . . . 7114, we deny FEA-SR's petition for review." (emphasis added)).

[1] *See FEA-SR*, 104 F.4th at 286 (recognizing that the Ground Rules do not apply to FSIP-imposed agreements, which are "executed" differently). Petitioner cited the Ground Rules (JA 131), which specifically require signatures *only* "once agreement is reached." *See* Pet. at 5,13; JA 131. The Ground Rules contemplate alternative procedures when parties *fail* to reach agreement by permitting parties to refer impasses to FSIP. (JA 129). An "impasse" occurs when parties are "deadlocked" without agreement. *Laborers Health & Welfare Tr. Fund For N. California v. Advanced Lightweight Concrete Co.*, 484 U.S. 539, 544 n.5 (1988) (citation omitted).

II. ARGUMENT

Given this backdrop, Petitioner's proposed construction of "executed" in section 7114(c)(2) fails as a matter of plain text, context, and statutory structure.

A. PETITIONER'S INTERPRETATION DOES NOT ACCORD WITH THE PLAIN TEXT

Section 7114(c)(2) states:

> The head of the agency shall approve the agreement within 30 days from the date the agreement is *executed* . . .

(emphasis added). Petitioner reads the term "executed" to mean signed, Pet., at 12. Petitioner then argues parties can withhold signatures to prevent the implementation of an agreement. *Id.* As a matter of plain text, Petitioner errs. "Execute" can mean "to bring (a legal document) into its final, legally enforceable form." *Black's Law Dictionary* ("Execute"); *see Nat'l Treasury Emps. Union v. FLRA*, 45 F.4th 121, 125 (D.C. Cir. 2022) (citing the same definition) ("a written agreement is executed when the parties complete the formalities necessary to bring the agreement into its final, legally enforceable form").[2] While parties signing a document is one formal way of bringing a legal document into its final, legally enforceable form, it is not the only way. Signatures are normally sufficient, but not necessary,

[2] This definition accords with FLRA's long-standing interpretation of the Statute. *E.g., U.S. Dep't of Def. Domestic Dependent Elementary & Secondary Schs. (DOD I)*, 72 F.L.R.A. 601, 604-05 (2021); *Pat. Office Pro. Ass'n*, 41 F.L.R.A. 795, 803 (1991).

conditions for executing documents. *See, e.g., Fredericks v. United States Dep't of the Interior*, No. 20-CV-2458 (KBJ), 2021 WL 2778575, at *10 (D.D.C. July 2, 2021) ("'[E]xecute' could mean '[t]o make (a legal document) valid by signing[,]' perhaps implying that [a party] must sign the lease document itself. . . . Or that term could mean 'to bring (a legal document) into its final, legally enforceable form[,]' such that no particular means of signing the lease is required.") (Jackson, J.).

In fact, Petitioner's own citations do not support Petitioner's narrow reading that "to execute" must mean "to sign." *See* Pet., at 12 (citing, *e.g.*, *Hous. Auth. of Dallas v. Killingsworth*, 331 S.W.3d 806, 811 (Tex. Ct. App. 2011)). *Housing Authority of Dallas*, 331 S.W.3d at 811, relies on *Mid–Continent Cas. Co. v. Global Enercom Mgmt., Inc.*, 323 S.W.3d 151, 157 (Tex. 2010) (per curiam), which states: "[T]he word 'execute' has several definitions and is not constrained by [the party's] argument that 'to execute' may only mean 'to sign.'"

Furthermore, section 7114(c)(2) was enacted as part of the Civil Service Reform Act in Title VII. *Dep't of Health & Hum. Servs. Fam. Support Admin. v. FLRA*, 920 F.2d 45, 47 (D.C. Cir. 1990) ("Title VII of the Civil Service Reform Act of 1978, commonly known as the Federal Service Labor-Management Relations Act"). In the Civil Service Reform Act, Title V, Congress set up another review by the head of the agency for reports related to the Office of the Special

Counsel, 5 U.S.C. § 1213(d), which states "[a]ny report required under subsection (c) shall be reviewed and *signed* by the head of the agency" (emphasis added). Congress, in the Civil Service Reform Act, understood how to impose a signature requirement. The plain text does ***not*** support Petitioner's argument that "executed" equates to a signature requirement. In accord with the panel's decision, the context and structure will further clarify what "execution" means for FSIP-imposed terms.

B. STATUTORY CONTEXT SUPPORTS FLRA AND PANEL'S CONSTRUCTION

The statutory context, as applied to the facts here, supports the panel and Authority's interpretation. The facts here involve FSIP-imposed terms in an agreement and a FSIP order that resolves an impasse, a situation Congress addressed in section 7119. 5 U.S.C. § 7119. While section 7114, including (c)(2), applies to all agreements under the Statute, section 7114 describes the general case for execution: when parties reach agreement without any impasse. *See, e.g.,* 5 U.S.C. § 7114(b)(5) ("*if agreement is reached*, to *execute* on the request of any party") (emphasis added). In the specific case when parties reach an "impasse," a situation opposite to agreement, the Statute applies a specific procedure laid out in section 7119, and FSIP may, among other things, "*take whatever action is necessary* and not inconsistent with this chapter to *resolve* the impasse." 5 U.S.C. § 7119(c)(5)(B)(iii) (emphasis added).

The term "resolve" commonly means to "settle" something "in a manner that carries with it at least some degree of certainty and finality." *E.g., Bernstein v. Bankert*, 733 F.3d 190, 211-12 (7th Cir. 2013) ("All of [the potential meanings of 'resolve'] seem to involve the concept of a conclusive determination of some kind."). "Implicit in these definitions [of 'resolve'] is an element of finality." *Asarco LLC v. Atl. Richfield Co.*, 866 F.3d 1108, 1122 (9th Cir. 2017). Thus, as the Authority and the panel both recognized, a "FSIP order execute[s] an agreement on the date of issuance because the parties need[] to take no further steps." *FEA-SR*, 104 F.4th at 286 (citing long-standing FLRA decisions); *see also Council of Prison Locs. v. Brewer,* 735 F.2d 1497, 1502 & n.8 (D.C. Cir. 1984) (noting FSIP brings negotiations to a "finality"). FSIP can thus "resolve" an impasse by imposing terms into an agreement that becomes its "final, legally enforceable form," and thus "executed."

FSIP's ability to "execute" agreements finds additional support in section 7119(c)(5)(C). That provision states: "Notice of any *final* action of [FSIP] under this section shall be promptly served upon the parties, and the action *shall be binding* on such parties during the term of the agreement, unless the parties agree otherwise."[3] (emphasis added). Whereas signatures may be a formality to "execute" an

[3] The phrase, "[u]nless parties agree otherwise[,]" modifies the last antecedent clause, "the term of the agreement." "[T]he 'rule of the last antecedent' . . . . provides that 'a limiting clause or phrase . . . should ordinarily be read as modifying

agreement into a "final" and "legally enforceable" form by signaling the parties' intent to be bound when they *agree*,[4] section 7119(c)(5)(C) provides the alternative mechanism to "execute" a FSIP-imposed agreement through "notice" of FSIP's "final" order that becomes "binding" on parties that *do not agree*.[5] Pursuant to section 7119(c)(5)(C), notice served on the parties of the FSIP decision thereby executes the "agreement" as "binding" on the parties in a "final, legally enforceable form." In short, fulfilling section 7119(c)(5)(C) renders the agreement "executed" for purposes of section 7114(c)(2); no signatures are statutorily required.

This interpretation accords with canons of statutory construction without surplusage. "A specific provision controls over one of more general application." *Gozlon-Peretz v. United States*, 498 U.S. 395, 407 (1991). The Authority and panel's interpretation relies on the specific provision in section 7119(c)(5)(C) for executing FSIP-imposed agreements, rather than the more general provisions in section 7114. *See FEA-SR,* 104 F.4th at 286 ("the date the FSIP issued its order").

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only the noun or phrase that it immediately follows.'" *Lockhart v. United States*, 577 U.S. 347, 351 (2016).

[4] *See, e.g.,* Williston on Contracts § 6:49 (4th ed.) ("In general, any writing signed by one party and orally assented to by the other will bind both parties[.]").

[5] *See AFGE Nat'l Veterans Affs. Council*, 39 F.L.R.A. 1055, 1057 (1991). "Binding" means "having legal force to impose an obligation," or, in other words, being legally enforceable. *Black's Law Dictionary* (12th ed. 2024) ("Binding"); *Benson v. High Rd. Operating, LLC,* No. 5:20-CV-00229, 2022 WL 264548, at *8 (N.D.W. Va. Jan. 27, 2022).

"Absent clearly expressed congressional intent to the contrary, it is [the court's] duty to harmonize the provisions and render each effective." *Adirondack Med. Ctr. v. Sebelius*, 740 F.3d 692, 698-99 (D.C. Cir. 2014). The Authority and panel's interpretation also reconciles sections 7114 and 7119. As the panel acknowledged, any other interpretation would render those sections at odds: "[i]f the Authority's interpretation of 'executed' were otherwise, a party could distort the impasse procedure by 'holding out its execution of the CBA in order to extract concessions it had already signed away' during negotiations." *FEA-SR*, 104 F.4th at 286 (describing other problems with Petitioner's interpretation in reconciling sections 7119 and 7114) (internal quotations and citations omitted).

C. PETITIONER'S INTERPRETATION UNDERMINES THE STATUTE'S STRUCTURE

Petitioner's interpretation undermines the Statute's structure. Petitioner would essentially permit it to "unilaterally impede execution of a finalized, FSIP-imposed agreement by refusing to sign" even if the Statute empowers FSIP to definitely "resolve" impasses. *See FEA-SR*, 104 F.4th at 286. Petitioner's interpretation essentially grants it a veto over the implementation of FSIP's resolution and an option to sustain the bargaining impasse, despite FSIP's resolution. "After the FSIP issued a decision, the [Petitioner] took the position that several other issues, as well as the conflict between the FSIP imposed provision and the language previously

agreed to, must be resolved through further bargaining, and declined to execute the new agreement." Pet., at 6.

Petitioner construes "executed" as essentially: "[e]xecution [*i.e.*, signatures] of a written agreement is necessary to ensure that, in fact, there is a 'meeting of the minds' on the terms of the agreement." Pet., at 13, 17. To suggest "executed" requires a "meeting of the minds," Pet., at 13, 17, as a "prerequisite to agency head review and implementation," Pet., at 10,[6] for FSIP-imposed resolutions of *impasses* makes no sense and is absurd.

"[T]he absurd results doctrine . . . embodies 'the long-standing rule that a statute [or rule] should not be construed to produce an absurd result,'" *Ctr. for Biological Diversity v. EPA*, 722 F.3d 401, 411 (D.C. Cir. 2013) (citation omitted); *see also Am. Tobacco Co. v. Patterson*, 456 U.S. 63, 71 (1982) ("Statutes should be interpreted to avoid. . . unreasonable results whenever possible."). This Court has already stated the exact opposite of Petitioner's understanding of the Statute. *See, e.g., Brewer*, 735 F.2d at 1500-01 ("[FSIP] serves as a mechanism of last resort in the speedy resolution of disputes, after negotiations have failed."); *Am. Fed'n of Gov't Emps., AFL-CIO, Loc. 1968 v. FLRA*, 691 F.2d 565, 569 n.26 (D.C. Cir. 1982) (noting FSIP is empowered to conduct "binding arbitration and imposed

[6] Agency heads can only review for "accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision)." 5 U.S.C. § 7114(c)(2).

settlement"); *U.S. Dep't of Just. Fed. Bureau of Prisons Fed. Corr. Complex Coleman, Fla. v. FLRA,* 737 F.3d 779, 787 (D.C. Cir. 2013) ("If the parties are still unable to reach settlement, the Impasses Panel may impose contract terms upon the parties."). *A fortiori,* a "meeting of the minds," with signatures, cannot be the gloss on "executed" for FSIP's resolution of impasses through FSIP-imposed agreements.

Petitioner's construction would completely undermine the longstanding understanding of FSIP's role and leads to an absurd result that FSIP-imposed resolutions of negotiation impasses actually require consent from both parties. Indeed, Petitioner's interpretation would undermine the structure of section 7119. Section 7119(c)(5)(A) describes situations where FSIP "recommend[s] to the parties procedures for the resolution of the impasse" or "assist[s] the parties in resolving the impasse." This subsection describes FSIP's role as conditional on the parties' assent to a resolution, either for the procedures or the substance of a resolution. In the next subsection, section 7119(c)(5)(B), Congress specifically envisioned a situation when "the parties do not arrive at a settlement after assistance by [FSIP] under subparagraph (A) of this paragraph, [so] [FSIP] may . . . take whatever action is necessary and not inconsistent with this chapter to resolve the impasse." *See, e.g., Brewer*, 735 F.2d at 1499 & n.1. In short, Congress envisioned that FSIP can *impose* actions without the parties' consent, including procedures to end disputes. *Id.*

Within this discretionary ambit, surely "whatever action is necessary" includes an imposition of a resolution that does not permit parties to veto and undo the resolution by not signing the FSIP-imposed resolution and order. Suggesting otherwise to require parties' assent (through signatures) fails to give full effect to section 7119(c)(5)(B) that is in harmony with section 7119(c)(5)(A).

To highlight the absurdity of Petitioner's interpretation, the only way to enforce a FSIP resolution under Petitioner's view is to sue the party refusing to sign as an unfair labor practice and compel a signing. *See, e.g.,* Pet., at 14 ("If a union lacks justification for executing the agreement, the employer can file an unfair labor practice charge."); Pet., at 15 (asserting that the agency cannot implement a FSIP-imposed term without signatures unless the union commits a statutory violation and the agency sues for a remedy). One of the Statute's goals is the "*Prevention* of unfair labor practices," section 7118 (emphasis added), not to incorporate unfair labor practices as a necessary step to effectuate section 7119 as Petitioner suggests.[7] Nor does Petitioner's view that impasses can continue indefinitely until a court adjudicates the unfair labor practice charge harmonize with this Court's repeated interpretation that section 7119 intends FSIP to provide "swift," "speedy," and "decisive" action without direct judicial review. *See, e.g., Brewer,* 735 F.2d at

[7] Unfair labor practice complaints may only be used for limited indirect review. *See Brewer*, 735 F.2d at 1498, 1502 & n.9; *U.S. Dep't of Just. Fed. Bureau of Prisons Fed*. 737 F.3d at 787 ("barring 'unusual circumstances'") (citation omitted).

1499-1500. Petitioner's interpretation is completely at odds with the statutory structure.

D. PETITIONER INCORRECTLY CHARACTERIZES AGENCY DEFERENCE

Petitioner's statutory interpretation is impermissible and the panel's decision is correct, regardless of the deference accorded the Authority's construction. But Petitioner is doubly incorrect in its analysis as to how courts should treat Authority decisions after *Loper Bright.* Petitioner argues that "legislative history" requires a uniquely searching review of the Authority's decisions, plucking a line from a single Representative. Pet., at 16 (citing 124 Cong. Rec. 38718 (1978)).

The Supreme Court and this Court have never endorsed Petitioner's view that somehow the Authority should be accorded any *less* deference than other federal agencies.[8] To the contrary, both have repeatedly stated the exact opposite due to the FLRA's specific role in federal labor relations.[9] The Statute delegates to the

[8] *See, e.g., Nat'l Fed'n of Fed. Emps., Loc. 1309 v. Dep't of Interior*, 526 U.S. 86, 99 (1999); *Bureau of Alcohol, Tobacco and Firearms v. FLRA*, 464 U.S. 89, 97 (1983); *Nat'l Treasury Emps. Union v. FLRA,* 848 F.2d 1273, 1278 (D.C. Cir. 1988); *Am. Fed'n of Gov't Emps., AFL-CIO v. FLRA*, 840 F.2d 947, 955 (D.C. Cir. 1988).

[9] In framing the questions presented, Petitioner recognizes the Supreme Court stated in *Bureau of Alcohol, Tobacco and Firearms*, 464 U.S. at 97, that "the Authority is entitled to considerable deference when it exercises its special function of applying the general provisions of the Act to the complexit[y] of federal labor relations" (internal quotations omitted) as a statement "relied upon by this Court dozens of times." *See* Pet., at 3-4 (questioning whether *Loper Bright* "effectively negated" this statement). Petitioner failed to acknowledge that *Loper Bright* cited the decision approvingly in describing how agency interpretations can be "informative

Authority the power, among others, to "conduct hearings and resolve complaints of unfair labor practices" and "resolve exceptions to arbitrator's awards[.]" 5 U.S.C. § 7105(a)(2)(G)-(H). Indeed, "[t]he Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter." 5 U.S.C. § 7105(a)(1). In carrying out these roles, the Authority encountered the problems that would occur with Petitioner's interpretation of the Statute. The panel recognized that, under Petitioner's interpretation, "a party could distort the impasse procedure by 'holding out its execution of the CBA in order to extract concessions it had already signed away' during negotiations" by citing a real example from the FLRA's experience. *FEA-SR*, 104 F.4th at 286 (citing *AFGE Loc. 1815*, 69 F.L.R.A. 309, 320 (2016)). These real examples of parties trying to undermine the FSIP process warrant rejecting Petitioner's interpretation, which would support such behavior.[10]

. . . 'to the extent it rests on factual premises within [the agency's] expertise.'" *See Loper Bright*, 144 S. Ct. at 2267 (quoting *Bureau of Alcohol, Tobacco and Firearms*, 464 U.S. at 98 n.8).

[10] *See AFGE Loc. 1815*, 69 F.L.R.A. at 320 (describing how the union wasted time by trying to renegotiate disputes resolved by FSIP); *Dep't of Def. Domestic Dependent Elementary & Secondary Sch. Fort Buchanan, Puerto Rico Respondent & Antilles Consol. Educ. Ass'n*, No. BN-CA-17-0170, 2017 WL 5402455, at *25 (Oct. 31, 2017) (describing agency's refusal to implement a FSIP-imposed resolution by unsuccessfully suggesting technical errors in execution).

In arguing for a unique FLRA standard for judicial review, Petitioner relies exclusively on a purported statement from then-Representative Clay. Pet. at 15-16 (quoting 124 Cong. Rec. 38718 (1978)). The first problem with the citation is that the statement is not by Representative Clay but Representative Ford. *See* 124 Cong. Rec. 38713 (1978) ("Statement of Mr. Ford of Michigan on Civil Service Reform Act of 1978"). Second, Petitioner pulled the quote from a statement that occurred *after* the Civil Service Reform Act's enactment. *See id.* ("Mr. Speaker, **yesterday**, I was present with the other managers on S. 2640, the Civil Service Reform Act of 1978, as the President signed the legislation into law." (emphasis added)). The Civil Service Reform Act was enacted on October 13, 1978, a day before the statement was made on October 14, 1978. *Compare* 124 Cong. Rec. 38718 (1978) *with* 92 Stat. 1111. "Post-enactment legislative history (a contradiction in terms) is not a legitimate tool of statutory interpretation." *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 242 (2011); *see also D.C. v. Heller*, 554 U.S. 570, 605 (2008) ("'[P]ostenactment legislative history,' . . . a deprecatory contradiction in terms, refers to statements of those who drafted or voted for the law that are made after its enactment and hence could have had no effect on the congressional vote.").

Petitioner also relies on only one side of the legislative history without describing the full picture of the pre-enactment legislative debate over judicial review. Other Representatives wanted minimal judicial review of Authority

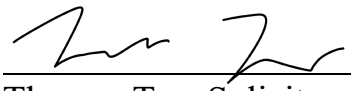
decisions. *E.g.,* 124 Cong. 29174 (Sept. 13, 1978) (Rep. Collins) (limiting review to constitutional questions). On the other extreme, a committee bill proposed to subject *all* FLRA decisions and orders to judicial review in any district court, which Representative Collins argued would cause "intolerable delays and unpredictable final decision by judges." *Id.* The resulting provision was a compromise with judicial review in the appellate courts and only for some orders and decisions; for example, there is no direct review of FSIP orders. *See Griffith v. Fed. Lab. Rels. Auth.*, 842 F.2d 487, 491 (D.C. Cir. 1988). The legislative history does not support Petitioner's request for special scrutiny of Authority decisions.

Petitioner offers an implausible interpretation that runs contrary to the text, context, and structure of the Statute. The panel and Authority endorsed a statutory construction that is not only the *best* and correct construction, but the only permissible one. *En banc* review is unnecessary.

III. CONCLUSION

The FLRA respectfully requests this Court deny the petition for rehearing.

Respectfully Submitted,

By: 

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CERTIFICATE OF COMPLIANCE

1. The Response to Petitioner's Combined Petition for Panel Rehearing and Rehearing *En Banc* on Behalf of Respondent complies with the type-volume limitations of Fed. R. App. R. 27(d)(2)(A) because this Brief contains 3,889 words.

2. The Response complies with the typeface and typestyle requirements of Fed. R. App. P. 32(a) because the Response was prepared in a proportionally spaced typeface using Microsoft Word Professional Plus 2021 in 14-point font in Times New Roman.

August 26, 2024

By: _____

Thomas Tso
Solicitor
Federal Labor Relations Authority

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of August, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I also certify that the foregoing document is being served on counsel of record and that service will be accomplished by the CM/ECF system.

By: _____

Thomas Tso
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