United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-1397 **September Term, 2005**

FILED ON: JULY 17, 2006 [980399]

NATIONAL WEATHER SERVICE EMPLOYEES ORGANIZATION,
PETITIONER

v.

FEDERAL LABOR RELATIONS AUTHORITY,
RESPONDENT

On Petition for Review of an Order of the Federal Labor Relations Authority

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Before: HENDERSON, ROGERS and GRIFFITH, *Circuit Judges*.

J U D G M E N T

This cause was considered on a petition for review of an order of the Federal Labor Relations Authority ("FLRA" or the "Authority") and was briefed and argued by the parties. The Court has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. Rule 36(b). It is

ORDERED AND ADJUDGED that the petition for review is granted and the case is remanded to the Authority for further proceedings.

To help employees dealing with the increased workload caused by the National Weather Service's decision to switch to a new computerized weather forecasting system, the National Weather Service Employees Organization (the "Union") proposed that the National Weather Service ("NWS") increase staffing at its Anchorage Weather Forecast Office ("WFO"). After the NWS refused to negotiate over the proposal, the Union petitioned the Authority for review. The Authority dismissed the petition for review, holding that the proposal was not an "appropriate arrangement," and, consequently, not negotiable. *See* 5 U.S.C. § 7106(b)(3) (requiring that management bargain with union officials over "*appropriate arrangements* for employees adversely affected by" management's exercise of its

authority to determine the organization and number of employees) (emphasis added). The Authority reached this decision after concluding that the Union's proposal would interfere with management rights by "leaving the Agency with no discretion as to the numbers and types of staff to assign to the Anchorage WFO." *Nat'l Weather Serv. Employees Org. v. U.S. Dep't of Commerce*, 61 F.L.R.A. No. 46, 243 (2005). Because the Authority concluded that this burden on management "outweighs any benefit [the proposal would have had for] employees," it held that the proposal was not an "appropriate arrangement." *Id*. The Authority did not, however, consider whether the proposal would have hampered the ability of the agency to get its job done in an effective and efficient manner. The Union now petitions this Court for review, arguing, among other things, that the Authority erred by failing to consider this factor.

We agree with the Union. In *American Federation of Government Employees, Local 1923 v. FLRA*, we explained that the determination whether a proposal is an appropriate arrangement "depends primarily on the extent to which the interference [with management rights] 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). Thus, assuming the proposal is an "arrangement"—which neither side disputes is the case here—"if implementation of [the] proposal will directly interfere with substantive managerial rights, *but will not significantly hamper the ability of an agency to get its job done*, the proposal . . . is negotiable . . . as an appropriate arrangement." *Id*. at 309 (emphasis added). Put another way, the "question . . . whether [a] proposed arrangement is appropriate within the meaning of § 7106(b)" "*demands* that we examine the extent to which implementation of the proposed arrangement would hamper the ability of the agency to perform its work in an efficient and effective manner." *Id*. at 310 (emphasis added). The Authority did not make this examination here. We must therefore grant the petition for review and remand to the Authority so that it can consider to what extent "implementation of the [Union's proposal] would hamper the ability of the [NWS] to perform its work in an efficient and effective manner." *See id*.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold 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.

Per Curiam
FOR THE COURT:
Mark J. Langer, Clerk

BY:
Michael C. McGrail
Deputy Clerk