

Arbitrator: Trump's union EOs violate 'hierarchy of law'

By Erich Wagner

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An independent arbitrator last week declined to dismiss a grievance between the Defense Department and a U.S. Air Force union, adding a new wrinkle to the months-long legal war between the Trump administration and federal employees.

When federal agencies began formally implementing the president's two executive orders, which together strip more than two-thirds of the federal workforce of their collective bargaining rights under the auspices of national security, they ceased participating in ongoing union grievance and arbitration processes. Though federal appellate judges have largely allowed the edicts to be implemented while litigation progresses, they have yet to issue a decision on the orders' legality.

In a Dec. 30 decision, independent arbitrator Marvin Hill declined to cede his jurisdiction over a grievance between the National Association of Independent Labor and Scott Air Force Base in southern Illinois, and described the Defense Department's effort to cease participating in proceedings as "unlawful." The Trump administration had requested that Hill either dismiss the matter for lack of jurisdiction, or to hold the case in abeyance until a federal appellate court issues its decision on a trio of union lawsuits seeking to block the two executive orders.

In Hill's analysis, his authority as an arbitrator stems from NAIL and Scott Air Force Base's collective bargaining agreement, which itself stems from the federal sector labor statute. President Trump's effort to cancel that CBA via executive order undermines a bedrock tenet of American law, he wrote.

"Every individual who attended law school and took a bar exam understands that a hierarchy of law exists where executive orders, whether issued by governors or presidents, rank below statutes and constitutions," he wrote. "[Clear] and simple, black letter law provides that bargaining rights and obligations contained in a collective bargaining agreement, including grievance arbitration, cannot be subject to restriction or elimination through a declaration, via executive order, making it so. To hold otherwise would turn on its head a long-established system of law in the United States."

Hill also noted that textbooks governing the practice of arbitration state that in CBA-related proceedings, the arbitrator has "exclusive authority" to decide whether a case is arbitrable.

"My obligation is to the parties' collective bargaining agreement and I refuse to adhere to a rule permitting an agency to unilaterally decide that their collective bargaining agreement is a nullity just because an executive order permits the agency to unilaterally impose its agenda, rather than the union and the agency, as Congress intended," he wrote.

In a statement Saturday, NAIL President Peter Cantwell applauded the decision.

"This ruling validates what NAIL has maintained from the beginning," he said. "Our negotiated rights are not optional, and the law cannot be overridden. This decision is a major step forward in our ongoing efforts to protect the rights of the workers we represent. We understand the frustrations of the administration and some members of Congress with federal bureaucracy. We want to help to increase efficiency and fiscal responsibility, but the law is the law."

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