

No. 21-1454

In the Supreme Court of the United States

THE OHIO ADJUTANT GENERAL'S DEPARTMENT, et al.,
Petitioners,

v.

FEDERAL LABOR RELATIONS AUTHORITY,
Respondent,

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
LOCAL 3970, AFL-CIO,
Intervenor-Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

**INTERVENOR-RESPONDENT'S MOTION
FOR DIVIDED ARGUMENT**

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November 29, 2022

RULE 29.6 DISCLOSURE STATEMENT

Intervenor-Respondent American Federation of Government Employees, Local 3970 has no parent company nor does any public company have a 10 percent or greater ownership in it.

Pursuant to Rules 21, 28.3, and 28.4 of this Court, Intervenor-Respondent respectfully moves for divided oral argument. Counsel for Intervenor-Respondent has conferred with counsel for Petitioners, who take no position on Intervenor-Respondent's request for divided argument. Counsel for Intervenor-Respondent also has conferred with counsel for Respondent, who takes no position on Intervenor-Respondent's request for divided argument with the following allocation of time: 20 minutes for Respondent and 10 minutes for Intervenor-Respondent. Intervenor-Respondent therefore respectfully requests that Respondent's oral argument time be divided between Respondent and Intervenor-Respondent as follows: **20 minutes for Respondent and 10 minutes for Intervenor-Respondent.**

This case concerns the rights of civilian, dual-status technicians under the Federal Service Labor-Management Relations Statute, 5 U.S.C. Chapter 71, (the "FSLMRS"), and the application of the FSLMRS to Petitioners in the exercise of those rights. Intervenor-Respondent is a labor organization that represents the civilian technicians who initiated the administrative proceedings which gave rise to this case. Intervenor-Respondent also is affiliated with a parent labor organization, the American Federation of Government Employees, AFL-CIO, that represents additional civilian technicians through other affiliates. Consequently, a divided argument is appropriate for two reasons.

One, the interests of Intervenor-Respondent and Respondent are not the same. Intervenor-Respondent represents the individual interests of the technicians whom it represents, and, in particular, their protected rights to: (a) form, join, or

assist any labor organization; (b) to act for a labor organization as a representative, “and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other authorities[;]” and (c) to engage in meaningful and enforceable collective bargaining with respect to their conditions of employment. 5 U.S.C. § 7102; *see also* 5 U.S.C. § 7114(a)(1) (a labor organization that is the exclusive representative of the employees it represents “is entitled to act for, and negotiate collective bargaining agreements covering, all the employees in the unit.”); 5 U.S.C. §§ 7114(a)(4), (b)(2) (a recognized labor organization is entitled to negotiate with duly authorized representatives for the purpose of arriving at a collective bargaining agreement).

In fact, the representation of civilian technician by affiliates of Intervenor-Respondent’s parent labor organization predates passage of the FSLMRS. *See, e.g., Adjutant General Department, State of Ohio, Air National Guard and American Federation of Government Employees, AFL-CIO, Ohio Council of Air National Guard Locals, A/SLMR No. 44, Case No. 53-2974 (May 20, 1971)*. Respondent, by contrast, represents the institutional interests of a different, governmental party, the Federal Labor Relations Authority (“FLRA”), with different institutional interests. As such, Intervenor-Respondent is able to provide a different perspective from Respondent.

Two, Intervenor-Respondent was the prevailing party before the FLRA and has remained a party in the proceedings to date. Intervenor-Respondent argued

below before the Sixth Circuit on behalf of the civilian technicians it represents and filed a brief in opposition to this Court's grant of certiorari. Intervenor-Respondent also participated in the prosecution of the underlying unfair labor practice complaints, which it initiated, before Respondent's administrative law judge and defended the outcome of that hearing to the full FLRA. Intervenor-Respondent thus has an obvious and substantial interest in the outcome of this matter, which, in conjunction with its historical representation of civilian technicians, warrants divided argument.

The Court also has previously granted divided argument to intervenor-respondents. *See, e.g., United States, et al., v. Texas, et al.*, 578 U.S. 917 (April 8, 2016); *State of Connecticut, et al., v. State of New Hampshire*, 507 U.S. 1016 (April 5, 1993); *State of South Carolina v. Baker*, 484 U.S. 892 (October 13, 1987).

Allowing divided argument here will not unduly delay the proceedings nor will it require an enlargement of time for argument. Consequently, Intervenor-Respondent respectfully requests that the Court grant divided argument.

Respectfully submitted,

/s/ Andres M. Grajales
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