SUPREME COURT OF THE UNITED STATES

Nos. 97–1184 AND 97–1243

NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 1309, PETITIONER

97–1184 *v.*

DEPARTMENT OF THE INTERIOR ET AL.

FEDERAL LABOR RELATIONS AUTHORITY, PETITIONER

97–1243 *v.*

DEPARTMENT OF THE INTERIOR ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[March 3, 1999]

JUSTICE BREYER delivered the opinion of the Court.

The Federal Service Labor-Management Relations Statute requires federal agencies and the unions that represent their employees to "meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement." 5 U. S. C. §7114(a)(4). We here consider whether that duty to bargain extends to a clause proposed by a union that would bind the parties to bargain midterm– that is, while the basic comprehensive labor contract is in effect– about subjects not included in that basic contract. We reverse a lower court holding that the statutory duty to bargain does not encompass midterm bargaining (or bargaining about midterm bargaining). We conclude that the Statute delegates to the Federal Labor

Relations Authority the legal power to determine whether the parties must engage in midterm bargaining (or bargaining about that matter). We remand these cases so that the Authority may exercise that power.

I

Congress enacted the Federal Service Labor-Management Relations Statute (Statute or FSLMRS) in 1978. See 5 U. S. C. §7101 *et seq*. Declaring that "labor organizations and collective bargaining in the civil service are in the public interest," §7101(a), the Statute grants federal agency employees the right to organize, provides for collective bargaining, and defines various unfair labor practices. See §§7114(a)(1), 7116. It creates the Federal Labor Relations Authority, which it makes responsible for implementing the Statute through the exercise of broad adjudicatory, policymaking, and rulemaking powers. §§7104, 7105. And it establishes within the Authority a Federal Service Impasses Panel, to which it grants the power to resolve negotiation impasses through compulsory arbitration, §7119, hence without the strikes that the law forbids to federal employees, §7116(b)(7).

Of particular relevance here, the Statute requires a federal agency employer to "meet" with the employees' collective-bargaining representative and to "negotiate in good faith for the purposes of arriving at a collective bargaining agreement." §7114(a)(4). The Courts of Appeals disagree about whether, or the extent to which, this good-faith-bargaining requirement extends to midterm bargaining. Suppose, for example, that the federal agency and the union negotiate a basic 5-year contract. In the third year a matter arises that the contract does not address. If the union seeks negotiations about the matter, does the Statute require the agency to bargain then and there, or can the agency wait for basic contract renewal negotiations? Does it matter whether the basic contract

itself contains a "zipper clause" expressly forbidding such bargaining? Does it matter whether the basic contract itself contains a clause expressly permitting midterm bargaining? Can the parties insist upon bargaining end-term (that is, during the negotiations over adopting or renewing a basic labor contract) about whether to include one or the other such clauses in the basic contract itself?

In 1985 the Authority began to answer some of these questions. It considered a union's effort to force midterm negotiations about a matter the basic labor contract did not address, and it held that the Statute *did not* require the agency to bargain. *Internal Revenue Service*, 17 F. L. R. A. 731 (1985) (*IRS I*).

The Court of Appeals for the District of Columbia Circuit, however, set aside the Authority's ruling. The court held that in light of the intent and purpose of the Statute, it must be read to require midterm bargaining, inasmuch as it did not create any distinction between bargaining at the end of a labor contract's term and bargaining during that term. *National Treasury Employees Union* v. *FLRA*, 810 F. 2d 295 (1987) *(NTEU)*. On remand the Authority reversed its earlier position. *Internal Revenue Service*, 29 F. L. R. A. 162, 166 (1987) (*IRS II*). Accepting the D. C. Circuit's analysis, the Authority held:

> "[T]he duty to bargain in good faith imposed by the Statute requires an agency to bargain during the term of a collective bargaining agreement on negotiable union-initiated proposals concerning matters which are not addressed in the [basic] agreement and were not clearly and unmistakably waived by the union during negotiation of the agreement." *Id*., at 167.

The Fourth Circuit has taken a different view of the matter. It has held that "union-initiated midterm bargaining is not required by the statute and would undermine the congressional policies underlying the statute."

Social Security Administration v. *FLRA*, 956 F. 2d 1280, 1281 (1992) (*SSA*). Nor, in its view, may the basic labor contract itself impose a midterm bargaining duty upon the parties. *Department of Energy* v. *FLRA*, 106 F. 3d 1158, 1163 (1997) (holding unlawful a midterm bargaining clause that the Federal Service Impasses Panel had imposed upon the parties' basic labor contract).

In the present suit, the National Federation of Federal Employees, Local 1309 (Union), representing employees of the United States Geological Survey, a subagency of the Department of the Interior (Agency), proposed including in the basic labor contract a midterm bargaining provision that said,

> "The Union may request and the Employer will be obliged to negotiate [midterm] on any negotiable matters not covered by the provisions of this [basic] agreement." *Department of Interior*, 52 F. L. R. A. 475, 476 (1996).

The Agency, relying on the Fourth Circuit's view that the Statute prohibits such a provision, refused to accept, or to bargain about, the proposed clause. The Authority, reiterating its own (and the D. C. Circuit's) contrary view, held that the Agency's refusal to bargain amounted to an unfair labor practice. *Id.*, at 479–481. The Statute itself, said the Authority, imposes an obligation to engage in midterm bargaining– an obligation that the proposed clause only reiterates. *Id.*, at 479–480. And even if such an obligation did not exist under the Statute, the Authority added, a proposal to create a *contractual* obligation to bargain midterm is a fit subject for endterm negotiation. *Id.*, at 480–481. Consequently, the Authority ordered the Agency to bargain over the proposed clause.

The Fourth Circuit set aside the Authority's order. 132 F. 3d 157 (1997). The court reiterated its own view that the Statute itself does not impose any midterm bargaining

duty. *Id*., at 161–162. That being so, it concluded, the parties should not be required to bargain endterm about including a clause that would require bargaining midterm. The court reasoned that once bargaining over such a clause began, the employer would have no choice but to accept the clause. Were the employer not to do so (by bargaining to impasse over the proposed clause), the Federal Service Impasses Panel would then inevitably insert the clause over the employer's objection, as the Impasses Panel (like the D. C. Circuit) believes that a midterm bargaining clause would merely reiterate the duty to bargain midterm that the Statute itself imposes. *Ibid*.

We granted certiorari to consider the conflicting views of the Circuits.

II

We shall focus primarily upon the basic question that divided the Circuits: Does the Statute itself impose a duty to bargain during the term of an existing labor contract? The Fourth Circuit thought that the Statute did not impose a duty to bargain midterm and that the matter was sufficiently clear to warrant judicial rejection of the contrary view of the agency charged with the Statute's administration. *SSA*, *supra*, at 1284 (stating that "'Congress has directly spoken to the precise question at issue,'" and quoting *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842 (1984)). We do not agree with the Fourth Circuit, for we find the Statute's language sufficiently ambiguous or open on the point as to require judicial deference to reasonable interpretation or elaboration by the agency charged with its execution. See *Chevron*, *supra*, at 842–845; *Fort Stewart Schools* v. *FLRA*, 495 U. S. 641, 644–645 (1990).

The D. C. Circuit, the Fourth Circuit, and the Authority all agree that the Statute itself does not expressly address

union-initiated midterm bargaining. See *NTEU*, 810 F. 2d, at 298; *SSA*, *supra*, at 1284; Brief for Petitioner FLRA in No. 97–1243, p. 18. The Statute's relevant language simply says that federal agency employer and union representative "shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement." 5 U. S. C. §7114(a)(4). It defines the key term "collective bargaining agreement" as an "agreement entered into as a result of collective bargaining." §7103(a)(8). And it goes on to define "collective bargaining" as involving the meeting of employer and employee representatives "at reasonable times" to "consult" and to "bargain in a good-faith effort to reach agreement with respect to the conditions of employment," incorporating "any collective bargaining agreement reached" as a result of these negotiations in "a written document." §7103(a)(12). This language, taken literally, may or may not include a duty to bargain collectively midterm.

The Agency, here represented by the Solicitor General, argues that in context, this language *must* exclude midterm bargaining. We shall explain why we do not agree with each of the Agency's basic arguments.

First, the Agency makes a variety of linguistic arguments. As an initial matter, it emphasizes the words "arriving at" in the Statute's general statement that the parties must bargain "for the purposes of *arriving at* a collective bargaining agreement." This statement tends to exclude midterm bargaining, the Agency contends, because parties engage in midterm bargaining, not for the purpose of *arriving at*, but for the purpose of *supplementing*, their basic, comprehensive labor contract. In other words, the basic collective-bargaining agreement is the only appropriate destination at which negotiations might "arriv[e]." The Agency adds that "collective bargaining agreement" is a term of art, which only and always refers to basic labor contracts, not to midterm agreements.

Further, while the Agency acknowledges that there is a duty to bargain midterm in the private sector, see *NLRB* v. *Jacobs Manufacturing Co.*, 196 F. 2d 680 (CA2 1952), it argues that this private-sector duty is based upon language in the National Labor Relations Act (NLRA) that is different in significant respects from the language in the Statute here. The Agency explains that the NLRA defines private-sector collective bargaining to include (1) negotiation "with respect to wages, hours, and other terms and conditions of employment, *or* [(2)] the negotiation of an agreement, or any question arising thereunder." 29 U. S. C. §158(d) (emphasis added). The "or," under this view, indicates that private-sector employers have a comprehensive duty to "bargain collectively" whether or not such bargaining is part of "the negotiation of an agreement" leading to "written contract."

In our view, these linguistic arguments, while logical, make too much of too little. One can easily read "arriving at *a collective bargaining agreement*" as including an agreement reached at the conclusion of midterm bargaining, particularly because the Statute itself does no more than define the relevant term "collective bargaining agreement" in a circular way– as "an agreement entered into as a result of collective bargaining." 5 U. S. C. §7103(a)(8). Nor have we found any statute, judicial opinion, agency document, or treatise that says whether the words "collective bargaining agreement" are words of art that must necessarily exclude midterm agreements. Finally, the linguistic differences between the NLRA and the FSLMRS tell us little, particularly given the fact that the two labor statutes, like collective bargaining itself, are not otherwise identical in the two sectors. For all these reasons, we find in the relevant statutory language ambiguity, not certainty.

Second, the Agency– like the Fourth Circuit– contends that the Statute's policies demand a reading of the statu-

tory language that would exclude midterm bargaining from its definition of "collective bargaining." The availability of midterm bargaining, the Agency argues, might lead unions to withhold certain subjects from ordinary endterm negotiations and then to raise them during the term, under more favorable bargaining conditions. A union might conclude, for example, that it is more likely to get what it wants by presenting a proposal during the term (when no other issues are on the table and a compromise is less likely) and then negotiating to impasse, thus leaving the matter for the Federal Service Impasses Panel to resolve. The Agency also points out that public-sector and private-sector bargaining differ in this respect. Private-sector unions enforce their views through strikes, and because they hesitate to strike midterm, they also have no particular incentive to bargain midterm. But public-sector unions enforce their views through compulsory arbitration, not strikes. Hence, the argument goes, public-sector unions have a unique incentive to bargain midterm on a piecemeal basis, thereby threatening to undermine the basic collective-bargaining process. See, *e.g.*, *SSA*, 956 F. 2d, at 1288–1289.

Other policy concerns, however, argue for a different reading of the Statute. Without midterm bargaining, for example, will it prove possible to find a collective solution to a workplace problem, say a health or safety hazard, that first appeared midterm? The Statute's emphasis upon collective bargaining as "contribut[ing] to the effective conduct of public business," 5 U. S. C. §7101(a)(1)(B), suggests that it would favor joint, not unilateral, solutions to such midterm problems.

The Authority would seem better suited than a court to make the workplace-related empirical judgments that would help properly balance these, and other, policy-related considerations. The Statute does not indicate that Congress itself decided to make these specific policy judg-

ments. Hence the Agency's policy arguments illustrate the need for the Authority's elaboration or refinement of the basic statutory collective-bargaining obligation; they illustrate the appropriateness of judicial deference to considered Authority views on the matter; and, most importantly, they do not narrow the scope of a statutory provision the language of which is consistent with a variety of interpretations.

Third, the Agency argues that the Statute's history and prior administrative practice support its view that federal agencies have no duty to bargain midterm. The Statute grew out of an Executive Order that previously had governed federal-sector labor relations. See Exec. Order No. 11491, 3 CFR 861 (1966–1970 Comp.), as amended by Exec. Order Nos. 11616, 11636, and 11838, 3 CFR 605, 634, 957 (1971–1975 Comp.). In support, the Agency cites a case in which an Assistant Secretary of Labor, applying that Executive Order, dismissed an unfair labor practice complaint on the ground, among others, that a federal agency need not bargain over midterm union proposals. *Army and Air Force Exchange Serv., Capital Exchange Region Headquarters*, Case No. 22–6657(CA), 2 Rulings on Requests for Review of Assistant Secretary of Labor for Labor-Management Relations 561–562 (1976) (not reviewed by the Federal Labor Relations Council, predecessor to the Authority); see *IRS I*, 17 F. L. R. A., at 736–737, n. 7 (finding, based upon this decision, that there was no obligation to bargain over midterm union proposals under the Executive Order). A single alternative ground, however– in a single, unreviewed decision from before the Statute was enacted– does not demonstrate the kind of historical practice that one might assume would be reflected in the Statute, particularly when at least one treatise suggested at the time that federal labor relations practice was to the contrary. See H. Robinson, Negotiability in the Federal Sector 10–11, and n. 9 (1981) (stating

that under the Executive Order both unions and agencies had a continuing duty to bargain through the term of a basic labor contract).

The Agency also points to a Senate Report in support of its interpretation of the Statute. That Report speaks of the parties' "mutual duty to bargain" with respect to (1) "changes in established personnel policies proposed by management," and (2) "negotiable proposals initiated by either the agency or [the union] . . . in the context of negotiations *leading to a basic collective bargaining agreement.*" S. Rep. No. 95–969, p. 104 (1978) (emphasis added). This Report, however, concerns a bill that contains language similar to the language before us but was not enacted into law. According to the D. C. Circuit, at least, any distinction between basic and midterm bargaining that is indicated by this passage "did not survive the rejection by Congress of the Senate's restrictive view of the rights of labor and the importance of collective bargaining." *NTEU*, 810 F. 2d, at 298. In any event, the Report's list of possible occasions for collective bargaining does not purport to be an exclusive list; it does not say that the Statute was understood to exclude midterm bargaining; and any such implication is simply too distant to control our reading of the Statute.

Fourth, the Agency and the Fourth Circuit contend that the "management rights" provision of the Statute, 5 U. S. C. §7106, *does* authorize limited midterm bargaining in respect to certain matters (not here at issue), and that by negative implication it denies permission to bargain midterm in respect to any others. See, *e.g.*, *SSA*, *supra*, at 1284 ("The inclusion of a specific duty of midterm effects bargaining . . . suggests the inadvisability of reading a more general duty into the statute"). Our examination of that provision, however, finds little support for such a strong negative implication.

Subsection (a) of the management rights provision

withdraws from collective bargaining certain subjects that it reserves exclusively for decision by management. It specifies, for example, that federal agency "management official[s]" will retain their authority to hire, fire, promote, and assign work, and also to determine the agency's "mission, budget, organization, number of employees, and internal security practices." §7106(a).

Subsection (b), however, permits a certain amount of collective bargaining in respect to the very subjects that subsection (a) withdrew. Subsection (b) states:

> "*Nothing in this section shall preclude* any agency and any labor organization from negotiating–
>
> "(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
>
> "(2) procedures which management officials . . . will observe in exercising any authority under this section; or
>
> "(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials." §7106(b) (emphasis added).

The two subsections of the management rights provision, taken together, do not help the Agency. While the provision contemplates that bargaining over the impact and implementation of management changes may take place during the term of the basic labor contract, subsection (b) need not be read to actually impose a duty to bargain midterm. The italicized clause, "[n]othing in this section shall preclude," indicates only that the delegation of certain rights to management (*e.g.*, promotions) shall not *preclude* negotiations about certain related matters

(*e.g.*, promotion procedures). By its terms, then, subsection (b) does nothing more than create an exception to subsection (a), preserving the duty to bargain with respect to certain matters otherwise committed to the discretion of management. Because §7106(b) chiefly addresses the subject matter of bargaining and not the timing, one could reasonably conclude that while that subsection contemplates midterm bargaining in the circumstances there specified, the duty to bargain midterm finds its source elsewhere in the Statute. Hence, the management rights provision seems to hurt, as much as to help, the Agency's basic argument.

The upshot of this analysis is that where the Agency and the Fourth Circuit find a clear statutory denial of any midterm bargaining obligation, we find ambiguity created by the Statute's use of general language that might, or might not, encompass various forms of midterm bargaining. That kind of statutory ambiguity is inconsistent both with the Fourth Circuit's absolute reading of the Statute and also with the D. C. Circuit's similarly absolute, but opposite, reading. Compare *SSA*, 956 F. 2d, at 1284, with *NTEU*, 810 F. 2d, at 301 (rejecting the Authority's position that there is no duty to bargain midterm on the ground that it is "contrary to the intent of the legislature and the guiding purpose of the statute"). Indeed, the D. C. Circuit's analysis implicitly concedes the need to make at least *some* midterm bargaining distinctions, when it assumes that the midterm bargaining obligation does not extend to matters that are covered by the basic contract. See *id.*, at 296.

The statutory ambiguity is perfectly consistent, however, with the conclusion that Congress delegated to the Authority the power to determine– within appropriate legal bounds, see, *e.g.*, 5 U. S. C. §706 (Administrative Procedure Act); *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984)– whether,

when, where, and what sort of midterm bargaining is required. The Statute's delegation of rulemaking, adjudicatory, and policymaking powers to the Authority supports this conclusion. See 5 U. S. C. §7105(a)(1) ("Authority shall provide leadership in establishing policies and guidance"); §7105(a)(2)(E) (Authority "resolves issues relating to the duty to bargain in good faith"); §7117(c) (Authority resolves disputes about whether the duty to bargain in good faith extends to a particular matter); accord *American Federation of Govt. Employees, Local 2986, AFL–CIO* v. *FLRA*, 775 F. 2d 1022, 1027 (CA9 1985); *American Federation of Govt. Employees, AFL–CIO, Council of Soc. Sec. Dist. Office Locals, San Francisco Region* v. *FLRA*, 716 F. 2d 47, 50 (CADC 1983). This conclusion is also supported by precedent recognizing the similarity of the Authority's public-sector and the National Labor Relations Board's private-sector roles. As we have recognized, the Authority's function is "to develop specialized expertise in its field of labor relations and to use that expertise to give content to the principles and goals set forth in the Act," and it "is entitled to considerable deference when it exercises its 'special function of applying the general provisions of the Act to the complexities' of federal labor relations." *Bureau of Alcohol, Tobacco and Firearms* v. *FLRA*, 464 U. S. 89, 97 (1983) (quoting *NLRB* v. *Erie Resistor Corp.*, 373 U. S. 221, 236 (1963)).

We conclude that Congress "left" the matters of whether, when, and where midterm bargaining is required "to be resolved by the agency charged with the administration of the statute in light of everyday realities." *Chevron*, *supra*, at 865–866.

III

The specific question before us is whether an agency must bargain endterm about including in the basic labor contract a clause that would require certain forms of

midterm bargaining. As is true of midterm bargaining itself, and for similar reasons, the Statute grants the Authority leeway (within ordinary legal limits) in answering that question as well.

The Authority says that it has determined, as a matter of its own judgment, that the parties must bargain over such a provision. Our reading of its relevant administrative determinations, however, leads us to conclude that its judgment on the matter was occasioned by the D. C. Circuit's holding that the Statute must be read to impose on agencies a duty to bargain midterm. See, *e.g.*, *Merit Systems Protection Bd. Professional Assn.*, 30 F. L. R. A. 852, 859–860 (1988) (midterm bargaining clause is negotiable because it "reiterates a right the Union has under the Statute"); 52 F. L. R. A., at 479 (in the instant suit, restating that same conclusion). The Authority did indicate below that even if it agreed with the Fourth Circuit's position that the Statute does not impose a duty to bargain midterm, the outcome in this litigation would be no different, as the Authority "'has previously upheld the negotiability of proposals despite the absence of a statutory right concerning the matter in question.'" *Id.*, at 480 (quoting *Department of Energy*, 51 F. L. R. A. 124, 127 (1995), enf. denied, *Department of Energy* v. *FLRA*, 106 F. 3d 1158 (CA4 1997)). This explanation, however, seems more an effort to respond to, and to distinguish, a contrary judicial authority, rather than an independently reasoned effort to develop complex labor policies. Regardless, the Authority's conclusion would seem linked to the D. C. Circuit's basic understanding about the statutory requirements.

In light of our determination that the Statute does not resolve the question of midterm bargaining, nor the related question of bargaining about midterm bargaining, we believe the Authority should have the opportunity to consider these questions aware that the Statute permits,

but does not compel, the conclusions it reached.

The decision of the Fourth Circuit is vacated, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.