

FLRA backs telework ruling with governmentwide implications

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WASHINGTON -- The **Federal Labor Relations Authority** has refused to change an arbitrator's decision reinstating a **Department of Education** employee's telecommuting schedule that allowed her to work from her South Carolina home three weeks out of four.

The decision also requires the agency to change her official duty station from Washington to her home for pay purposes and to reimburse her travel and per diem expenses when she does work in Washington. *U.S. Department of Education and American Federation of Government Employees Council 252*, [105 LRP 48935](#) (FLRA 09/30/05).

The case has drawn widespread interest because agencies are under pressure from **Congress** to increase their commitment to telework and to comply with a law that requires telecommuting to be made available to all eligible employees last year. A major barrier to telework is opposition by managers who want to have their employees where they can see them.

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"This is a wonderful decision for federal government employees nationwide, in all agencies," said attorney **Michael J. Snider**, who argued the case on behalf of the **American Federation of Government Employees Council 252 (Local 2607)**. The decision shows the government's telework policy is intended to be broadly exercised and to supersede any local agency policy that interferes, he said.

Working from home

The case involves **Marjorie Beaulieu**, an educational program analyst in the Office of Vocational and Adult Education at the **Department of Education**. Beaulieu travels four or five days each month to perform site visits and carries out a substantial portion of her work by telephone.

According to the FLRA decision, from January 2000 until April 2002, under a flexiwork program negotiated with the union and set out in the agency's Personnel Manual Instruction, Beaulieu worked one week per month in Washington and three consecutive weeks at her South Carolina home. She subsequently worked a modified schedule under which she went to Washington on Mondays and Fridays and worked Tuesdays, Wednesdays and Thursdays in South Carolina.

In late August 2002, the agency terminated Beaulieu's telework schedule and required her to work full time in Washington. The agency denied the employee's request to reinstate the original telework schedule, saying it needed her presence in Washington at least once per week "to participate effectively in team-oriented assignments."

The union grieved and the unresolved dispute went to an arbitrator, who found that under the telework law and guidance from the **Office of Personnel Management**, an agency is required to establish "a policy under which an eligible employee may telecommute to the maximum extent possible without diminishing employee performance."

The arbitrator also found that under the OPM guidance, an agency "must change an employee's official duty station to the location of the telework, if the employee does not regularly commute at least once a week into the main or reporting office." He also found the employee's original schedule "had not had an adverse impact" on her performance.

No structural change

The arbitrator's ruling did not require the agency to change the organizational structure of the unit where Beaulieu works, nor any other organizational structure within the department.

Seeking to overturn the arbitrator's decision, the Education Department claimed it impermissibly interferes with management's right to determine its organization, is contrary to the agency's PMI and is not required by the OPM guidance.

The FLRA denied the agency's exceptions.

The case has implications across the federal service, said attorney Snider, of **Snider & Fischer LLC** in Baltimore. "It shows the OPM guidance trumps contrary agreements between agencies and unions, or agency policies which are contrary to the OPM guidance. It shows that if there is an agency policy that stands in the way of the telework arrangement, which is otherwise proper, that policy will be stricken."

In his brief, Snider argued the core of the dispute was whether Beaulieu's work on the teams on which she served could be done from an alternative work place -- and the agency failed to show there was not.

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