

**FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C.**

**U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

(Agency)

AND

**NATIONAL ASSOCIATION OF IMMIGRATION JUDGES
INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL
ENGINEERS JUDICIAL COUNCIL 2**

(Union)

No. WA-RP-19-0067-REC

**AGENCY'S WITHDRAWAL OF
REPRESENTATION PETITION**

Table of Contents

I.	Procedural Background	2
II.	Withdrawal of Representation Petition	2

The U.S. Department of Justice, Executive Office for Immigration Review (Agency) respectfully submits this withdrawal of the Representation Petition. Because this filing is not expressly authorized by the regulations of the Federal Labor Relations Authority (Authority), it is accompanied by a separate request for leave to submit same under 5 C.F.R. §§ 2424.27 and 2429.26.

I. Procedural Background

On or about August 9, 2019, the Agency filed the Representation Petition herein with the FLRA Washington Regional Director seeking unit clarification and a determination that the bargaining unit of Immigration Judges was inappropriate because IJs are management officials under 5 U.S.C. § 7103(a)(11). In its “Decision and Order on Review” dated November 2, 2020, the Authority ruled that the Agency’s Immigration Judges are management officials under the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101, *et seq.* On November 17, 2020, Respondent filed its Motion for Reconsideration.¹ On November 24, 2020, the Agency filed its opposition to the Motion for Reconsideration. On June 21, 2020, the Respondent filed its Motion for Leave, Motion for Remand and for Stay. On June 25, 2021, the Agency withdrew its Opposition to the Respondent’s Motion for Reconsideration, and with respect to Respondent’s Motion for Leave, Motion for Remand and for Stay, the Agency stated that it did not oppose remand.²

II. Withdrawal of Representation Petition

The Agency’s Representation Petition, which sought clarification regarding the appropriateness of the IJs’ bargaining unit status, was supportable given the prior Administration’s policy views and existing legal authorities. However, in light of the Executive Order on Worker Organizing and Empowerment (EO) dated April 26, 2021, the Agency has revisited its position. In support of the Administration and its EO, the Agency respectfully withdraws its Representation Petition. In the meantime, unless and until the FLRA rules

¹ *Amicus curiae* briefs in support of Respondent’s Motion for Reconsideration were filed by the Association of Administrative Law Judges, International Federation of Professional Employees, AFL-CIO, on November 16, 2020, and the American Federation of Government Employees, AFL-CIO, on December 15, 2020. The Agency filed an opposition to the Association of Administrative Law Judges’ *amicus* brief on November 24, 2020.

² The Agency also respectfully withdrew its opposition to the *amicus curiae* brief filed by the Association of Administrative Law Judges.

otherwise, the Agency will continue to abide by the FLRA's decision that Immigration Judges are management officials.

Respectfully submitted,

Date: July 19, 2021

Charles B. Barksdale

Charles B. Barksdale, Attorney Advisor
Office of the General Counsel
Executive Office for Immigration Review
U.S. Department of Justice
(571) 249-6098 (work mobile)
charles.barksdale@usdoj.gov

Jean King

Jean King, Director
Executive Office for Immigration Review
U.S. Department of Justice

STATEMENT OF SERVICE

This is to certify in accordance with 5 C.F.R. § 2422.4 and § 2429.27 that this Agency's Withdrawal of Representation Petition was served on July 19, 2021, via electronic mail (as indicated) and first class mail, postage prepaid, on the following recipients:

Federal Labor Relations Authority
Brandon Bradley, Chief
Office of Case Intake and Publication
Federal Labor Relations Authority
Docket Room, Suite 200
1400 K Street, NW
Washington, DC 20424-0001

FLRA Regional Director
Jessica S. Bartlett, Regional Director
William D. Kirsner, Regional Attorney
Washington Regional Office
Federal Labor Relations Authority
1400 K Street, NW, Second Floor
Washington, DC 20424-0001
email: jbartlett@flra.gov,
wkirsn@flra.gov

Counsel for Respondent
Richard Bialczak, Esq.
48-18 Van Dam Street, 2nd Floor
Long Island City, NY 11101
email: rickbial@gmail.com

Margaret Tough, Esq. and Abigail Parr, Esq.
Latham & Watkins LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111-6538
email: Margaret.Tough@lw.com
Abigail.Parr@lw.com

Amicus – Association of Administrative Law Judges (AALJ), International Federation of Professional Employees, AFL-CIO

Melissa McIntosh, Esq.
Counsel for and President of AALJ
4740 12th Avenue North
St. Petersburg, FL 33713
email: JudgeMelissaMcIntosh@gmail.com

Amicus – American Federal of Government Employees (AFGE), AFL-CIO

Julia Turner, Assistant General Counsel
AFGE, AFL-CIO
80 F Street, NW
Washington, DC 20001
email: julia.turner@afge.org

Date: July 19, 2021

Charles B. Barksdale
Charles B. Barksdale
Associate General Counsel
Office of the General Counsel
Executive Office for Immigration Review
U.S. Department of Justice