

A Review of Federal Labor Relations Authority (FLRA) Case Law as it pertains to the Right of Management to Assign Work

Preface

This guide provides a synopsis of various FLRA decisions addressing the negotiability of issues associated with the right of management to assign work. The guide is designed as a reference to identify issues that may be encountered in the classification process and which may require consultation with Labor Management Relations Specialists. The guide references specific cases that can be accessed locally and researched should you require further clarification. In all cases, the personnelist performing the classification action must be aware of local negotiated agreements that impact on this functional area. This is not a policy document.

The Federal Labor Relations Authority (FLRA) rules on many areas. Other subjects directly related to position classification are **Position Descriptions, Position Classification, Job Duties, Job Assignments, Right to Determine Organization**, etc. These will be addressed in the future. We hope this information will create a greater sensitivity to Labor Relations issues which impact on the classification function.

Introduction

The FLRA consists of three independent, bi-partisan, full-time members. The organization consists of seven regional offices with the headquarters in Washington, DC. It establishes policies and guidelines for Federal sector labor relations. Its interpretations and decisions are contained in FLRA case law. The major responsibilities of the FLRA are to determine bargaining unit appropriateness, supervise/conduct elections, determine union eligibility for national consultation rights, determine negotiability questions, resolve unfair labor practice (ULP) complaints, and resolve exceptions to arbitration awards.

Right to Assign Work

Title 5, USC, Section 7106(a) specifies various rights reserved to agency management. Section 7106(b) (2), however, provides that the enumeration of the specified management rights does not preclude the negotiation of procedures which management will observe in exercising those rights.

Title 5, USC, Section 7106(a) is known as "Management Rights" which are to make basic management decisions regarding mission, budget, organizations, security, emergencies; and to take personnel actions to hire, direct, layoff, and retain employees, remove, reduce in grade or pay, take disciplinary actions, assign work, contract out, and promote. These items generally are nonnegotiable.

Section 7106(b), known as "Permissive Topics," states that nothing in this section shall preclude any agency and any labor organization from negotiating (1) at the election of the agency, on the

numbers, types and grades of employees or positions assigned to any organization subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work; (2) procedures which management officials of the agency will observe in exercising any authority under this section; or (3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials. These items generally are negotiable.

Over the past few years many FLRA decisions have been made regarding the negotiability of certain subjects that come under management's right to assign work.

The selected cases compiled indicate what the FLRA has determined to be negotiable and nonnegotiable. In determining negotiability questions, the FLRA reviews proposals solely as to whether or not they violate a law, rule, or regulation. The FLRA does not review the merits of a proposal. If the FLRA determines a proposal conflicts or violates a law, rule, or regulation, it will declare that proposal nonnegotiable and the agency is not required to bargain over that proposal.

Representative Cases

Assignment of other duties:

The Authority found that management's right "to assign work" was not violated by a union proposal which would require agency management to amend an employee's position description if it decided to require the performance, on a regular basis, of additional duties not reasonable related to the duties set forth in the position description. See *AFGE, LOCAL 1999 vs. AAFES*, 2 FLRA No. 16 (29Nov79).

A proposal to prohibit management from assigning grounds maintenance or other non-job related duties to technicians without their consent and, apparently, whether or not such duties were reflected in the employees' position descriptions was found non-negotiable. It also found that management's right "to assign work" was not violated by the union's proposal that would require the agency to amend an employee's position description if it decided to require, on a regular basis, additional duties not reasonable related to the duties in the position description. *ACT vs. ARMY, NGB, GEORGIA*, 2 FLRA No. 75 (25Jan80).

A nonnegotiable proposal would have construed "all other duties as assigned" in such a way as to prohibit the assignment of lower-graded duties to employees on a regular basis. A negotiable proposal would provide that employees not be required to recruit unless their position descriptions included recruiting. *SEIU VS ARMY, TAG*, 27 FLRA No. 86 (26Jun87).

A proposal which would prevent management from assigning "additional or incidental duties" to bargaining unit employees except in "special circumstances" or in emergency situations is nonnegotiable. *NYSNA VS VA*, 14 FLRA No. 62 (3May84).

Assignment of workload:

A proposal which would require the agency to refrain from assigning cases to employees when the caseload is unmanageable is nonnegotiable because it imposes a condition precedent to the assignment of cases to certain employees. *NTEU vs. TREASURY, IRS*, 6 FLRA No. 97

(4Sep81).

A proposal which would require the agency to discontinue or reassign the work involved after 35 days, regardless of whether it had been completed, is nonnegotiable because it prevents the agency from exercising its discretion to assign work under 7106(a)(2)(B). *AFGE VS JUSTICE*, 8 FLRA No. 75 (6Apr82).

Assignment of duties to certain employees:

A proposal that would require agency managers to recognize that work usually assigned to the bargaining unit should be performed by qualified employees in that unit is not within the duty to bargain. A proposal that would preclude the assignment of duties, normally performed by employees in the bargaining unit, to supervisors except for specific purposes, is not within the duty to bargain. However, a proposal which requires the agency to "make every reasonable effort" to insure that work normally assigned to bargaining unit members is performed by properly qualified employees in the unit, is within the duty to bargain. *NAATS vs. DOT, FAA*, 6 FLRA No. 106 (18Sep81).

A proposal that would specify which personnel within the agency will provide instructions to, and evaluate the work performance of, bargaining unit employees is nonnegotiable as it is inconsistent with management's right to assign work. *NFFE, LOCAL 1497 VS AIR FORCE*, 9 FLRA No. 20 (23Jun82).

A proposal which would require the agency to assign work to personnel familiar with code requirements and qualified for the class of work to be performed is nonnegotiable. A proposal which would require that all work normally performed by employees within certain job classifications would under no circumstances be assigned outside the unit is nonnegotiable. *IBEW, LOCAL 570 VS ARMY*, 14 FLRA No. 68 (8May84).

Proposals which would prevent management from assigning any work to military personnel which historically has been performed by bargaining unit employees, and would prevent management from assigning such work to supervisors except for instruction and research work or where an emergency exists, are nonnegotiable. *IAM, LOCAL 2424 VS ARMY*, 8 FLRA No. 117 (20May82).

A proposal is nonnegotiable which provides that management will avoid assigning janitorial or other custodial duties to certain types of employees. *NFFE, LOCAL 943 VS AIR FORCE*, 19 FLRA No. 113 (23Aug85). A nonnegotiable proposal would have provided that employees be required to move only their personal property during a move. *AFGE, LOCAL 644 VS LABOR, MSHA*, 27 FLRA No. 51 (29May87).

Assignment of duties outside classification:

A proposal which would prohibit the assignment of duties performed by employees in one classification series from being performed by employees in any other classification series is nonnegotiable. *NAGI, UNIT #2 vs. NAVY*, 8 FLRA No. 28 (11Feb82).

A provision which expressly prevents the agency from requiring employees to perform certain duties, i.e., when the duties to be assigned are outside the employee's regular field of work or are

inappropriate to the employee's position or qualifications, is nonnegotiable. *NFFE, LOCAL 1622 VS ARMY*, 16 FLRA No. 82 (27Nov84).

A nonnegotiable proposal would have limited the agency's ability to assign non-professional duties, such as housekeeping and clerical work, to professional nurses. A proposal that would have prohibited the assignment of nurses to new, unfamiliar duties without orientation or training, except in emergencies, was nonnegotiable. *NAT'L UNION OF HOSP. & HEALTH CARE, DIST. 1199 VS VA MEDICAL CENTER*, 28 FLRA No. 65 (31Jul87).

The provision provides that to the maximum extent consistent with work requirements, employees will assigned to work appropriate to their job classification specified in (their) job description(s) and at the step or grade level, for which they are being paid, was nonnegotiable. *AFGE, COUNCIL 214 VS MARINE*, 29 FLRA No. 126 (6Nov87).

A proposal which provided that firefighters should not be assigned duties unrelated to their position or regular field of work was nonnegotiable. *NFFE, LOCAL 1214 VS ARMY, HQ, TRAINING CENTER, FT JACKSON, SC.*, 45 FLRA No. 111 (4Sep92).

Assignment of higher level duties:

A proposal is nonnegotiable that absolutely bars the assignment of higher level duties to bargaining unit employees if such assignments were made "solely for the convenience of the Employer." The Authority has previously held that proposals seeking to prohibit the assignment of specified duties to certain bargaining unit employees or the assignment of certain work to specific circumstances are inconsistent with management's right under 7106(a) (2) (B) to assign work. *LIUNA, LOCAL 1267 VS DOD, DLA*, 14 FLRA No. 91 (24May84).

A proposal is nonnegotiable that requires management to refrain from rotating assignments of employees to avoid compensating employees at a higher level when the employees might otherwise be entitled to higher pay when detailed to perform duties at higher graded positions. *NETU VS TREASURY, IRS*, 45 FLRA No. 126 (24Sep92).

General:

A provision which required the Agency to limit the length of temporary duty assignments away from the employee's duty station to 15 work days was nonnegotiable because it directly and excessively interfered with management's right to assign employees and to assign work. *AFGE, LOCAL 1658 VS ARMY, TANK-AUTOMOTIVE COMMAND*, 44 FLRA No. 113 (28May92).

A proposal which states that management should not, in making work assignments, act contrary to law or regulation, is consistent with Sec. 7106(a)(2) which provides that nothing in the Statute shall affect the authority of any management official, in accordance with applicable laws, to exercise the management rights set forth therein. *NFFE, LOCAL 1497 VS AIR FORCE*, 9 FLRA No. 20 (23Jun82).

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