

Federal Labor Relations Authority
Quarterly Digest Report: April 1, 2022 – June 30, 2022



The following case digests are summaries of decisions/orders issued by the Federal Labor Relations Authority, with a short description of the issues and facts of each case. Descriptions contained in these case digests are for informational purposes only, do not constitute legal precedent, and are not intended to be a substitute for the opinion of the Authority.

CASE DIGEST: *U.S. Dep't of the Treasury, IRS, 72 FLRA 728 (2022)*
 (Chairman DuBester concurring in part and dissenting in part)

In this case, the Authority granted interlocutory review of the Agency's essence exceptions, but denied them for failure to establish that the Arbitrator's interpretation of the parties' negotiated grievance procedure was irrational, unfounded, implausible, or in manifest disregard of the parties' agreement.

Chairman DuBester agreed with the dismissal of the Agency's interlocutory contrary-to-law exception, but dissented from the decision to grant interlocutory review of the Agency's essence exception.

CASE DIGEST: *AFGE, Council of Locs. 222, 72 FLRA 738 (2022)*

The Arbitrator issued an award finding, in relevant part, that because neither party was the prevailing party, each was responsible for its own legal fees and expenses. The Union filed exceptions on exceeded-authority, nonfact, contrary-to-law, and essence grounds. The Authority dismissed the exceeded-authority exception and portions of the remaining exceptions because the Union's arguments were inconsistent with the position it took before the Arbitrator. The Authority denied the remaining exceptions because the Union failed to demonstrate that the award was deficient.

CASE DIGEST: *AFGE, Loc. 2338*, 72 FLRA 743 (2022)

After finding that the Agency failed to pay eligible employees Saturday premium pay, the Arbitrator issued a remedial award granting backpay but denying interest, overtime, and shift differentials. In a subsequent fee award, the Arbitrator summarily denied the Union's application for attorney fees. The Union filed exceptions to both awards, alleging that they were contrary to the Back Pay Act (the Act). The Authority granted those exceptions, modified the remedial award to conform with the Act, and remanded the fee issue to the parties.

CASE DIGEST: *NTEU*, 72 FLRA 749 (2022)

This negotiability case involved one proposal to allow more than 120 days of backpay for noncompetitive temporary promotions and details. The Authority found the proposal outside the duty to bargain because it was contrary to a government-wide regulation, and dismissed the Union's petition for review.

CASE DIGEST: *NTEU*, 72 FLRA 752 (2022) (Chairman DuBester concurring in part, dissenting in part)

This case involved two proposals arising from the Agency's decision to reassign forty-seven bargaining unit employees to different duty stations. The Authority found that the proposals were not appropriate arrangements because they excessively interfered with management's right to determine its organization and right to retain employees. Accordingly, the Authority dismissed the petition for review.

Chairman DuBester concurred in part and dissented in part. He agreed that the first proposal excessively interfered with management's right to determine the Agency's organization, but disagreed with the majority's finding that the Union conceded an effect on management's rights, as well as the majority's application of a "negates" test to assess whether the proposal was an appropriate arrangement. Additionally, in his view, the second proposal was an appropriate arrangement.

CASE DIGEST: *AFGE, Loc. 906*, 72 FLRA 761 (2022) (Member Abbott dissenting)

Because the Arbitrator imposed a contractual obligation not found in the parties' settlement agreement, the Authority held that the award failed to draw its essence from the agreement.

Member Abbott dissented, emphasizing that the relevant question was whether the award was consistent with the requirements of the executive order and other applicable laws and regulations.

CASE DIGEST: *AFGE, Loc. 2142*, 72 FLRA 764 (2022) (Chairman DuBester concurring)

In this case, the Arbitrator issued an award finding that the Agency had just cause to suspend the grievant for two days for discourteous conduct and use of abusive language. The Union filed exceptions to the award on nonfact, contrary-to-law, and essence grounds. Because the Union failed to demonstrate that the award was deficient on any of these grounds, the Authority denied the Union's exceptions.

Chairman DuBester agreed with the decision to deny the Union's exceptions.

CASE DIGEST: *Int'l Bhd. of Boilermakers, Loc. 290*, 72 FLRA 769 (2022)
(Member Kiko concurring)

The Arbitrator dismissed a grievance as untimely under the parties' agreement. The Union challenged the award on essence and exceeded-authority grounds. Because the Union's exceptions failed to demonstrate that the award was deficient on either of those grounds, the Authority denied the exceptions.

Member Kiko concurred in the decision to deny the Union's exceptions but wrote separately to highlight the Arbitrator's disturbingly partial statements throughout the award.

CASE DIGEST: *U.S. Dep't of the Army, Mil. Dist. of Wash., Fort Myer, Va.*, 72 FLRA 772 (2022)

The Arbitrator found that the Agency violated the parties' master agreement and a local agreement by denying official time for training. The Agency filed exceptions arguing that the award failed to draw its essence from the parties' agreement, the Arbitrator lacked the authority to award backpay, and the award violated the doctrine of sovereign immunity. Because the Agency did not establish that the award was deficient, the Authority denied the Agency's exceptions.

Chairman DuBester concurred, finding that under the circumstances of this case, the award failed to satisfy the requirements of the Back Pay Act.

CASE DIGEST: *AFGE, Loc. 2814*, 72 FLRA 777 (2022) (Chairman DuBester concurring; Member Abbott concurring)

The Authority dismissed the Union's exception to the Arbitrator's interim award because it did not demonstrate extraordinary circumstances warranting interlocutory review.

Chairman DuBester agreed with the decision to dismiss the Union's exception.

Member Abbott concurred expressing his continued concerns with the broad scope of the current interlocutory review standard.

CASE DIGEST: *U.S. Dep't of VA, 72 FLRA 781 (2022)*

In this case, the Authority upheld an award that enforced contract provisions defining the parties' obligations to engage in midterm bargaining.

CASE DIGEST: *Dep't of the Army, Fort Carson Fire & Emergency Svc., Fort Carson, Colo., 73 FLRA 1 (2022)*

This case concerned the Agency's application for review of an FLRA Regional Director's (RD) decision finding that two supervisory firefighters in the Agency's operations branch are not confidential employees excluded from the bargaining unit represented by the Union. The Authority found that the RD did not commit a clear and prejudicial error concerning a substantial factual matter or fail to apply established law. Therefore, the Authority denied the application for review.

CASE DIGEST: *NLRB Pro. Ass'n, 73 FLRA 20 (2022)*

The Authority found that the Agency withdrew any allegations of nonnegotiability that it had previously made during proceedings before the Federal Service Impasses Panel concerning the proposals at issue in the Union's petition for review. Therefore, the Authority dismissed the petition, without prejudice to the Union's right to refile, for failing to meet the conditions governing review of negotiability appeals.

CASE DIGEST: *AFGE, Loc. 1822, 73 FLRA 22 (2022)*

The Agency filed a motion for reconsideration of the Authority's decision in *AFGE, Local 1822, 72 FLRA 595 (2021)* (Chairman DuBester concurring). The Authority dismissed the motion as untimely because it was filed outside the ten-day deadline for such motions under § 2429.17 of the Authority's Regulations.

CASE DIGEST: *AFGE, Loc. 2338, 73 FLRA 24 (2022)*

The Arbitrator found that a grievance concerning the alleged involuntary resignation of the grievant from federal employment was not procedurally arbitrable. The Authority found that it lacked jurisdiction over the Union's exceptions challenging that award under § 7122(a) of the Federal Service Labor-Management Relations Statute. Accordingly, the Authority dismissed the Union's exceptions.

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Memphis, Tenn., 73 FLRA 26 (2022)*

The Union filed a grievance alleging that the Agency unlawfully prevented female employees from staffing two correctional posts. The Arbitrator found that the grievance was procedurally arbitrable and that the Agency's policy of excluding female employees from the posts violated law, Agency regulations, and the parties' collective-bargaining agreements. Because the Agency failed to demonstrate that the Arbitrator's procedural-arbitrability

determination was deficient on essence grounds or that the merits determinations were contrary to law, the Authority denied the Agency's exceptions.

CASE DIGEST: *Fed. Educ. Ass'n, Stateside Region*, 73 FLRA 32 (2022)

The Arbitrator found that the Union's grievance was not substantively arbitrable based on management's right to hire under the Federal Service Labor-Management Relations Statute. The Authority found that determination was contrary to law and remanded the award to the parties for resubmission to the Arbitrator for a decision on the merits.

CASE DIGEST: *AFGE, Loc. 1441*, 73 FLRA 36 (2022)

The Arbitrator found that the Agency did not unlawfully designate the Dredge William L. Goetz floating plant as the grievants' permanent duty station. The Authority denied the Union's nonfact, contrary-to-law, and contrary-to-public-policy exceptions.

CASE DIGEST: *AFGE, Loc. 3954*, 73 FLRA 39 (2022)

After finding that certain employees were entitled to overtime compensation under the Fair Labor Standards Act, the Arbitrator issued a damages award in which he determined the amount of overtime compensation, liquidated damages, and attorney fees and costs to be paid by the Agency. The Union filed exceptions to the damages award on nonfact, exceeded-authority, contrary-to-law, fair-hearing, and impossible-to-implement grounds. The Authority denied the nonfact and exceeded-authority exceptions, but granted the contrary-to-law exception, in part. The Authority found that the Arbitrator improperly relied on averages to determine the amount of overtime compensation, the wrong legal standard to determine entitlement to liquidated damages, and the wrong market to determine the Union attorneys' hourly rate. The Authority remanded those matters to the parties, absent settlement, for resubmission to the Arbitrator and therefore found it unnecessary to address the Union's remaining exceptions.

CASE DIGEST: *U.S. Dep't of VA, James A. Haley VAMC, Tampa, Fla.*, 73 FLRA 47 (2022)

The Arbitrator issued an award finding that the grievance was substantively arbitrable and that the Agency's rescission of the grievant's contracting warrant authority violated Agency regulations. The Arbitrator directed the Agency to reinstate the grievant's warrant authority and pay backpay. The Authority found that the grievance was arbitrable but set aside the backpay remedy as contrary to law.

CASE DIGEST: *NLRB Pro. Ass'n*, 73 FLRA 50 (2022)

Although the parties' agreement defined a "grievance" in a way that mirrored § 7103(a)(9)(C)(ii) of the Federal Service Labor-Management Relations Statute, the Arbitrator found that a Union complaint containing unfair-labor-practice (ULP) allegations was not grievable or arbitrable. Because § 7103(a)(9)(C)(ii) authorizes grievances over ULP claims, the Authority set aside the award as contrary to law.

CASE DIGEST: *AFGE, Council 222, 73 FLRA 54 (2022)*

The Arbitrator found that the Agency did not violate the parties' collective-bargaining agreement or law when it discontinued holiday pay in excess of eight hours to employees not on a compressed work schedule. The Union filed exceptions challenging the award on nonfact and contrary-to-law grounds. The Authority found that the Union failed to establish that the award was deficient on either ground and denied the exceptions.

CASE DIGEST: *NAGE, Loc. R3-74, SEIU, 73 FLRA 57 (2022)*

In this case, the Arbitrator denied a grievance alleging that the Agency violated the parties' collective-bargaining agreement (CBA) by reassigning an employee without following proper CBA procedures concerning department-initiated reassignments. The Union filed an exception arguing that the award failed to draw its essence from the CBA because the Arbitrator ignored dispositive contract language. The Authority was unable to determine whether the award was deficient as raised in the Union's exception, and remanded the matter for further action consistent with its decision.

CASE DIGEST: *AFGE, Loc. 2052, Council of Prison Locs. 33, 72 FLRA 59 (2022)*
(Chairman DuBester concurring)

The Arbitrator granted the Agency's motion for summary judgement and dismissed the Union's grievance, finding that the Agency had no obligation to bargain over a change in the staffing roster. The Union raised essence, bias, exceeded-authority and nonfact exceptions concerning the award and the Arbitrator's management of the arbitration process. The Authority found that the Union failed to establish the award was deficient on those grounds, and denied the exceptions.

Chairman DuBester concurred, noting concerns with the manner in which the Arbitrator handled the case.

CASE DIGEST: *Indep. Union of Pension Emps. for Democracy & Just., 73 FLRA 65 (2022)*

The Union filed two sets of exceptions to the award. Because the Union failed to include any arguments in its exceptions, the Union did not raise grounds for review. Accordingly, the Authority dismissed the Union's exceptions.

CASE DIGEST: *U.S. Dep't of VA, John J. Pershing VA Med. Ctr, Poplar Bluff, Mo., 73 FLRA 67 (2022)* (Member Kiko concurring)

The Arbitrator found that the Agency violated the parties' collective-bargaining agreement by miscounting the number of bargaining-unit employees used to determine the Union's allotment of annual official-time hours. The Agency filed exceptions on essence and nonfact grounds. The Authority dismissed the essence exception, in part, and denied it in part, and denied the nonfact exception.

Member Kiko concurred in order to note the unprecedented amounts of official time sought by the Union in negotiations, and to reiterate that parties have an obligation under the Federal Service Labor-Management Relations Statute to negotiate agreements that provide for official time in amounts that are reasonable, necessary, and in the public interest.

CASE DIGEST: *AFGE, Council 270*, 73 FLRA 73 (2022)

This matter was before the Authority on a negotiability appeal filed by the Union under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute. The Authority found that the Union filed unfair labor practice charges that concern issues directly related to the Union's petition for review. Accordingly, the Authority dismissed the petition without prejudice.

CASE DIGEST: *U.S. DOD Educ. Activity*, 73 FLRA 75 (2022)

The Authority's Office of Case Intake and Publication (CIP) issued a procedural deficiency order (PDO) directing the Agency to correct a procedural deficiency in the filing of its exceptions. The Agency filed its response to the PDO after the deadline, but argued that the deadline should be waived because it delivered its response to the PDO to the Agency's mailroom in a timely manner. The Authority dismissed the Agency's exceptions, finding that the Agency failed to establish extraordinary circumstances warranting waiver of the expired deadline.

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Miami, Fla.*, 73 FLRA 77 (2022)
(Member Kiko dissenting in part)

The Arbitrator issued an award finding that the Agency violated the parties' master collective-bargaining agreement and the Fair Labor Standards Act by wrongfully denying official time. The Agency filed exceptions to the award on contrary-to-law, exceeded-authority, and essence grounds. Because the Agency's contrary-to-law argument was not properly before the Authority, and the remaining exceptions did not demonstrate that the award was deficient, the Authority dismissed the exceptions, in part, and denied the exceptions, in part.

Because the pertinent provision of the parties' agreement authorized official time only for Union officers, stewards, and representatives, and it was undisputed that the grievant was serving as a witness, Member Kiko would have found that the award failed to draw its essence from the parties' agreement. Accordingly, she dissented in part.

CASE DIGEST: *U.S. DHS, Citizenship & Immigr. Servs.*, 73 FLRA 82 (2022)

In this case, the Arbitrator found that the Agency violated the parties' collective-bargaining agreement by failing to process certain career ladder promotions retroactively. The Agency excepted, arguing that the award failed to draw its essence from the agreement and that it was contrary to a government-wide regulation and Comptroller General and Authority precedent concerning retroactive promotions. The Authority dismissed the Agency's essence exception under §§ 2425.4(c) and 2429.5 of the Authority's Regulations and

that the Union violated the parties' ground-rules agreement by refusing to execute a completed agreement. Because the Union did not establish that either award was deficient, the Authority upheld both awards.

Chairman DuBester concurred, noting that because the Union did not allege that either arbitrator exceeded their authority by failing to decide whether the Agency's actions preceding its declaration of impasse constituted bad-faith bargaining, the Authority is constrained from addressing that question.