Assignment of Work

**Overview**

An agency's right to assign work is guaranteed by 5 USC 7106(a)(2)(B). It is one of the most contested of the numerous management rights contained in Section 7106, asserted frequently by agencies in negotiability disputes and in exceptions to the awards of arbitrators.

The right to assign work extends to matters beyond the simple assignment of tasks to positions or employees. It is also inherent in such management decisions as the determination of the qualifications required to perform certain tasks, evaluation of performance, assignment of overtime, and handling requests for leave.

**Key Points**

These key-point summaries cannot reflect every fact or point of law contained within a source document. For the full text, follow the link to the cited source. The references to ***Broida*** in this Quick Start Guide are to federal employment law expert Peter Broida's treatise, *A* *Guide to Federal Labor Relations Authority Law and Practice* (Dewey Publishing Inc.), to which ***cyber*FEDS®** has exclusive Web rights.

**The basics**

* The right to assign work includes the determination of the particular duties to be assigned to employees or positions and the particular employees to whom those duties will be assigned. *Supervisor of Shipbuilding, Conversion and Repair*, 107 LRP 73689, 62 FLRA 328 (FLRA 2007); *Bureau of the Public Debt*, 80 FLRR 1-1367, 3 FLRA 769 (FLRA 1980).
* ***Broida:*** Whether a proposal interferes with the right to assign work turns on whether the proposal specifies which employees will (or will not) perform a task or when employees may perform the task.[*Broida Guide to FLRA Law and Practice:* Studies](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Chapter+06:+Subjects+of+Bargaining:+Specific+Applications+of+Negotiability+Determinations,+Subchapter+21:+Union+Rights,+Bargaining+Rights+and+Procedures,+Section+I:+Information+From%20Management,+Subsection+02:+Studies), *citing NFFE v. FLRA*, 105 LRP 34844, 412 F.3d 119 (D.C. Cir 2005).
* A proposal restricting the agency's ability to assign more than one task to an employee, although having the benefit of ensuring the safety of children, excessively interfered with the right to assign work. *Domestic Dependent Elementary and Secondary Schools*, 105 LRP 48955, 61 FLRA 327 (FLRA 2005).
* A proposal that would place a burden on the agency but does not dictate which employees would perform the tasks at issue does not affect the right to assign work. *NFFE v. FLRA*, 105 LRP 34844, 412 F.3d 119 (D.C. Cir 2005); *reversing Bureau of Land Management*, 104 LRP 30909, 59 FLRA 951 (FLRA 2004).
* A proposal requiring an agency to assign particular duties to a particular management official or requiring a management official to perform certain tasks interferes with the agency's right to assign work. *NASA Goddard Space Flight Center*, 105 LRP 57034, 61 FLRA 382 (FLRA 2005).
* A proposal that civilian employees be supervised by a civilian interfered with the right to assign work. *Military Sealift Command*, 105 LRP 15397, 60 FLRA 828 (FLRA 2005).
* An arbitrator's award does not interfere with the right to assign work when it merely finds a contract violation but does not preclude the agency from assigning an employee to particular duties or a particular shift. *Federal Aviation Administration*, 105 LRP 30271, 61 FLRA 54 (FLRA 2005).
* An arbitrator's award ordering the agency to return an employee to her previous position after finding the employee was reassigned for an inappropriate reason did not excessively interfere with the right to assign work, because it did not preclude a future reassignment for a proper reason. *DVA Medical Center, Detroit*, 105 LRP 53977, 61 FLRA 371 (FLRA 2005).
* An arbitrator's ruling requiring the agency to rescind an adverse weather essential designation affected the right to assign work because it impacted the agency's ability to determine which employees will perform work and when work will be performed. *Womack Army Medical Center*, 105 LRP 13972, 60 FLRA 721 (FLRA 2005).
* ***Broida:*** A proposal that called on management to avoid assigning employees to work in isolated areas unless it had also assigned a supervisor, security person, or some other person the responsibility for watching over those isolated areas, was nonnegotiable. The proposal conditioned one work assignment on another and directly interfered with management's right to assign work, in *VA Medical Center, Dayton, Ohio*, 87 FLRR 1-1381, 28 FLRA 435 (FLRA 1987). [*Broida Guide to FLRA Law and Practice:* Safety Measures](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Chapter+06:+Subjects+of+Bargaining:+Specific+Applications+of+Negotiability+Determinations,+Subchapter+13:+Safety,+Section+A:+Safety+Procedures,+Training+Equipment,+Subsection+07:+Safety+Measures).
* Union proposals and arbitration awards requiring that employees travel only during duty hours affect the right to assign work because they prevent the agency from requiring a full day of work. *Social Security Administration*, 104 LRP 59421, 60 FLRA 476 (FLRA 2004); *Supervisor of Shipbuilding, Conversion and Repair*, 88 FLRR 1-1364, 33 FLRA 187 (FLRA 1988).
* Proposals requiring the agency to set aside an amount of time at the end of the day for activities such as cleanup and storage of materials affect the right to assign work in that they preclude the assignment of other duties. *National Guard Bureau*, 87 FLRR 1-1158, 26 FLRA 515 (FLRA 1987); *Internal Revenue Service*, 82 FLRR 1-1414, 8 FLRA 197 (FLRA 1982).
* ***Broida:*** A proposal that the minimum number of instructional days for teachers be 175 days, with additional compensation for teaching beyond that period, was nonnegotiable because the proposal interfered with the right to assign work, in *Department of* *Defense Dependents Schools*, 87 FLRR 1-1517, 29 FLRA 485 (FLRA 1987). [*Broida Guide to FLRA Law and Practice:* Shift, Tours, Hours of Duty](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Chapter+06:+Subjects+of+Bargaining:+Specific+Applications+of+Negotiability+Determinations,+Subchapter+02:+Hours+of+Work;+Tours+of+Duty,+Section+A:+Shifts,+Tours,+Hours+of+Duty).

**Appropriate arrangements**

* Proposals impacting the exercise of management rights may be negotiable as appropriate arrangements if the interference with the right is not excessive. *NOAA, Air Operations Center*, 106 LRP 54511, 61 FLRA 779 (FLRA 2006); *Kansas National Guard*, 86 FLRR 1-1492, 21 FLRA 24 (FLRA 1986).
* ***Broida:*** Some surveillance measures are negotiable as appropriate arrangements, according to *Department of the Army, Ft. Carson*, 93 FLRR 1-1198, 48 FLRA 168 (FLRA 1993). [*Broida Guide to FLRA Law and Practice:* Safety Measures](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Chapter+06:+Subjects+of+Bargaining:+Specific+Applications+of+Negotiability+Determinations,+Subchapter+13:+Safety,+Section+A:+Safety+Procedures,+Training+Equipment,+Subsection+07:+Safety+Measures).
* A proposal requiring the agency to assign additional duties fairly and equitably affected the right to assign work but was a negotiable appropriate arrangement. *HUD, Boston Region*, 93 FLRR 1-1202, 48 FLRA 232 (FLRA 1993).
* Although proposals involving an end-of-day cleanup period affect the right to assign work, in certain circumstances, they may be ruled as an appropriate arrangement. *Naval Air Station*, *Whidbey Island*, 91 FLRR 1-1336, 41 FLRA 589 (FLRA 1991).

**Position descriptions**

* Position descriptions themselves are not an assignment of work. They reflect an agency's decisions regarding work assignments. Proposals that position descriptions be accurate do not affect the right to assign work. *Marine Corps Logistics Base*, 101 FLRR 1-1142, 57 FLRA 275 (FLRA 2001); *AAFES Fort Dix*, 80 FLRR 1-1138, 2 FLRA 153 (FLRA 1979).
* Proposals requiring an agency to amend position descriptions before changes in work assignments may be made interfere with the right to assign work because they dictate when a management right may be exercised. *Naval Submarine Base, Groton*, *Conn.,* 106 LRP 6060, 61 FLRA 480 (FLRA 2006); *Fort Carson*, 93 FLRR 1-1198, 48 FLRA 168 (FLRA 1993).
* An arbitrator's ruling requiring the agency to either amend a position description each time the agency assigned a duty not specified in the PD or to assign the same duty to each employee occupying the same position excessively interfered with the right to assign work. *Federal Correctional Complex, Beaumont*, *Texas,* 107 LRP 31550, 62 FLRA 100 (FLRA 2007).
* Proposals prohibiting an agency from assigning duties not contained in a position description -- cleanup work, clerical duties, for example -- affect the right to assign work. *Illinois National Guard*, 90 FLRR 1-1282, 35 FLRA 815 (FLRA 1990); *VAMC North Chicago*, 87 FLRR 1-1285, 27 FLRA 714 (FLRA 1987).
* A proposal restricting the duties that may be assigned only to those duties that conform to an employee's position classification was ruled nonnegotiable. *Letterman Army Medical Center*, 87 FLRR 1-1511, 29 FLRA 456 (FLRA 1987).

**Evaluation of performance**

* The management right to assign work includes the authority to identify critical elements of performance and to establish performance standards. *Naval Facilities Engineering Command*, 90 FLRR 1-1431, 36 FLRA 834 (FLRA 1990).
* An arbitrator's award restricting the agency's authority to determine the content of performance standards and critical elements affects an agency's right to assign work and direct employees. *USDA Food and Nutrition Service*, 91 FLRR 1-1462, 42 FLRA 964 (FLRA 1991).
* An arbitrator's enforcement of an agreement precluding the agency from applying numerical production standards excessively interfered with the agency's right to assign work and direct employees. *DVA, Board of Veterans Appeals*, 105 LRP 62183, 61 FLRA 422 (FLRA 2005).
* Agencies have the right to determine the methods used to evaluate and supervise employees. Proposals precluding an agency from auditing performance through unannounced visits and spot checks interfere with the right to direct employees and assign work. *Alaska Civilian Personnel Advisory Center*, 107 LRP 7799, 62 FLRA 15 (FLRA 2007).
* Proposals prohibiting an agency from monitoring employee production using information derived from its computer system interfere with the right to assign work and direct employees. *Social Security Administration*, 104 LRP 43885, 60 FLRA 278 (FLRA 2004).
* The determination of the number of tiers in a performance appraisal system is a component of the evaluation process, hence an exercise of the right to assign work. *Environmental Protection Agency*, 108 LRP 6398, 62 FLRA 350 (FLRA 2008).
* A proposal that employees be informed of expectations at each performance level defined by the agency did not interfere with the right to assign work. *Naval Submarine Support Facility*, 100 FLRR 1-1078, 56 FLRA 268 (FLRA 2000).

**Determination of qualifications**

* The right to assign work includes the right to establish the qualifications and skills necessary to perform the work and to judge whether particular employees meet those requirements. *Federal Prison Camp, Duluth*, *Minn.,* 103 LRP 56111, 59 FLRA 481 (FLRA 2003).
* An agency may require that employees possess specific knowledge, skill and ability to perform work, including personal characteristics such as judgment and reliability*. 645 Air Base Wing*, 96 FLRR 1-1085, 51 FLRA 1725 (FLRA 1996).
* Proposals requiring the adherence to certain qualifications and precluding the assignment of work if those qualifications are not met excessively interfere with management rights. *NOAA, Air Operations Center*, 106 LRP 54511, 61 FLRA 779 (FLRA 2006); *Federal Aviation Administration*, 105 LRP 34119, 61 FLRA 97 (FLRA 2005).
* When an agency has determined that two or more employees are equally qualified for an assignment, a proposal or provision describing how the agency will select the employee to perform the assignment is a negotiable procedure. *SSA Office of Hearings and Appeals*, 104 LRP 57684, 60 FLRA 461 (FLRA 2004).

**Training needs**

* Proposals requiring an agency to assign training to employees affect the right to assign work. *SSA Casa Grande*, 102 LRP 25708, 58 FLRA 148 (FLRA 2002); *Federal Aviation Administration*, 101 FLRR 1-1017, 56 FLRA 798 (FLRA 2000).
* A proposal affecting the agency's right to assign employees to training, but allowing the agency to determine who would receive training and the type of training employees would receive, was ruled an appropriate arrangement. *Federal Aviation Administration*, 106 LRP 640, 61 FLRA 437 (FLRA 2006).

**Assignment of overtime**

* The right to assign work includes the right to assign overtime and to determine when it will be worked. *SSA Office of Hearings and Appeals*, 104 LRP 57684, 60 FLRA 461 (FLRA 2004); *Bureau of Prisons*, 100 FLRR 1-1006, 55 FLRA 1078 (FLRA 1999).
* ***Broida:*** A proposal that employees may be requested to perform a reasonable amount of overtime during a week was nonnegotiable because it limited management's right to assign work, in *U.S. Commissary, Fort Meade, Md.,* 84 FLRR 1-1802, 16 FLRA 998 (FLRA 1984). [*Broida Guide to FLRA Law and Practice:* Overtime, Holiday Work Limitations and Requirements](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Subchapter+02:+Hours+of+Work;+Tours+of+Duty,+Section+D:+Overtime+and+Premium+Pay+Assignments,+Subsection+04:+Overtime,+Holiday+Work+Limitations+and+Requirements).
* Proposals having the effect of requiring an agency to assign overtime only to bargaining unit employees interfere with the right to assign work. *Portsmouth Naval Shipyard*, 87 FLRR 1-1674, 30 FLRA 650 (FLRA 1987); *Adjutant General Publications Center*, 84 FLRR 1-1724, 16 FLRA 352 (FLRA 1984).

**Job rotation**

* A proposal requiring selection by seniority from a rotating roster does not interfere with the right to assign work when the agency has already determined or retains the right to determine that employees are equally qualified for the assignment. *Social Security Administration*, 105 LRP 14197, 60 FLRA 785 (FLRA 2005).

**Seniority**

* An arbitrator's award requiring the agency to rotate employees based on seniority excessively interfered with the right to assign work in that it did not provide for a determination by the agency that employees are equally qualified to perform the work. *Federal Detention Center, Houston*, 104 LRP 11878, 59 FLRA 744 (FLRA 2004).

**Requests for leave**

* Proposals placing restrictions on an agency's ability to deny requests for annual leave and leave without pay directly interfere with the right to assign work. *Bureau of Alcohol, Tobacco and Firearms*, 92 FLRR 1-1209, 45 FLRA 339 (FLRA 1992).
* Proposals to grant administrative leave that deprive the agency of the discretion to deny leave because of workload demands interfere with the right to assign work. *Patent and Trademark Office*, 97 FLRR 1-1123, 53 FLRA 539 (FLRA 1997).
* A proposal to grant administrative leave for fitness activities did not affect the right to assign work because it required supervisory approval based on workload considerations. *Customs Service*, 100 FLRR 1-1022, 55 FLRA 1174 (FLRA 1999).

**Labor-management relations activities**

* A contract provision limiting the number of management representatives that may be assigned to represent the agency at a grievance meeting affects the right to assign work. *Alaska VA Health Care System*, 105 LRP 22293, 60 FLRA 968 (FLRA 2005); *Health Care Financing Administration*, 101 FLRR 1-1170, 57 FLRA 462 (FLRA 2001).
* The structure of a grievance procedure, e.g., the number of steps and the organizational levels to which those steps apply, is negotiable, but within that structure, the parties have the right to choose their own representatives. *Headquarters MEP*, 87 FLRR 1-1528, 29 FLRA 726 (FLRA 1987); *Carswell Air Force Base*, 88 FLRR 1-1081, 31 FLRA 620 (FLRA 1988).
* When it allowed for the negotiation of official time for employees to perform union representational duties, Congress realized that the use of official time results in some limitation on the exercise of management rights. *Council of Locals No. 214, AFGE v. FLRA*, 86 FLRR 1-8063, 798 F.2d 1525 (D.C. Cir. 1986).
* 5 USC 7131(d) carved out an exception to the right to assign work. *Military Entrance Processing Station*, 87 FLRR 1-1057, 25 FLRA 685 (FLRA 1987); *Patent and Trademark Office*, 97 FLRR 1-1036, 52 FLRA 1265 (FLRA 1997).
* The carve-out exception is inapplicable if the use of duty time by union representatives is not for labor relations activities. *DVA Medical Center, Newington*, *Conn.*, 94 FLRR 1-1099, 49 FLRA 852 (FLRA 1994).