

CASE DIGEST: *U.S. DOD Educ. Activity, Alexandria, Va.*, 73 FLRA 398 (2022)
(Member Kiko dissenting)

In this case, the Authority considered the Union’s motion for reconsideration of the Authority’s decision in *U.S. DOD Education Activity, Alexandria, Va. (DODEA)*, 71 FLRA 765 (2020) (then-Member DuBester dissenting). In *DODEA*, the Authority had concluded that the Arbitrator’s procedural-arbitrability determination did not represent a plausible interpretation of the parties’ agreement, granted the Agency’s essence exception, and vacated the award. However, the Authority granted the Union’s motion for reconsideration because of the U.S. Court of Appeals for the District of Columbia Circuit’s intervening decision in *National Weather Service Employees Organization v. FLRA (NWSEO)*, 966 F.3d 875 (D.C. Cir. 2020). The Authority concluded that under the standard as articulated by the court in *NWSEO*, the Arbitrator’s procedural-arbitrability determination drew its essence from the parties’ agreement. The Authority considered the merits of the Agency’s additional exceptions that were not considered in *DODEA*. The Authority dismissed or denied the Agency’s remaining exceptions.

Member Kiko dissented. She found that the Union’s motion for reconsideration did not establish extraordinary circumstances to warrant reconsideration of *DODEA*, and she disagreed with the majority that *NWSEO* controlled the outcome in this case. Further, she criticized the majority’s analysis as being inconsistent with Authority precedent that anticipatory contractual breaches cannot serve as the bases for unfair-labor-practice claims.

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.