

FOREIGN SERVICE LABOR RELATIONS BOARD  
WASHINGTON, D.C.

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AMERICAN FOREIGN SERVICE ASSOCIATION  
(Union)

and

UNITED STATES DEPARTMENT OF COMMERCE  
UNITED STATES AND FOREIGN COMMERCIAL SERVICE  
WASHINGTON, D.C.  
(Agency)

FS-NG-16

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DECISION AND ORDER ON NEGOTIABILITY ISSUES

October 8, 2003

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Before Chairman, Dale Cabaniss, and Member, Richard Block.

I. Statement of the Case

This case is before the Foreign Service Labor Relations Board (the Board) on a petition for review of negotiability issues concerning two proposals filed by the Union under § 1007(a)(3) of the Foreign Service Act of 1980 (22 U.S.C. §§ 3901-4173) (the Act) and Part 1424 of the Board's Regulations. The Agency filed a Statement of Position and the Union filed a Response.

For the following reasons, we find that the proposals affect management's right to assign employees and fill positions from any appropriate source under § 4105(a)(2) and (5) of the Act and do not constitute procedures under § 4105(b)(2) or appropriate arrangements under § 4105(b)(3) of the Act. Consequently, we find that the proposals are outside the duty to bargain.

## II. Proposals

### Proposal 1

After the above described assignments process is completed, the Director General may direct the assignment of any career or career-candidate member to any Foreign Commercial Service position for which he/she is qualified and on which there are no qualified bidders. All first tour career candidates are direct [sic] assigned to their first tour of duty. Therefore, the directed assignment process may be used for first tour career candidates, un-bid upon positions, and under special circumstances, where no other option is available to assign a career member to a non-Foreign Service position.

### Proposal 2

The assignments panel agenda may include other actions for the needs of the Service, as well as directed assignment made by the Director General. The assignment panel may recommend and/or the Director General may directly assign any member to any position for which the member is qualified following the directed assignment process as detailed in Section 6.03.

## III. Background

Employees of the United States and Foreign Commercial Service (Agency), who are in a unit of exclusive recognition represented by the American Foreign Service Association (Union), are Foreign Service personnel subject to the Act. Position assignments of unit employees are governed by Subchapter 100-1 of the Foreign Service Personnel Management Manual (Manual). This case arose when the Agency notified the Union of certain amendments it intended to make in Sections 6.03. and 8.08. of Subchapter 100-1 of the Manual and the Union responded with the instant proposals.<sup>1/</sup> The Union's

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<sup>1/</sup> The text of Sections 6.03. and 8.08., as the Agency would amend those sections, is set forth in the Appendix to this decision. During the pendency of the petition for review, the  
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proposals purport to restore the effect of the sections as originally worded. The Agency declared those proposals nonnegotiable and the Union appealed to the Board.

In order to understand the parties' dispute over the Union's proposals, it is necessary to briefly outline the Agency's assignment policies and processes. Specifically, as Foreign Service personnel, unit employees are subject to a "competitive, 'up or out'" personnel system, in which employees must be promoted prior to the expiration of their "time-in-class or time-in-service" or they will be separated from the service. Union Response (Response) at 2. Promotion decisions are made after review of an employee's record by a selection board comprised of career members of the Foreign Service. See, e.g., *AFSA*, FS-NG-10 (1989), slip op. at 5. Employees' assignments are "crucial" to their ability to be promoted, because it is through their performance in a variety of positions that they demonstrate their potential for further promotion and for retention. Response at 2.

During their careers, unit employees rotate through a number of various assignments, most lasting 3 to 4 years. Such a rotational system means that employees periodically must decide on another assignment. It also means that the assignment process is "cyclical in nature." *Id.* at 3. Since not all employees are on the same cycle, the Agency annually produces a list of positions that will be coming open in the next year and employees who are subject to assignment in the upcoming cycle bid on anywhere from a minimum of four to a maximum of eight of those positions. The parties refer to this system as an open assignments process.

During the assignment process, an Assignment Panel is convened, which is chaired by the Director General of the Agency. In a series of meetings, the Assignment Panel reviews employee bids and recommends assignments to the Director General, who has the power to approve or disapprove the recommendations. The Assignment Panel and the Director General have the discretion to assess whether an employee is qualified for a particular position. Employees may be assigned to positions by the Director General outside the

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Agency continues to apply the unamended sections. See Statement of Position at 4.

bidding process. Such assignments are called "direct[] assignments." Direct assignments are used for an employee's initial assignment as a Foreign Service officer, for extraordinary situations, or when there are no Foreign Service positions available. Generally speaking, however, the Agency has "consistently" adhered to the bidding process and assigned employees to positions on which they have bid. *Id.* at 6.

#### IV. Positions of the Parties

##### A. Agency

According to the Agency, the proposals directly interfere with management's rights, under § 4105(a), to assign employees, to fill positions from any appropriate source, or to take action in an emergency. As explained by the Agency, in revising the Manual, it deleted wording, in both Sections 6.03. and 8.08., that "restricted the Director General's directed assignment authority to instances where a position has been advertised and no qualified employees have bid on the position." Statement of Position (Statement) at 2. The Agency claims that the proposals reimpose that limit.

Specifically, the Agency maintains that the proposals restrict the Director General's authority to make direct assignments "by requiring the open assignments process be completed, including advertising and bidding upon every open position, before the Director General can effect a direct assignment." *Id.* at 6. Further, the Agency contends, the proposal limits direct assignments to initial assignments, positions that have not been bid upon, and non-Foreign Service positions where no other options are available.

The Agency asserts that "[b]y requiring that every assignment go through the open assignments process, the proposal[s] establish[] a substantive condition which interferes with management's right to assign employees" under § 4105(a)(2). *Id.* at 7. The Agency also states that the proposals "do not allow the Director General to direct assignments in the event of an emergency or other exigent circumstances where a position must be filled quickly to meet the needs of the [Agency]" and, thus, they are "inconsistent with the Agency's right to take action in an emergency" under § 4105(a)(7). *Id.* at 8.

The Agency maintains that the proposals would require it to assign a qualified single bidder to a position, thus precluding the Director General from assessing whether there are better qualified non-bidders and directly assigning such a non-bidder. In this manner, according to the Agency, the proposals restrict the available "pool of candidates" for assignment to a position and interfere with management's rights to assign employees, under § 4105(a)(2), and to fill positions from any appropriate source, under § 4105(a)(5) of the Act. *Id.* at 9. The Agency notes that the Union contends that, under the proposals, management has the discretion to assess whether a bidder is qualified, but the Agency claims that a bidder may be qualified for a position "without being the ideal candidate for the position." *Id.* at 11. In this regard, the Agency asserts, employees "are not all equally qualified for every position." *Id.* at 12.

Further, the Agency asserts that, because they directly interfere with management's right to assign employees, the proposals are not procedures under § 4105(b)(2). Similarly, the Agency claims that the proposals deprive the Director General of the flexibility needed to respond to exigent situations and thus are not procedures for taking action to deal with emergencies.

Finally, the Agency claims that the proposals excessively interfere with management's rights, under § 4105(a)(2), to direct and assign work to employees and are not appropriate arrangements under § 4105(b)(3) of the Act. The Agency notes that the Union claims the proposals are intended to "minimize the impact of hardship" on employees that results "from service abroad." *Id.* at 15. The Agency also notes that the proposals accomplish that objective by ensuring that employees are matched with positions for which they have bid. The Agency contends, however, that the proposals "restrict the Agency's ability to quickly assign employees when necessary" and that the "negative impact on management's rights is disproportionate to the benefits derived from the proposed arrangement." *Id.* The Agency states that "the Union presents no evidence of hardship caused by direct assignments." *Id.*

#### B. Union

The Union explains that the proposals are intended to require the Agency to fill positions by, first, advertising

all regular Foreign Service positions, allowing all employees to bid on the positions for which they are qualified and in which they are interested, and, then, based on the assignment panel's recommendations, filling positions from among those employees who have bid on them. The Union further explains that the Agency would be able to directly assign employees to a position when none of those who bid on a position are determined by the Agency and/or the assignment panel to be qualified. According to the Union, the Director General would also be able to directly assign untenured junior employees or in circumstances where no employee has bid on a position. Succinctly stated, the Union explains that the proposals "seek to ensure that the directed assignments process is only utilized after the open assignment procedure fails to yield a qualified officer." Response at 6.

The Union asserts that the proposals are intended to "minimiz[e] the impact of the hardships, disruptions, and other unusual conditions of service abroad upon the members of the Foreign Service, and mitigat[e] the special impact of such conditions upon their families." Petition for Review at 4, citing 22 U.S.C. § 3901(b)(5). The Union states that the proposals would ensure that employees are assigned to positions that match their needs with the needs of the Agency.

The Union states that the changes the Agency intends to make in Sections 6.03. and 8.08. of the Manual "invalidate the entire open assignments process because they permit the Director General to disregard the agreed-upon open assignments procedure any time he or she wishes." Response at 8. Specifically, the Union claims, the Agency's changes would "permit the Director General to fill any (and all) assignments without advertising the position, soliciting bids, or utilizing the assignments panel." *Id.* According to the Union, the proposals "preserve the *status quo*" because they require the Director General "to *consider* the bids of eligible bidders . . . prior to directing the assignment of an officer who did not bid on the position." *Id.* (emphasis in original).

The Union argues that the proposals establish a "procedure which helps ensure[] transparency and fairness in the assignment process." *Id.* at 9. In particular, the Union states that the proposal would not require the Director General to "wait until every open position has been filled before directing an officer into a position upon which he or



she has not bid." *Id.* at 11. Rather, the Union maintains, "the Director General may exercise his or her right to make a directed assignment any time: 1) there are no eligible bidders . . . ; 2) qualified bidders on the position have been assigned to one of the other three to seven positions they have bid on; 3) the assignment panel or the [Director General] determine that the eligible bidders who have bid on a position are not qualified for the position." *Id.* The Union also maintains that the Agency can attempt to persuade employees with whom it wants to fill particular positions to bid on those positions. The Union claims that, in this manner, the proposals preserve management's flexibility to make directed assignments.

The Union also asserts that evidence as to directed assignments made by the Agency does not support the Agency's position. According to the Union, the cases cited by the Agency were all short tour assignments. Moreover, the Union states that the proposal does not cover short term, temporary duty assignments. The Union contends that the Agency retains the right to detail employees "without advertising the position or soliciting bids." *Id.* at 17.

The Union maintains that the proposals concern the operation of the open assignment system, which "begins almost a year before a position becomes vacant" and during which, as openings become available, bids are solicited. *Id.* at 15. Consequently, the Union states, the process does not address "the situation of unanticipated vacancies." *Id.* For this reason, the Union argues, the proposals would not affect management's ability to take any action necessary in the event of an emergency.

The Union disputes the Agency's claim that the proposals would require management to assign a single bidder to a position without permitting management to evaluate the qualifications of other employees. The Union claims that the proposals allow the assignment panel to recommend that the employee be assigned to another of the positions on which he or she has bid. Management would then be free to directly assign an employee who has not bid on the position. Moreover, the Union maintains that the Agency could decide not to fill the position and re-advertise it, soliciting additional bids. In this regard, the Union contends that the proposals "only require the Agency to *consider* officers who bid on the

position prior to assigning an officer who did not bid on the position." *Id.* at 19.

Finally, according to the Union, the proposals are appropriate arrangements that "ensure that favored officers are not given unfair advantage in the assignment process and disfavored officers are not assigned to hardship or undesirable assignments as a punitive measure." *Id.* at 9. The Union notes the Agency's concession that a directed assignment could have a "significant impact" on an employee. *Id.* at 20. The Union argues that, because of the Agency's "up-or-out" system, the nature of the assignments an employee receives will affect the employee's opportunity to progress in his or her career. The Union contends, in this regard, that employees "must have a fair opportunity to compete for career-enhancing positions." *Id.* at 21. The Union also maintains that directed assignments affect "the personal lives of the [employee] and his or her spouse and their family members" and that the "personal impact on an unwanted assignment can be far reaching." *Id.*

The Union claims that the burden imposed on management by the proposals does not outweigh the benefit to employees resulting from those proposals. In this regard, the Union asserts that the proposals do not prevent the Agency from taking action in an emergency, nor do they restrict the pool of candidates for assignment. Rather, the Union maintains, the "negative impact of a directed assignment on an officer and his or her family far outweighs the benefit to the Agency derived from directing the assignment of an officer who did not bid on and does not wish to go to the post." *Id.* at 22. Citing 22 U.S.C. § 3901(b)(5), the Union contends that the proposals are consistent with the intent of Congress to "minimiz[e] the impact of hardship, disruptions, and other unusual conditions of service abroad upon the members of the Foreign Service, and mitigat[e] the special impact of such conditions upon their families."<sup>2/</sup>

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<sup>2/</sup> The Union also requests that the Board sever negotiable portions of the proposals from nonnegotiable portions. Although the Regulations of the Board contain no provision relating to severance, the Regulations of the Federal Labor Relations Authority (Authority) require a Union to "support

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V. Analysis and Conclusions

A. Meaning of the Proposals

As explained by the Union, the proposals provide for the Agency to fill positions through the open assignments system. That is, the Agency will fill positions from among those employees who have bid on those positions and been recommended by an assignment panel, except where no qualified employee is available either because those who bid on the position were not qualified, or qualified employees who bid on the position were assigned to other positions, or no qualified employee bid on the position. In those latter circumstances, the Agency would be able to fill the positions by means of directed assignments of qualified employees who did not bid on the positions. In sum, the Agency would be precluded from assigning an employee to a position unless there are no qualified employees who have bid on the position.

Although the Union suggests that the Agency has other alternatives to obtain an employee who is better qualified than those who have bid on a position, e.g., decline to fill the position and re-advertise the vacancy, attempt to persuade the better qualified employee to bid on the position, if those strategies do not produce a candidate acceptable to the Agency, as long as a qualified candidate has bid on the

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its request with an explanation of how each severed portion of the proposal . . . may stand alone, and how such severed portion would operate." 5 C.F.R. § 2424.22(c), 2424.25(d). See also 5 C.F.R. § 2424.2(h). The Union makes no attempt to explain how the proposals could be severed or how the severed portions could stand alone or would operate. As the Board is required, in the absence of special circumstances, to conform its decisions to those of the Authority, 22 U.S.C. § 4107(b), we find that the request for severance fails to comply with applicable requirements and deny it because no special circumstances are evident on the record in this case. See, e.g., *ACT, Wichita Air Capitol Chapter*, 58 FLRA 28, 29 (2002), *reconsideration denied*, 58 FLRA 483 (2003), *petition for review filed, Assoc. of Civilian Technicians, Wichita Air Capitol Chapter v. FLRA*, Case No. 03-1141 (D.C. Cir. May 20, 2003).

position, the Agency would be obligated to assign that employee and precluded from assigning any other employee who had not bid on the position.

B. The Proposals Affect Management's Rights to Assign Employees and Fill Positions from Any Appropriate Source

The Union does not specifically dispute the Agency's claim that the proposals affect management's rights to assign employees and fill positions from any appropriate source within the meaning of § 4105(a)(2) and (5) of the Act and, for the following reasons, it is clear that they do.

The open assignment system used by the Agency to fill the Foreign Service positions involved in this case is analogous to the competitive procedures used to fill Civil Service positions. See, e.g., 5 C.F.R. § 335.103. The Authority has held that proposals or provisions requiring an agency to use competitive procedures to fill positions affect management's right to select employees to fill positions from any appropriate source under § 7106(a)(2)(C) of the Federal Service Labor-Management Relations Statute (Statute), even where the proposals or provisions provide management with an exception in specified circumstances.<sup>3/</sup> See, e.g., *ACT, Treasure State Chapter #57*, 56 FLRA 1046, 1048 (2001) (*Treasure State Chapter*), request for reconsideration denied, 57 FLRA 53 (2001). In *Treasure State Chapter*, the Authority found that "[u]nless one of the exceptions [stated in the disputed provision] applies, the provision . . . would preclude the [a]gency from selecting an individual for a vacant position unless that individual is available for selection through competitive procedures." *Id.* at 1048. Stated differently, the Authority held that the provision in that case did not allow the agency to fill a position from a source other than competitive procedures, including a noncompetitive reassignment.

The proposals in this case would similarly prevent the Agency from directly assigning an employee unless the

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<sup>3/</sup> As noted *supra*, n.2, pursuant to § 4107(b), the decisions of the Board under the Act are to be consistent with the decisions of the Authority under the Statute.

exceptions specified by the Union apply, *i.e.*, no employee had bid on the position, employees who had bid on the position were assigned to other positions, or there were no qualified employees who had bid on the position. As in *Treasure State Chapter*, the proposals in this case restrict the source from which the Agency can fill a position, limiting the Agency's ability to use direct assignments for that purpose. Thus, the proposals affect management's right to fill positions from any appropriate source, including direct assignments, within the meaning of § 4105(a)(5) of the Act.<sup>4/</sup> See, *e.g.*, *NAGE, Local R4-45*, 54 FLRA 218, 225 (1998) ("The Authority has repeatedly held that proposals requiring management to fill vacancies from a single source directly interfere with management's right to select employees from any appropriate source.") Cf. *NFFE, Local 33*, 47 FLRA 765, 772-75 (1993) (proposal governing selection of candidate to fill vacant position that does not preclude concurrently considering unit employees and outside candidates, and does not prevent reassigning an employee to fill the position, does not affect management's rights to fill positions from any appropriate source under § 7106(a)(2)(C) or to assign employees under § 7106(a)(2)(A)).

Further, because the proposal would prevent management from assigning an employee who had not bid on a position to that position, it would affect management's right to assign employees under § 4105(a)(2) of the Act. See, *e.g.*, *FEMTC*, 38 FLRA 1410, 1415 (1991) (provision precluding assignment of employees to vacant position where there were employees available on promotion registers affects management's right to assign under § 7106(a)(2)(A) of the Statute).

Accordingly, we find that the proposal affects management's rights to assign employees under § 4105(a)(2) and to fill positions from any appropriate source under § 4105(a)(5) of the Act.

C. The Proposals do not Constitute Procedures

In determining whether a proposal constitutes a negotiable procedure under § 4105(b)(2) of the Act, the Board

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<sup>4/</sup> There is no dispute in this case that direct assignments constitute an "appropriate source" for filling positions within the meaning of § 4105(a)(5) of the Act.

looks to the Authority's interpretation and application of negotiable procedures under the Statute for guidance. See, e.g., *AFSA, FS-NG-8* (1987), slip op. at 6 (*AFSA*). The Authority has held that proposals and provisions that dictate the source from which management will fill positions, as does the proposal in this case, are not negotiable as procedures under § 7106(b)(2) of the Statute. See, e.g., *Treasure State Chapter*, 56 FLRA at 1048. See also *United States Dep't of Defense, Alabama Air National Guard, Montgomery, Ala.*, 58 FLRA 411 (2003).

Generally speaking, procedures under § 7106(b)(2) concern the process leading up to, or following, the exercise of a right. See, e.g., *NTEU*, 47 FLRA 370, 384 (1993); *AFGE, Local 1923*, 44 FLRA 1405, 1450 (1992) (*Local 1923*). Proposals that go directly to the nature and scope of the exercise of a right, as do the restrictions on who may be selected and assigned under the proposals at issue herein, are not procedural. Compare *Local 1923*, 44 FLRA at 1436-39 with *AFGE, AFL-CIO, Local 1923*, 17 FLRA 661 (1985); *AFGE, AFL-CIO, Local 1622*, 17 FLRA 429 (1985).

Accordingly, we find that the proposal is not a procedure within the meaning of § 4105(b)(2) of the Act.

D. The Proposals do not Constitute Appropriate Arrangements

In determining whether a proposal constitutes an appropriate arrangement under § 4105(b)(3), the Board is guided by the Authority's interpretation and application of the parallel "appropriate arrangements" provision of § 7106(b)(3) of the Statute. See, e.g., *AFSA, Case No. FS-NG-8*, slip op. at 8. In *AFSA*, the Board outlined the framework applied by the Authority in applying the appropriate arrangements provision of the Statute as follows:

In *NAGE, Local R14-87 and Kansas Army National Guard*, 21 FLRA 24 (1986), the Authority adopted the "excessive interference" test set forth in *AFGE, Local 2782 v. FLRA*, 702 F.2d 1183 (D.C. Cir. 1983), for determining whether a proposal constitutes a negotiable "appropriate arrangement" under § 7106(b)(3) of the Statute. See also *AFGE, Local 1923 v. FLRA*, 819 F.2d 306, 308-09, where the court

discusses the application of the appropriate arrangement test. In *Kansas Army Nat'l Guard*, the Authority held that, as a threshold matter, a union must demonstrate that its proposal is intended to be an "arrangement" for employees adversely affected by the exercise of a management right. Specifically, there must be some evidence in the record identifying the management right or rights claimed to produce the alleged adverse effects which flow from the exercise of those rights, how those effects are adverse, and how the proposal is intended to address or compensate for the actual or anticipated adverse effects.

Once the Authority finds that a proposal is an "arrangement" for employees within the meaning of § 7106(b)(3), it then determines whether the proposal is "appropriate" for bargaining by applying the excessive interference test. That test involves weighing the competing practical needs of employees and management in the light of various factors, so as to determine whether, on balance, the impact of the proposal on management's rights is excessive when compared to the benefits afforded employees.

*AFSA*, slip op. at 8.

However, even if we were to find that the proposals are arrangements within the meaning of § 4105(b)(3) of the Act and consistent with Authority precedent,<sup>5/</sup> we would also find that they are not within the duty to bargain because they excessively interfere with the exercise of management's rights under § 4105(a) of the Act. See, e.g., *AFGE, Local 3694*, 58 FLRA 148, 150 (2002) (Authority assumed proposals to be arrangements).

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<sup>5/</sup> Since the Board's decision in *AFSA*, as a result of certain court decisions, the Authority has modified and refined its framework for determining whether a proposal constitutes an arrangement. See, e.g., *NTEU, Chapter 243*, 49 FLRA 176, 183-85 (1994) (Member Armendariz concurring in part and dissenting in part). Because it is not necessary to address that question here, the modifications and refinements of the Authority's framework will not be further discussed.



The Authority has emphasized that unions have the burden of supporting a claim that a proposal constitutes an appropriate arrangement, including explaining how employees are adversely affected by the exercise of a management right and providing evidence as to how a proposal benefits employees by mitigating those adverse effects. See, e.g., *NEA, OEA, Laurel Bay Teachers Assoc.*, 51 FLRA 733, 740 (1996). According to the Union in this case, by confining management to filling positions through the bidding and assignment panel process, the proposals would allow employees to be placed in posts that they have selected for career enhancement opportunities and that meet the needs of their families, and would limit the potential for retaliatory and punitive direct assignments.

The Union has provided no evidence, however, that the adjustments required by employee families as a result of directed assignments are any different from, or more onerous than, the adjustments that are needed when employees are assigned to posts on which they have bid. Moreover, the Union has provided no evidence that directed assignments have been uniformly detrimental to employee careers. In actual practice, therefore, the benefits of the proposals may be less than claimed by the Union.

Whatever benefits are provided employees by the proposals, however, are obtained only by placing severe restrictions on management's flexibility with respect to filling positions. Under the proposals, as long as the bidding and assignment panel process results in qualified candidates for a position, management must fill the position with such a candidate, regardless of whether management is aware of employees who did not bid on the position who are better qualified as a result of greater skills or more extensive experience performing the work of that position. In this regard, the Union's claim that the Agency has discretion to assess employee qualifications is of limited significance. Any judgment by the Agency as to whether an employee is more or less qualified than another employee must be adequately supported. See, e.g., *SSA, Chicago Region, Cleveland Ohio Dist. Office, University Circle Branch*, 56 FLRA 1084, 1088-89 (2001).

Because the proposals limit management's ability to directly assign better qualified employees with greater skills



and experience, they significantly affect management's ability to achieve the optimal use of its personnel resources to meet the needs of its mission. For these reasons, the burden imposed on the exercise of management's rights to fill positions from any appropriate source, including direct assignment, and to make such assignments, greatly outweighs the benefits to employees resulting from the proposals. See, e.g., *NTEU*, 45 FLRA 429, 435-36 (1992); *AFGE, Local 1923*, 44 FLRA at 1478, 1488. Thus, the proposals excessively interfere with those management rights and do not constitute appropriate arrangements within the meaning of § 4105(b)(3) of the Act.

Accordingly, we find that the proposals do not constitute appropriate arrangements under § 4105(b)(3) of the Act.

VI. Order

The petition for review is dismissed.<sup>6/</sup>

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<sup>6/</sup> Given this result, it is unnecessary for the Board to address the Agency's claims that the proposals affect management's rights to assess employee qualifications under § 4105(a)(2) and (5) or to take whatever action is necessary to carry out the mission of the Agency in an emergency under § 4105(a)(7) of the Act.

**APPENDIX**

Sections 6.03. and 8.08., as amended by the Agency, are set forth below. Bracketed text is material that the Agency's amendment would delete from the existing regulation. Bold text is material that the Agency's amendment would add to the regulation:

Section 6. Assignment Policies.

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03. Directed Assignments. The Director General may direct the assignment of any career or career-candidate member to any Foreign Service position **for which** [that] he or she is qualified. [for, provided it has been advertised and there are no qualified career or career-candidates bidding on that position.] All first-tour career-candidates are direct-assigned to their first tour of duty. Under special circumstances, where no other option is available, a career or career-candidate member can be assigned to a non-advertised, non-Foreign Service position.

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Section 8. Foreign Commercial Service Assignments Process

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07. Assignment Panel Meetings.

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08. Assignments Panel agenda items may include other actions for the needs of the Service, as well as directed assignments made by the Director General. The Assignments Panel may recommend and/or the Director General may directly assign any member to any position **for which** [that] the member is qualified. [for, provided there are no other qualified members bidding on that position.]