74 FLRA No. 22

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
COUNCIL 220
(Union)

and

SOCIAL SECURITY ADMINISTRATION
(Agency)

0-NG-3679

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DECISION AND ORDER
ON A NEGOTIABILITY ISSUE

November 22, 2024

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Before the Authority: Susan Tsui Grundmann, Chairman, and Colleen Duffy Kiko and Anne Wagner, Members

I. Statement of the Case

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 (the Statute).[1] The Union's petition for review (petition) involves one proposal that guarantees employees daily and weekly minimum amounts of adjudication time during hours when their offices are open to the public.

The Union concedes that the proposal affects the Agency's right to assign work under § 7106(a)(2)(B) of the Statute.[2] For the reasons that follow, we find that the Union does not establish the proposal is nevertheless negotiable under § 7106(b)(1), (2), or (3) of the Statute.[3] Accordingly, we find the proposal outside the duty to bargain, and we dismiss the petition.

II. Background

The Agency administers three Social Security Act programs, and supports other agencies to administer various programs under other laws. The Union represents employees who assist the public – and handle submissions or claims – in connection with those programs. For many years, the field offices where these employees work were closed to the public on Wednesday afternoons from noon to 4:00 p.m., although employees in those offices continued working during that time. Beginning in January 2020, the Agency made a change that required field offices to remain open to the public on Wednesday afternoons (changed hours). The parties bargained over proposals related to the changed hours. During bargaining, the Union expressed concern about the effects that the changed hours would have on "adjudication time," which – as further defined later in this decision – is time when employees address and process their workloads, lists, and backlogs.[4]

The Union proposed that the Agency guarantee employees daily and weekly minimum amounts of adjudication time under specific conditions. The Agency alleged the proposal was outside the duty to bargain, and the Union filed the petition. The Authority conducted a post-petition conference with the parties; the Agency filed a statement of position (statement); the Union filed a response (response); and the Agency filed a reply to the response (reply).

III. Preliminary Matter: We do not address the parties' timeliness or service disputes.

The Agency argues some of the Union's filings are untimely.[5] The Union disputes these arguments.[6] Further, the Agency argues the Union failed to properly serve the petition on the Agency head, so the petition should be dismissed.[7] Because our decision on the proposal's negotiability results in the petition's dismissal, we need not address these issues.[8]

[1] 5 U.S.C. § 7105(a)(2)(E).
[2] *Id.* § 7106(a)(2)(B).
[3] *Id.* § 7106(b)(1), (2), (3).
[4] *See* Union's Resp. to Agency's Statement of Position at 4-5; Agency's Reply to Union's Resp. Br. at 7-8.
[5] Statement Br. at 4-6; Reply Br. at 3-6.
[6] Resp. at 2-3.
[7] Reply Br. at 6-7.
[8] *See, e.g., AFGE, Council 270*, 73 FLRA 73, 73 n.8 (2022) (declining to address a filing's timeliness when doing so would not alter the Authority's ultimate disposition of the case).

IV. Proposal

A. Wording

> 1. The parties agree to a process for providing employees with adjudication time during hours that the office is open to the public. The process will be as follows: Each Bargaining Unit Employee will have one (1) four (4) hour block of adjudication time one (1) day a week, and between thirty (30) minutes and one (1) hour of adjudication time on each of the other days worked during the week. Adjudication time may be temporarily suspended, on an occasional basis, due to operational needs that are more urgent than the operational need for adjudication time. If an employee's adjudication time has to be suspended, management will provide the employee with an additional amount of time equal to the time lost within the employee's next four workdays. Management is not expected to make up time missed due to an employee's choice to take leave. Appointments will be scheduled so they can be taken, and generally completed, prior to the beginning of the employee's adjudication time.[9]

B. Meaning

The proposal's first and second sentences guarantee employees a weekly minimum amount of adjudication time during hours when their offices are open to the public.[10] The proposal does not address the time periods during which – although employees are working – the field offices are closed to the public.[11]

The parties agree "adjudication time" is "[t]ime that an employee is free from regularly assigned/rotational duties (e.g., appointments, reception, General Inquiry (GI) phone line answering, walk-in duties) in order to address and process their workloads, lists, and backlogs" (agreed-upon definition).[12] In addition, the Union clarifies that, within the agreed-upon definition, the phrase "workloads, lists, and backlogs" refers to already pending cases and workloads.[13] The Agency disagrees with the Union's clarification.[14] We find it unnecessary to resolve the dispute over the Union's clarification because our negotiability analysis relies on the agreed-upon definition alone, and even if the Union's clarification were accurate, it would not change our analysis.[15]

Under the proposal's third sentence, the Agency may "temporarily suspend[], on an occasional basis," an employee's adjudication time.[16] The parties agree that, for purposes of this sentence, "temporarily" and "occasional" have their "plain, dictionary meanings."[17] "Temporarily" means "during a limited time,"[18] and "occasional" means, as relevant here, "occurring . . . at irregular or infrequent intervals."[19] Thus, under the third sentence, the Agency may suspend adjudication time for a limited period, on an irregular or infrequent basis. However, the Agency may suspend adjudication time only if it determines, in its discretion, that "operational needs that are more urgent than the operational need for adjudication time" justify the suspension.[20] The Union could challenge any Agency decision to suspend adjudication time through informal and formal channels.[21]

Under the proposal's fourth sentence, if the Agency suspends an employee's adjudication time, then the Agency must reschedule that same amount of adjudication time within the employee's next four workdays.[22]

The proposal's final sentence requires the Agency to schedule appointments so that they would generally conclude before an employee's adjudication time is scheduled to begin.[23] For example, the Agency

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[9] Pet. at 5; *see* Record of Post-Pet. Conf. (Record) at 2 (parties agree petition accurately sets forth proposal's wording).
[10] Record at 2.
[11] *Id.*
[12] Statement Br. at 9-10 (setting forth this definition of "adjudication time"); *see* Resp. at 4 (stating the "Agency's understanding of the meaning of '[a]djudication time' . . . does not disagree with the Union's understanding of the meaning," but then adding clarifications beyond the agreed-upon definition).
[13] Resp. at 4.
[14] *See* Reply Br. at 8.
[15] *AFGE, Loc. 32*, 73 FLRA 464, 467 (2023) ("[W]here . . . parties dispute aspects of a proposal's meaning, the Authority will find it unnecessary to resolve those disputes if they do not affect the negotiability analysis.").
[16] Pet. at 5.
[17] Record at 2.
[18] *Temporarily*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/temporarily (last visited Nov. 21, 2024); *see also* Reply Br. at 13 (stating "temporarily" means "for a limited period of time" (internal quotation marks omitted)).
[19] *Occasional*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/occasional (last visited Nov. 21, 2024); *see also* Reply Br. at 13 (stating "occasional" means "occurring . . . infrequently and irregularly" (internal quotation marks omitted)).
[20] Pet. at 5; *see* Record at 2 (parties confirmed Agency has discretion to determine when "operational needs" justify suspending adjudication time).
[21] Record at 2.
[22] *Id.*
[23] *Id.* at 3.

would have to schedule a thirty-minute appointment at least thirty minutes before the employee's adjudication time.[24]

C. Analysis and Conclusions

1. The Union concedes that the proposal affects the right to assign work under § 7106(a)(2)(B).

The Union does not dispute the Agency's assertion that the proposal affects management's right to assign work under § 7106(a)(2)(B) of the Statute.[25] Accordingly, we find that the Union concedes the proposal's effect on the right to assign work.[26]

2. The Union does not show the proposal is negotiable under § 7106(b)(1) or (b)(2).

The Union contends the proposal is electively negotiable under § 7106(b)(1) of the Statute[27] and mandatorily negotiable under § 7106(b)(2) of the Statute.[28] However, the Union neither cites any authority to support its contentions, nor explains how the proposal meets the requirements of § 7106(b)(1) or (2). Accordingly, we reject these contentions as bare assertions.[29]

3. Even assuming the proposal is an arrangement, it is not appropriate under § 7106(b)(3).

The Union asserts the proposal is negotiable as an appropriate arrangement under § 7106(b)(3) of the Statute.[30] To determine whether a proposal is within the duty to bargain under § 7106(b)(3), the Authority applies the analysis set out in *NAGE, Local R14-87* (*KANG*).[31] First, the Authority determines whether a proposal is intended to be an "arrangement" for employees adversely affected by the exercise of a management right.[32] If a proposal is an arrangement, then the Authority determines whether it is "appropriate" because it does not excessively interfere with the relevant management right.[33] The Authority makes this determination by weighing "the competing practical needs of employees and managers" to ascertain whether the proposal's benefit to employees outweighs the proposal's burden on the exercise of the management right involved.[34]

The parties dispute whether the proposal is an arrangement.[35] Even assuming the proposal is an arrangement, we find, for the following reasons, that it is not appropriate because it excessively interferes with the Agency's right to assign work.[36]

The Union argues employees will enjoy several benefits from the proposal. Employees would have a "guarantee[d]" minimum amount of adjudication time each week while field offices are open to the public,[37] and employees could "plan for, [and] count on," that adjudication time.[38] In addition, employees would have a four-hour block of uninterrupted adjudication time each

[24] *Id.*

[25] Statement Br. at 10 ("[T]he proposal limits management's right to assign work . . . ."); Resp. at 16 ("The Union is not alleging that our proposal does not interfere with management's right to assign work . . . .").

[26] *NATCA*, 66 FLRA 213, 216 (2011) ("[W]hen a union does not dispute that a proposal affects the exercise of management's rights, the Authority will find that the union concedes that the proposal affects the asserted rights.").

[27] *E.g.*, Resp. at 20; 5 U.S.C. § 7106(b)(1) ("Nothing in [§ 7106] shall preclude any agency and any labor organization from negotiating . . . at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work . . . .").

[28] *E.g.*, Resp. at 16; 5 U.S.C. § 7106(b)(2) ("Nothing in [§ 7106] shall preclude any agency and any labor organization from negotiating . . . procedures which management officials of the agency will observe in exercising any authority under [§ 7106] . . . .").

[29] *NAGE, Loc. R1-134*, 73 FLRA 637, 643 (2023) (citing *NFFE, Loc. 1450, IAMAW*, 70 FLRA 975, 977 (2018) (*Loc. 1450*); *AFGE, Loc. 723*, 66 FLRA 639, 644 (2012)) (rejecting unsupported § 7106(b) claim as bare assertion).

[30] Resp. at 13-14, 16, 18, 20; 5 U.S.C. § 7106(b)(3) ("Nothing in [§ 7106] shall preclude any agency and any labor organization from negotiating . . . appropriate arrangements for employees adversely affected by the exercise of any authority under [§ 7106] by such management officials.").

[31] 21 FLRA 24 (1986).

[32] *NAIL, Loc. 5*, 67 FLRA 85, 87 (2012) (quoting *KANG*, 21 FLRA at 31).

[33] *Id.* (citing *KANG*, 21 FLRA at 31-33).

[34] *Id.* (quoting *KANG*, 21 FLRA at 31-32).

[35] *E.g.*, Resp. at 12-15 (arguing proposal would ameliorate adverse effects from exercise of management's rights); Reply Br. at 14 (arguing proposal is not tailored to apply only to employees who will suffer adverse effects from exercise of management's rights).

[36] *E.g.*, *Loc. 1450*, 70 FLRA at 976 & n.12 (citing *AFGE, Loc. 1164*, 66 FLRA 112, 117 (2011)) (even assuming proposal constituted arrangement, it was not appropriate because it excessively interfered with exercise of management right).

[37] Record at 2.

[38] Resp. at 12.

week for focused efforts to address and process their workloads, lists, and backlogs.[39] Further, the Agency would have to schedule employees' appointments to conclude before adjudication time.[40] Thus, completing appointments would not detract from adjudication time.[41] Moreover, according to the Union, employees would be: (1) less likely to suffer lower performance evaluations, as guaranteed adjudication time would allow employees to better satisfy management's expectations for timeliness and accuracy;[42] (2) less stressed and anxious from losing the adjudication time that was available when field offices were closed to the public on Wednesday afternoons;[43] and (3) less likely to need to work through their breaks and lunches, as well as less likely to need to work credit hours or overtime, in order to keep up with their adjudication-time tasks.[44]

Finally, the Union argues the proposal is analogous to one that the Authority found to be an appropriate arrangement in *AFGE, Local 1164* (*Local 1164*).[45] In that case, the union proposed a rotational process for granting additional adjudication time to employees who performed adjudication work in one office.[46] Under the *Local 1164* proposal, the agency would place those employees' names on a roster according to their seniority.[47] Each workday, the employee whose name appeared at the top of the roster would receive one day of adjudication time, after which that employee's name would move to the bottom of the roster.[48] This process would continue indefinitely, but the agency could "suspend the rotation for business reasons at any point during the work day."[49] The Authority found the *Local 1164* proposal was within the duty to bargain under § 7106(b)(3).[50]

The Agency argues the proposal in this case excessively interferes with its right to assign work for many reasons. Initially, because the Agency could meet its obligation to assign adjudication time under the proposal only by scheduling such time when an office is open to the public,[51] the Agency argues the proposal restricts the tasks the Agency may assign employees, in two ways.

The first set of restrictions operates when offices are open to the public. On these occasions, the Agency may not assign regular or rotational duties during those periods when the proposal requires the Agency to assign employees adjudication time.[52] In other words, the proposal imposes a new prohibition on directing employees to perform regular or rotational duties that interrupt adjudication time, unless the Agency suspends adjudication time.[53] Further, even on the days when employees do not have four hours of adjudication time, the Agency must still schedule appointments early enough that they are completed in time to provide employees thirty minutes to one hour of adjudication time each day before their shifts end.[54]

The second set of restrictions operates when offices are closed to the public. Because the Agency must assign every bargaining-unit employee between six and eight hours of adjudication time per week while offices are open to the public, the Agency will sometimes have to avoid assigning adjudication time while offices are closed to the public.[55] If the Agency were to assign adjudication time when offices were closed to the public – in addition to adjudication time under the proposal – then employees could receive more adjudication time than their workloads, lists, and backlogs merited.[56] In such a situation, employees would not be addressing some of their non-adjudication-time tasks efficiently because their workdays would consist of more dedicated adjudication time than their adjudication-time tasks warranted.[57]

Additionally, the Agency asserts it never previously guaranteed a specific amount of adjudication time on a daily or weekly basis, and the proposal would now require it to do so.[58] Although the Agency may suspend adjudication time, the proposal tightly circumscribes such suspensions.[59] As noted previously, the suspensions may only be for a limited period, on an

[39] *See id.* at 14 (asserting proposal would "provide employees with much[-]needed adjudication time for them to process their . . . cases, lists, and backlogs").
[40] Record at 3; Resp. at 10 (reiterating benefits to employees from proposal's last sentence).
[41] Record at 3; Resp. at 10 (explaining proposal's final sentence was important because, "[i]f a [ninety]-minute appointment was scheduled [fifteen] minutes before the employee's adjudication time was scheduled to begin, [then] the first [seventy-five] minutes of the employee's adjudication time really wouldn't qualify as adjudication time").
[42] Resp. at 14.
[43] *Id.*
[44] *Id.*
[45] 65 FLRA 836, 836, 838-40 (2011); Resp. at 13-14 (relying on *Local 1164*), 17-18 (asserting the "operational needs" wording in the current proposal is the same as in the *Local 1164* proposal).
[46] *Local 1164*, 65 FLRA at 836.
[47] *Id.*
[48] *Id.*
[49] *Id.* at 837.
[50] *Id.* at 840.
[51] Record at 2.
[52] Reply Br. at 8.
[53] *Id.* at 8-9.
[54] *See id.* at 18.
[55] *See id.* at 9-10.
[56] *See id.*
[57] *See id.*
[58] *See* Statement Br. at 14, 16-17; Reply Br. at 13.
[59] *See* Reply Br. at 13.

irregular or infrequent basis.[60] Even when suspensions occur, they do not lessen an employee's overall amount of guaranteed adjudication time because the Agency must reschedule the suspended adjudication time within four workdays.[61] The Agency contends the rescheduling requirement is especially onerous. Specifically, even if an office received a sudden, large influx of customers for several consecutive days that required suspending adjudication time – owing to, for example, a migration surge or natural disaster – the Agency would accrue ever-increasing adjudication-time obligations to all employees.[62] Further, considering that the Agency must eventually reschedule all suspended adjudication time by the proposal's deadline – while still meeting its obligation to schedule new adjudication time each workday – the Agency would eventually have to refuse service to customers, in order to comply with the proposal.[63] Besides those constraints, suspensions must be justified by operational needs that are "more urgent" than the need for adjudication time.[64]

Moreover, the Agency disputes the Union's argument that employees formerly enjoyed a predictable, uninterrupted block of four hours of adjudication time when field offices closed to the public on Wednesday afternoons.[65] The Agency asserts that managers sometimes scheduled trainings and staff meetings during the Wednesday office closures,[66] and the Union does not dispute this assertion.[67] The Agency also states, and the Union confirms,[68] that a longstanding Agency policy guarantees service to any customers in line when an office closes.[69] As such, when an office closed on Wednesday afternoon, adjudication time would not be available "until the lobby was cleared."[70] Even if the Agency accepted the Union's assertion that the changed hours cost employees four hours of adjudication time,[71] the Agency notes the proposal would provide employees with a six- to eight-hour guarantee of adjudication time – far beyond what the employees allegedly lost.[72]

As for the asserted benefits of reduced stress and fairer performance evaluations, the Agency contends the parties' collective-bargaining agreement already addresses these issues, so a new proposal is unnecessary.[73] In particular, the agreement contains a section dedicated to addressing employee stress,[74] and an article on performance management and evaluations that includes procedures for considering any circumstances beyond an employee's control.[75]

Finally, the Agency argues that – for all the reasons it set forth to illustrate that the proposal excessively interferes with management's right to assign work – the proposal is "much more burdensome to management" than the proposal in *Local 1164*.[76]

Considering both parties' arguments, we find that, although the proposal's benefits to employees are substantial, the burdens on management are weightier still.

We find employees would benefit from guaranteed adjudication time to process their workloads, lists, and backlogs. Employees could plan to have at least some adjudication time every workday, as well as a four-hour block of time every week. Even if the Agency temporarily suspended that time, employees would regain it through mandatory rescheduling. Further, the proposal would guarantee employees significantly more

[60] *See* Part IV.B. above.
[61] Reply Br. at 13-15.
[62] *See id.* at 16-17.
[63] *Id.*
[64] Pet. at 5 ("more urgent"); Reply Br. at 13 (arguing this requirement excessively interferes with management's right to assign work).
[65] Statement Br. at 10-11.
[66] *Id.* at 11. We do not consider Exhibit 3 of the reply – which the Agency offers as evidence that other activities besides adjudication time occurred when offices closed on Wednesday afternoons, Reply Br. at 11 – because the Agency could have offered that evidence with its statement, but did not do so. *See* 5 C.F.R. § 2424.26(c) ("You must limit your reply to matters that the exclusive representative raised *for the first time in its response*." (emphasis added)); Pet. at 5 (asserting changed hours "resulted in taking away four hours of uninterrupted adjudication time per week"). We note that, on September 12, 2023, the Authority revised its negotiability Regulations. Negotiability Proceedings, 88 Fed. Reg. 62,445, 62,445 (Sept. 12, 2023). The revised Regulations "appl[y] to all petitions for review filed on or after October 12, 2023." *Id.* Because the Union filed its petition before that date, we apply the prior Regulations throughout this decision. However, the regulatory revisions did not affect the pertinent wording of § 2424.26(c).
[67] Although the Union inaccurately claims the loss of four hours of uninterrupted adjudication time was "without question," Resp. at 7, the Union does not contest the Agency's specific assertion that managers scheduled trainings and staff meetings when offices were closed on Wednesday afternoons, Statement Br. at 11.
[68] Resp. at 7.
[69] Statement Br. at 11.
[70] *Id.* In an example the Union provides, clearing the lobby could take as long as ninety minutes after an office technically closed to the public. *See* Resp. at 7.
[71] The Union broadly asserts the Agency failed to offer arguments to support the position that employees did not lose "four hours of uninterrupted adjudication time per week." Resp. at 7. Contrary to the Union's assertion, the Agency offered supporting arguments, which are set forth above.
[72] Reply Br. at 23.
[73] *Id.* at 24.
[74] *Id.*; *see* Statement, Ex. 15, Collective-Bargaining Agreement Art. 9, § 15 ("Stress").
[75] Reply Br. at 25; *see* Statement, Ex. 14, Collective-Bargaining Agreement Art. 21 ("Performance").
[76] Reply Br. at 30; *see also id.* at 27-28 (identifying specific differences between the proposal here and the one in *Local 1164*).

adjudication time than they allegedly enjoyed before – an increase of between 50% and 100% more time. In this regard, if the Agency assigns employees a four-hour block plus thirty minutes every day for four days, then employees would receive six hours of adjudication time, which is 50% more than the four hours they allegedly lost due to the changed hours. If the Agency assigns employees a four-hour block plus one hour every day for four days, then employees would receive eight hours of adjudication time, which is 100% more than four hours. Moreover, to the extent that any employees are working through their breaks or lunches, or are working overtime or credit hours, in order to complete their adjudication-time tasks, we agree the proposal would lessen the need for those actions. At the same time, the parties' agreement already addresses reducing employee stress and considering circumstances beyond an employees' control when evaluating performance. To some extent, these existing agreement provisions limit the benefits that the proposal would provide.[77] In this respect, the current dispute is unlike *Local 1164*, where the agency did not contest the union's assertion that its proposal would benefit employees by reducing stress and raising performance evaluations.[78]

There are several other salient differences between the dispute in *Local 1164* and the dispute in this case. First, in *Local 1164*, only one employee per day enjoyed guaranteed adjudication time.[79] In this case, absent a suspension, every employee is guaranteed adjudication time every day. Second, the *Local 1164* proposal allowed management to suspend adjudication time for as long as "operational needs" required, and the agency there had the discretion to determine the relative importance of any "operational needs."[80] By contrast, in this case, management may suspend adjudication time for only a limited period, on an irregular or infrequent basis.[81] Further, the Agency may rely on operational needs to suspend adjudication time only when those needs are "more urgent than the operational need for adjudication time"[82] – a limitation with no counterpart in the *Local 1164* proposal. Third, when the agency in *Local 1164* suspended adjudication time, the proposal there did not require the agency to reschedule suspended time at all.[83] Under the Union's proposal, rather than affording the Agency discretion to suspend adjudication time indefinitely, the Agency must reschedule the exact amount of previously suspended adjudication time by a particular date, without exception.[84] Fourth, the Union's proposal requires the Agency to schedule all "adjudication time" (within the meaning of the proposal) while an office is open to the public,[85] whereas the *Local 1164* proposal did not contain any similar restriction.[86] Fifth, the *Local 1164* proposal did not address appointment-scheduling requirements, unlike the proposal here. For these reasons, we find the Union's proposal interferes with management's right to assign work to a much greater degree than the *Local 1164* proposal did.

Further, in decisions addressing other proposals that would require agencies, under certain conditions, to set aside work time to allow employees to engage in particular activities, the Authority has emphasized the importance of management's retention of discretion regarding whether to devote work time to the prescribed activities. For instance, in *NAGE, Local R12-105*,[87] the Authority found that a proposal that would have required management to provide three hours of work time for employees to engage in physical-fitness activities excessively interfered with management's right to assign work because, among other reasons, the "proposal d[id] not allow exceptions."[88]

By contrast, in *Overseas Education Ass'n*,[89] the Authority addressed a proposal that would have required the agency to "make every reasonable effort to provide a reasonable amount of preparation time for each impacted unit employee during the employee's instructional day."[90] The Authority found the proposal was an appropriate arrangement primarily because it did "not absolutely require the [a]gency to accomplish the specified action, but only require[d] reasonable efforts. This qualification would allow exceptions to the limitations otherwise placed on management's right to assign work where, under the circumstances, exceptions are necessary and reasonable."[91]

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[77] *See, e.g.*, *Nat'l Weather Serv. Emps. Org. (MEBA/NMU)*, 46 FLRA 49, 55-56 (1992) (where proposal's asserted benefit was maintaining employees' occupational certifications by compelling agency to detail employees to offices offering certification-related services, Authority considered – in its § 7106(b)(3) balancing analysis – that employees had other means to maintain certifications).

[78] 65 FLRA at 839 ("Although the [a]gency disputes employees' need for additional uninterrupted adjudication time, the [a]gency does not dispute that its current work-assignment policies have caused the adverse effects alleged by the [u]nion with respect to employees' stress levels, performance, and performance appraisals.").

[79] *Id.* at 836 ("[O]ne employee per day would be selected to work an 'adjudication day' . . . .").

[80] *See id.* at 837.

[81] *See* Part IV.B. above.

[82] Record at 2.

[83] *See Local 1164*, 65 FLRA at 836-37.

[84] Record at 2.

[85] *Id.*

[86] *See Local 1164*, 65 FLRA at 836-37.

[87] 37 FLRA 462 (1990).

[88] *Id.* at 467 ("Thus, the [a]gency would be prevented from denying technicians duty time for physical fitness activities, for example, to respond to staffing shortages.").

[89] 39 FLRA 153 (1991).

[90] *Id.* at 165.

[91] *Id.* at 169.

In sum, the proposal here – by mandating that the Agency reschedule suspended adjudication time at some point (even after the Agency determined it could not assign that time on the prescribed day due to operational needs) – burdens the right to assign work in a manner found material in not only *Local 1164*, but also *NAGE, Local R12-105* and *Overseas Education Ass'n*.

The Union's proposal imposes additional burdens as well. We consider that the proposal guarantees employees more adjudication time than even the Union alleges the employees lost, and this increase in adjudication time likewise increases the burden on management's right to assign work because it expands the period during which management may not assign employees regularly assigned/rotational duties. We find persuasive the Agency's explanation of why, even when offices were closed on Wednesday afternoons, employees could not have reasonably expected to have four hours of uninterrupted adjudication time every week. In particular, the Union does not dispute that managers scheduled trainings and staff meetings on Wednesday afternoons.[92] Additionally, the Union confirms that the Agency required employees to continue serving all customers in the lobby when an office technically closed at midday Wednesday.[93] Moreover, the Union does not contest the Agency's assertion that, even when employees had adjudication time, managers were able to assign them other unanticipated tasks that might temporarily interrupt their adjudication time.[94] The proposal would prohibit that flexible assignment practice for at least six hours, for each bargaining-unit employee, every week.

Next, we recognize that the proposal would prevent the Agency from providing uninterrupted services after a sudden, large influx of customers that necessitated a multiple-day suspension of adjudication time, inasmuch as the proposal would require the Agency to reschedule all suspended adjudication time by a certain date, while also continuing to schedule new adjudication time each workday.[95]

Last, we must acknowledge that a requirement to assign every bargaining-unit employee uninterrupted adjudication time every workday inherently limits the Agency's ability to assign adjudication time on the days, at the times, and in the amounts that best balance the employees' need for adjudication time with the other competing needs of the Agency's offices.

For all of the foregoing reasons, we find the proposal excessively interferes with the Agency's right to assign work under § 7106(a)(2)(B).[96] As such, the proposal is not an appropriate arrangement under § 7106(b)(3). We have also found the proposal is not negotiable under § 7106(b)(1) or (2).[97] Therefore, the proposal is outside the duty to bargain.

V. Order

We dismiss the petition.

[92] Statement Br. at 11.
[93] *See* Resp. at 7.
[94] Reply Br. at 8-9.
[95] *See id.* at 16-17.
[96] *See, e.g., Antilles Consol. Educ. Ass'n*, 61 FLRA 327, 330 (2005) (Chairman Cabaniss dissenting in part on other grounds) ("By limiting the assignment of work to one specific task, we conclude, on balance, that the proposal excessively interferes with the right to assign work.").
[97] As these conclusions are sufficient to find the proposal outside the duty to bargain, we do not address the Agency's other arguments for finding the proposal nonnegotiable – such as alleged effects on other management rights. *E.g.*, Statement Br. at 18 (citing three management rights); *see AFGE, Loc. 1938*, 66 FLRA 1038, 1040 & n.* (2012) (where one argument provided basis for finding proposal outside duty to bargain, Authority did not address other arguments).