

United States Court of Appeals for the Federal Circuit

FEDERAL EDUCATION ASSOCIATION -
STATESIDE REGION, KAREN GRAVISS,
Petitioners

v.

DEPARTMENT OF DEFENSE, DOMESTIC
DEPENDENTS ELEMENTARY AND SECONDARY
SCHOOL,
Respondent

2015-3173

Petition for review of an arbitrator's decision in No.
14-1024-00182-7 by Steven G. Hoffmeyer.

ON PETITION FOR REHEARING EN BANC

DOROTHY LOUISE LEE, Federal Education Association
Stateside Region, Dublin, OH, filed a response to the
petition for petitioners.

TARA K. HOGAN, Commercial Litigation Branch, Civil
Division, United States Department of Justice, Washing-
ton, DC, filed a petition for rehearing en banc for re-
spondent. Also represented by CLAUDIA BURKE, ROBERT E.
KIRSCHMAN, JR., CHAD A. READLER.

Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,
HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

ORDER

Respondent Department of Defense filed a petition for rehearing en banc. A response was invited and filed. The petition and response were considered by the panel that heard the appeal, see Fed. Cir. R. 35 Practice Notes, and thereafter referred to the circuit judges in regular active service. A poll was requested and taken, and the court decided that the appeal warrants en banc attention.

On consideration thereof,

IT IS ORDERED THAT:

- (1) The petition for rehearing en banc filed by Respondent Department of Defense is granted.
- (2) The court's opinion in *Federal Education Association—Stateside Region v. Department of Defense*, 841 F.3d 1362 (Fed. Cir. 2016), is vacated and the appeal is reinstated.
- (3) The Petitioners and Respondent are requested to file supplemental briefs. As part of the briefing of the relevant cases and issues, the parties are requested to address this court's decisions in *Sullivan v. Department of Navy*, 720 F.2d 1266 (Fed. Cir. 1983) and *Ryder v. United States*, 585 F.2d 482 (Ct. Cl. 1978).
- (4) The supplemental en banc briefs and briefs of any amici curiae shall be electronically filed in the ECF system, and thirty paper copies of each brief shall

be filed with the court. Two paper copies of all filings shall be served on opposing counsel. Briefs shall adhere to the type-volume limitations set forth in Federal Rule of Appellate Procedure 32 and Federal Circuit Rule 32.

- (5) The supplemental brief of Petitioners must be filed within 30 days of this order. Any amicus brief supporting Petitioners' position or supporting neither position must be filed within 10 days thereafter. Respondent's supplemental brief must be filed within 60 days of this order. Any amicus briefs supporting Respondent's position must be filed within 10 days thereafter. Petitioners reply brief must be filed within 14 days after Respondent's supplemental brief.
- (6) In addition, the Petitioners and Respondent are directed to file with the court thirty paper copies of their original briefs and any Appendix within 17 days from the date of this Order.
- (7) The court invites the views of amici curiae. Any such briefs may be filed without consent and leave of court, but otherwise must comply with Federal Rule of Appellate Procedure 29 and Federal Circuit Rule 29. All amicus briefs shall be filed as stated above.
- (8) The appeal will be heard en banc on the basis of the original briefs, the supplemental briefs ordered herein, and oral argument.
- (9) Oral argument will be scheduled at a later date.

FOR THE COURT

October 13, 2017
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court