

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

**American Federation of Government Employees Local 1164 v.
Federal Labor Relations Authority**

483 F. App'x 577 (D.C. Cir. 2012) · Decided November 9, 2012

SUMMARY

The D.C. Circuit denied a union’s petition for review of an FLRA decision concerning whether the Social Security Administration was required to negotiate over a proposed hybrid workstation plan. The court held that it need not resolve the union’s argument regarding the applicable “appropriate arrangement” test because the FLRA had considered the proposal’s effect on efficient government operations as the union requested.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	Per curiam
JURISDICTION	Federal
DECIDED	November 9, 2012
DISPOSITION	writ_denied
PROCEDURAL POSTURE	The union petitioned for review of an order of the Federal Labor Relations Authority dismissing its petition and determining that the Social Security Administration was not required to negotiate over the union's proposed workplace floor plan.
STANDARD OF REVIEW	The court reviewed the FLRA's order on a petition for review and considered whether the FLRA applied the correct test for determining negotiability under 5 U.S.C. § 7106(b)(3).
PRECEDENTIAL VALUE	unpublished
PARTIES	American Federation of Government Employees Local 1164 v. Federal Labor Relations Authority

TOPICS

federal labor relations

judicial review of agency action

agency adjudication

administrative law

appellate procedure

PRACTICE AREAS

federal labor relations

administrative law

federal employment law

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QUESTIONS PRESENTED

1. Whether the FLRA applied the correct test in determining that the union's proposed floor plan was not an appropriate arrangement negotiable under 5 U.S.C. § 7106(b)(3).
2. Whether the FLRA was required to apply the balancing approach from *National Association of Government Employees, Local R14-87 and Kansas Army National Guard* differently in light of *American Federation of Government Employees, AFL-CIO, Local 1923 v. FLRA*.

HOLDINGS

1. The petition for review was denied because the FLRA conducted the inquiry the union claimed was required: it considered the proposal's effect on effective and efficient government operations and concluded that the proposal would lessen the Newport office's ability to serve the public efficiently.

KEY QUOTATIONS

"a proposal that infringes on a management right is negotiable as an 'appropriate arrangement' under section 7106(b)(3) ... if it does not excessively interfere with management's rights." (578)

"We need not decide whether the Union has correctly interpreted the relationship between KANG and Local 1923 because in this case the FLRA conducted the very inquiry the Union says Local 1923 requires" (579)

FACTUAL BACKGROUND

The Social Security Administration planned to move its Newport, Rhode Island, field office to a new location with wall-mounted workstations along an interview privacy wall. The union proposed a hybrid arrangement allowing employees to use both privacy-wall workstations for interviews and rear-office cubicles for other work. The agency refused to negotiate, and the FLRA concluded that the proposal would interfere with management rights and reduce the office's ability to serve the public efficiently.

PROCEDURAL HISTORY

The Social Security Administration refused to negotiate over the union's proposed hybrid front-end interviewing floor plan. The union petitioned the FLRA for review, and the FLRA dismissed the petition, concluding that the proposal was not an appropriate arrangement under 5 U.S.C. § 7106(b)(3). The union then sought review in the D.C. Circuit, which denied the petition.

DISPOSITION

writ_denied

CASES CITED

- *Patent Office Prof'l Ass'n v. FLRA*, 873 F.2d 1485, 1491 (D.C. Cir. 1989)

- Am. Fed'n of Gov't Emps., Local 2782 v. FLRA, 702 F.2d 1183, 1188 (D.C. Cir. 1983)
- National Association of Government Employees, Local R14-87 and Kansas Army National Guard, 21 F.L.R.A. No. 4, 31-33 (1986)
- Am. Fed. of Gov't Emps., AFL-CIO, Local 1923 v. FLRA, 819 F.2d 306, 308-09 (D.C. Cir. 1987)

OPINION

PER CURIAM.

JUDGMENT PER CURIAM. This cause was considered on a petition for review of an order of the Federal Labor Relations Authority (FLRA) and was briefed and argued by the parties. The Court has accorded the issues full *578consideration and has determined that they do not warrant a published opinion. See D.C.Cir. R. 36(d). It is ORDERED AND ADJUDGED that the petition for review is denied.

The Social Security Administration (the Agency) plans to move its Newport, Rhode Island, field office to a new location. The Agency's floor plan for the new space provides for wall-mounted workstations along an "Interview Barrier Privacy Wall." This privacy wall would separate Agency employees from the public areas of the office. Employees seated at the workstations would conduct interviews through windows in the privacy wall (like teller windows at banks) and complete other tasks at the same workstation.

In order to alleviate perceived ergonomic and other deficiencies in the floor plan, the American Federation of Government Employees, Local 1164 (the Union) proposed a "hybrid front-end interviewing floor plan" that would allow each employee to use a cubicle in the back of the office for work that does not require interviewing as well as the workstation mounted to the privacy wall for work that does.

After the Agency refused to negotiate over the proposal, the Union petitioned the FLRA for review. The FLRA dismissed the petition, holding that the Agency need not negotiate over a proposal that was not an "appropriate arrangement] for employees adversely affected by" management's exercise of its authority to determine the "methods, and means of performing work." See 5 U.S.C. §§ 7106(b)(1)-(3) (2006).

The FLRA reached this decision after concluding that the Union's proposal would interfere with management rights by "totally eliminating] the single-workstation setup chosen by the Agency" and by "lessening] the Newport office's ability to fulfill its mission to serve the public efficiently...." Am. Fed'n of Gov't Emps., Local 1164 and Soc. Sec. Admin., 66 F.L.R.A.

No. 24, 117, 2011 WL 4381075 (2011) (Local 1164). The Union now petitions this Court for review, arguing that the FLRA applied the incorrect test to determine whether or not the proposal is "appropriate." We have held that "a proposal that infringes on a management right is negotiable as an 'appropriate arrangement' under section 7106(b)(3)... if it does not excessively interfere with

management's rights." *Patent Office Prof'l Ass'n v. FLRA*, 873 F.2d 1485, 1491 (D.C.Cir.1989) (citing *Am.*

Fed'n of Gov't Emps., Local 2782 v. FLRA 702 F.2d 1183, 1188 (D.C.Cir.1983)). In *National Association of Government Employees, Local R14-87 and Kansas Army National Guard (KANG)*, the FLRA made that determination by "weighing the competing practical needs of employees and managers." 21 F.L.R.A. No. 4, 31-32 (1986).

The FLRA identified five illustrative but not exhaustive factors that could be used in that balancing depending on the facts and circumstances of the case at hand. *Id.* at 32-33. Here, the FLRA looked at two of those factors, one of which is relevant to this petition for review. Considering "the effect of the proposal on effective and efficient government operations," *id.* at 33, the FLRA determined that the Agency need not negotiate over the Union's proposal because it would "lessen the Newport office's ability to fulfill its mission to serve the public efficiently." *Local 1164, supra*, at 117.

The Union argues that the balancing test in *KANG* has been revised by the formulation in *Am. Fed. of Gov't Emps., AFL-CIO, Local 1923 v. FLRA* (*Local 1923*), which, the Union contends, makes the primary factor "the extent to which the interference hampers the ability of an agency to perform its core functions — to get its work done in an efficient and effective way." 819 F.2d 306, 308-09 (D.C.Cir.

1987) (emphasis added). We need not decide whether the Union has correctly interpreted the relationship between *KANG* and *Local 1923* because in this case the FLRA conducted the very inquiry the Union says *Local 1923* requires, concluding that the proposal would "lessen the Newport office's ability to fulfill its mission to serve the public efficiently." *Local 1164, supra*, at 117 (emphasis added).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold the issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. See Fed. R.App. P. 41(b); D.C.Cir. R. 41.