

64 FLRA No. 138

UNITED STATES
DEPARTMENT OF THE INTERIOR
UNITED STATES PARK POLICE
(Agency)

and

FRATERNAL ORDER OF POLICE
UNITED STATES PARK POLICE
LABOR COMMITTEE
(Union)

0-AR-4330

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DECISION

April 30, 2010

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Before the Authority: Carol Waller Pope, Chairman,
and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This matter is before the Authority on exceptions to an award of Arbitrator Donald S. Wasserman filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Union filed an opposition to the Agency's exceptions.

The Arbitrator sustained in part the Union's grievance alleging that the Agency violated certain federal laws and regulations when it mandated, pursuant to the District of Columbia Code (D.C. Code), that United States Park Police (Park Police) officers who work overtime must receive compensatory time in lieu of overtime pay. The Arbitrator found that compensation of the officers for overtime work they have performed is not governed strictly by the law of the District of Columbia or by federal law. Instead, the Arbitrator found that overtime for the officers is governed jointly by the D.C. Code, the Fair Labor Standards Act (FLSA), and 5 C.F.R. Part 551.

For the reasons that follow, the Authority denies the exceptions to the Arbitrator's determination that compensation for overtime work performed by the Park Police is governed jointly by the D.C. Code and the FLSA. However, the Authority finds the award to be deficient to the extent that it finds that overtime compensation for the Park Police officers is also governed by 5 C.F.R. Part 551.

II. Background and Arbitrator's Award

The dispute concerns a disagreement over which laws govern how Park Police officers are to be compensated when working overtime. Award at 1. The laws in question are Title 5 of the D.C. Code, the FLSA, 29 U.S.C. § 201, *et seq.*, the Federal Employees Pay Comparability Act of 1990, 5 U.S.C. § 5541, *et seq.* (FEPCA), and the FLSA regulations in Part 551 of Title 5 of the Code of Federal Regulations (C.F.R.). Congress, in adopting § 5-201 of the D.C. Code, established the Park Police in 1882 to "perform the same powers and duties as the [D.C.] Metropolitan Police Department." Award at 2 (citations omitted). Additionally, Title 5 of the D.C. Code establishes pay scales for the Park Police and specifies how overtime work by police should be compensated. *Id.* The Agency has been compensating the officers for overtime strictly in accordance with Title 5 of the D.C. Code. The Union alleged that, by doing so, the Agency violated applicable federal law. *Id.* at 1-2.

The Union submitted a step 2 grievance followed by a demand for arbitration. *Id.* at 2. The parties agreed to forego a hearing, agreeing, instead, to a decision on their briefs. *Id.* at 1. They stipulated to the following issues:

1. What laws, rules and/or regulations govern how the [Agency] pays its officers for performing overtime work?
 - a. Is it lawful for [the Agency] to compensate officers who perform overtime work with compensatory time rather than premium pay?
 - b. Is it lawful for [the Agency] to compensate officers at a rate of one hour of compensatory time for each hour of overtime worked?
2. If the [Agency] has violated applicable law, what is the appropriate remedy?

Id. In addition, the parties made other stipulations, including that the Park Police officers are nonexempt under the FLSA. *Id.*

The Agency argued that overtime compensation for Park Police officers is governed strictly by D.C. Code § 5-1304 (§ 5-1304). The Agency noted that, for overtime work performed during special events, special assignments, or court duties, § 5-1304 sets overtime pay rates at "one and one-half times the basic hourly rate" and allows an officer to choose compensatory time off

in lieu of premium pay. Award at 2. Further, the Agency noted that “in all other circumstances” § 5-1304 provides that overtime work will be compensated with compensatory time “at the rate of 1 hour of compensatory time for each hour of overtime work[.]” *Id.* (citations omitted). The Agency also asserted that the D.C. Code prevails over the FEPCA, which it claimed specifically excludes Park Police from its coverage, and over the FLSA which, the Agency contended, does not specifically address compensatory time for federal employees. *Id.* at 3.

By contrast, the Union argued that § 5-1304 was “implicitly repealed” in 1974 when the FLSA was extended to federal employees, and that overtime compensation for the Park Police officers is regulated by the FLSA and FEPCA. *Id.* at 4-5. Thus, the Union argued, the Agency may give compensatory time in lieu of overtime premium pay only upon an officer’s request, and such time off must be “in the amount of one and one-half hours off for each hour of overtime.” *Id.* at 5 (citation omitted). However, the Union argued, nothing in the FLSA, FEPCA, or 5 C.F.R. Part 551 authorizes agencies to order employees to accept compensatory time in lieu of overtime premium pay. *Id.* at 7.

The Arbitrator was not persuaded by the parties that compensation of Park Police officers for overtime is governed exclusively by the D.C. Code or by federal law. *Id.* at 13. Specifically, he found that the FLSA and FEPCA do not impliedly repeal § 5-1304, noting that Congress did not take advantage of the opportunities it had to repeal or amend § 5-1304 when it amended the FLSA and FEPCA. *Id.* at 14. However, the Arbitrator, noting the parties’ stipulation that the Park Police officers are FLSA nonexempt, and that the Agency is not among the agencies enumerated in the FLSA as excluded from coverage, found that the officers are protected by the FLSA and 5 C.F.R. Part 551. *Id.*

The “complicating factor[.]” according to the Arbitrator, is that the FEPCA, at 5 U.S.C. § 5541(2)(c)(iv)(II), specifically excludes Park Police officers from the definition of “employee” for purposes of the overtime rate and compensatory time provisions of the FEPCA. Award at 14. The Arbitrator found, however, that the FEPCA does not diminish the protections for the Park Police officers under the FLSA and 5 C.F.R. Part 551. In support of this finding, the Arbitrator refers to the Office of Personnel Management’s (OPM’s) 1997 interim rule change covering compensatory time for prevailing rate employees. *Id.* at 6-7, 15 (citing 62 Fed. Reg. 28,305 (May 23, 1997)). In particular, the Arbitrator refers to OPM’s statement therein that, under the revised FLSA regulations, “no employee

covered by the FLSA may be intimidated, threatened, or coerced to request or not to request compensatory time off[.]” and that the “FLSA regulations on compensatory time off already provide that compensatory time off may not be required for nonexempt employees.” Award at 15 (quoting 62 Fed. Reg. 28,305, 28,306).

Having found that the officers were protected by, or “non-exempt” from, the FLSA, the Arbitrator then found that, pursuant to 5 C.F.R. Part 551, the Agency may not require Park Police officers working overtime to accept compensatory time in lieu of overtime pay. Award at 14-15. The Arbitrator also found that if an officer requests compensatory time in lieu of premium pay, then it would be lawful for the Agency to compensate the officers at the rate of one hour of compensatory time for each hour of overtime work. *Id.* at 15. In this regard, the Arbitrator noted a discrepancy that needed to be resolved between the D.C. Code and 5 C.F.R. Part 551 as to how fractional hours of overtime work are credited. *Id.* The Arbitrator resolved the discrepancy in accordance with 5 C.F.R. § 551.513, which provides that an employee entitled to overtime pay under Subpart E of 5 C.F.R. Part 551 and also under any other authority outside of Title 5 shall be paid under whichever authority provides the greater benefit to the employee. *Id.*

The Arbitrator ordered the following relief:

(1) Backpay retroactive to two years from the date of the grievance to officers who were required to accept compensatory time in lieu of premium pay at the rate of time and one-half; backpay to be lost wages minus the value of compensatory time already taken.

(2) Employees who have earned but not yet taken compensatory time may exchange it for premium pay at the rate of time and one-half.

(3) The Agency is prohibited from requiring an employee to accept compensatory time in lieu of premium pay for overtime unless an accurate computation of overtime hours worked shows that the employee’s benefits would be greater if required to accept compensatory time.

(4) The Agency must immediately implement a system of computation by which it can be determined, particularly when fractional hours are involved, whether greater benefits for overtime hours worked during that work period are earned under FLSA or D.C. Code requirements; the employee shall be entitled to overtime pay under whichever of the two authorities provides the greater entitlement.

(5) The Union's request for compensatory time at the time and-one half premium rate is denied.

(6) Reasonable attorney fees.

Id. at 19-20.

III. Positions of the Parties

A. Agency's Exceptions

The Agency contends that the award is contrary to law for three reasons. First, the Agency contends, the Arbitrator erred in finding that the Agency's compliance with the overtime compensation provisions of § 5-1304 is unlawful. Exceptions at 4-7. The Agency argues that this finding contradicts the Arbitrator's findings that § 5-1304 specifically sets forth overtime compensation for Park Police officers and that Congress never repealed § 5-1304 despite numerous opportunities to do so when it amended the FLSA and the FEPCA. *Id.* at 6-7.

Second, the Agency contends that the award is contrary to law because it relies on 5 C.F.R. Part 551 and a 1997 OPM interim rule change, neither of which applies to the Park Police. Exceptions at 7-11. The Agency contends that 5 C.F.R. § 551.501(a) excludes the Park Police officers from the FLSA's overtime compensation regulations when it states that an employee "shall not receive overtime compensation under this part" if the employee "is not an employee as defined in 5 U.S.C. [§] 5541(2) for purposes of 5 U.S.C. [§§] 5542, 5543, and 5544[.]" Exceptions at 8 (quoting 5 C.F.R. § 551.501(a)(4) & (5)). In this regard, the Agency notes that Park Police are not "employees" as defined in 5 U.S.C. § 5541(2) and are not covered by 5 U.S.C. §§ 5542, 5543, and 5544. Exceptions at 8. As for the 1997 OPM interim rule change, the Agency contends that it applies only to prevailing rate employees, and that Park Police officers do not fit within this category. *Id.* at 9. Furthermore, the Agency argues, the OPM interim rule states that it amends 5 C.F.R. Parts 532, 550, 551, and 610, none of which apply to Park Police officers. *Id.* at 10.

Third, the Agency contends that the award is contrary to law because the FEPCA and the FLSA do not prevail over the D.C. Code. Exceptions at 11-15. Regarding the FEPCA, the Agency contends that it specifically excludes Park Police from its coverage in 5 U.S.C. § 5541(2). *Id.* at 11-12. Regarding the FLSA, the Agency contends that § 5-1304, the more recent legislation which specifically addresses the overtime compensation of Park Police officers, prevails over the older FLSA, which contains only general overtime compensa-

tion provisions and does not specifically address the Park Police. *Id.* at 13-14.

Finally, the Agency contends that the Arbitrator exceeded his authority when he interpreted the law in a way that "effectively repealed" § 5-1304. *Id.* at 15, 16.

B. Union's Opposition

The Union contends that the Agency's contrary to law exceptions should be dismissed as barred by 5 C.F.R. § 2429.5 because the Agency stipulated to the primary issue in dispute, that is, what laws, rules, or regulations govern how Park Police officers are to be compensated for overtime work. Opp'n at 14. By seeking a ruling on this issue, the Union contends, the Agency has agreed to be bound by the Arbitrator's legal interpretations. *Id.* at 14-15, 17-18. A further basis for dismissal of the exceptions, according to the Union, is that they may not have been timely filed and also were not properly served on the Union. *Id.* at 15-17.

On the merits of the exceptions, the Union notes the Agency's stipulation that the Park Police officers are FLSA nonexempt and that, therefore, they are protected by the FLSA's overtime compensation provisions. *Id.* at 18-19. The Union contends that the Arbitrator correctly found that, to the extent the D.C. Code and the FLSA conflict, the FLSA prevails. *Id.* at 19. Finally, the Union contends that the Agency's disagreement with the Arbitrator's legal interpretations does not establish that the award fails to draw its essence from the parties' collective bargaining agreement. *Id.* at 20-21.

IV. Analysis and Conclusions

A. The Agency's exceptions are not barred by 5 C.F.R. § 2429.5.

Exceptions are barred by § 2429.5 of the Authority's Regulations when they pertain to an issue that could have been but was not presented to an arbitrator. *See U.S. Dep't of the Air Force, Air Force Materiel Command, Robins Air Force Base, Ga.*, 59 FLRA 542, 544 (2003). Here, the Agency raised before the Arbitrator all of the issues raised in its exceptions. Accordingly, the Authority finds that the Agency's exceptions are not barred by 5 C.F.R. § 2429.5. Likewise, we reject the Union's contention that the parties are bound by the Arbitrator's interpretations of laws, rules, and regulations and that, therefore, they cannot be excepted to. Instead, as the Authority's Regulations provide, a party may raise contrary to law exceptions to an award. *See* 5 C.F.R. § 2425.3(a)(1).

B. The Agency's exceptions were timely filed and properly served on the Union.

In its exceptions, which were filed on December 20, 2007, the Agency explains that the award was sent to it via regular mail and was postmarked November 20, 2007. Therefore, according to the Agency, its exceptions were due on December 25, 2007, and, thus, were timely. Exceptions at 1 n.1. However, the Union, in its opposition to the Agency's exceptions, suggests that the exceptions may have been untimely filed. Opp'n at 5 & 5 n.1. Specifically, the Union states uncertainty as to whether the Agency received an additional copy of the award on November 20, 2007, by facsimile or electronic mail. *Id.* at 5, 5 n.1 & 15. The Union notes that if this in fact happened, then, pursuant to 5 C.F.R. § 2429.1, the exceptions would have been due on December 19, 2007, a day prior to the Agency's filing. *Id.* at 5, 5 n.1 & 15-17. In addition, the Union contends that the Agency did not properly serve the exceptions on the Union. *Id.* at 17.

The Agency sought leave to file and filed a supplemental submission pursuant to 5 C.F.R. § 2429.26 which includes a declaration that the Agency received the award only by mail on November 20, 2007, and a copy of the envelope with a postmark of that date. The supplemental submission also explains that the Agency properly served the exceptions on counsel who represented the Union in the arbitration and had not been informed that the counsel had since been replaced.

The Authority's Regulations do not provide for the filing of a supplemental submission. Therefore, it is incumbent upon the moving party to demonstrate a reason why the Authority should consider such a supplemental submission. *See, e.g., U.S. Dep't of the Treasury, U.S. Customs Serv., El Paso, Tex.*, 52 FLRA 622, 625 (1996) (citing *Nat'l Union of Labor Investigators*, 46 FLRA 1311, 1311 n.1 (1993)). Section 2429.26 of the Authority's Regulations provides that the Authority may, in its discretion, grant leave to file "other documents" as deemed appropriate. 5 C.F.R. § 2429.26. Here, the Agency explained that it needed to file a supplemental submission to address the Union's timeliness and service arguments. Accordingly, the Authority will consider the Agency's supplemental submission.

Under the Authority's Regulations, parties have 30 days from the date of service of an award to file exceptions. 5 C.F.R. § 2425.1(b). Five days are added if the award was received via regular mail. 5 C.F.R. § 2429.22. The Agency demonstrated that it received a copy of the award only by regular mail on November 20, 2007. Therefore, it needed to file excep-

tions within 35 days of November 20, 2007, i.e., December 24, 2007. The exceptions, which were filed on December 20, were timely. Accordingly, the Authority finds that the Agency's exceptions were timely filed. In addition, we find that the Agency properly served the exceptions on the counsel that it legitimately believed was still Union counsel.

C. The award, in part, is contrary to law.

When an exception involves an award's consistency with law, the Authority reviews any question of law raised by the exception and the award *de novo*. *See NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)). In applying the standard of *de novo* review, the Authority assesses whether an arbitrator's legal conclusions are consistent with the applicable standard of law. *See U.S. Dep't of Def., Dep'ts of the Army & the Air Force, Ala. Nat'l Guard, Northport, Ala.*, 55 FLRA 37, 40 (1998). In making that assessment, the Authority defers to the arbitrator's underlying factual findings. *See id.*

1. Section 5-1304 of the D.C. Code governs compensation of Park Police officers for performing overtime work.

In 1965, Congress amended what is now § 5-1304 to specify how overtime work by the Park Police should be compensated. Pub. L. 89-282, 79 Stat. 1013 (Oct. 21, 1965). Section 1304(d) and (e) set the general overtime rate¹ for special events, special assignments, and court duty at "one and one-half times the basic hourly rate." § 5-1304. Officers performing this work may choose to receive compensatory time off in lieu of overtime payments. § 5-1304(d)(2). For overtime work not covered by § 5-1304(d) and (e), officers are to receive one hour of compensatory time off for each hour of overtime work. § 5-1304(f).² Such overtime work shall be credited in multiples of one hour, with periods of 30 minutes or more of an hour being credited as a full hour. § 5-1304(f)(2).

As the Arbitrator found, Congress had numerous opportunities to repeal or amend § 5-1304 when amending the FLSA and FEPCA, but chose not to take them.

1. More highly compensated officers are to be paid overtime at their basic hourly rate. § 5-1304(d)(1)(B).

2. The parties do not dispute that for the types of overtime work covered by § 5-1304(d) and (e) of the D.C. Code, the Agency offered overtime pay at one and one-half times the basic hourly rate. Instead, the dispute appears to concern only overtime performed other than for special events, special assignments, and court duty.

Award at 14. Moreover, it is well established that repeals by implication are disfavored. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1017-18 (1984) (“repeals by implication are disfavored” and “where two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective”). See also *U.S. Dep’t of Def. Nat’l Guard Bureau*, 55 FLRA 657, 661 (1999) (repeals by implication are neither favored nor necessary where two statutes can be reconciled). Accordingly, the Authority finds that the Arbitrator determined correctly that § 5-1304 was not implicitly repealed and remains in force. See Award at 14.

2. The FLSA governs compensation of Park Police officers for performing overtime work.

In 1974, Congress extended the FLSA to federal employees but exempted employees employed in a “bona fide executive, administrative, or professional capacity.” 29 U.S.C. § 213(a); *Adams v. United States*, 391 F.3d 1212, 1214 (Fed. Cir. 2004).³ The parties stipulated that Park Police officers are FLSA nonexempt, see Award at 1 and, therefore, that the FLSA governs their compensation for overtime. See 5 C.F.R. § 551.104 (“FLSA nonexempt” defined as “covered by the minimum wage and overtime provisions of the Act”); see also 5 C.F.R. § 551.103(a) (any employee of an agency not specifically excluded from the FLSA by another statute is covered by the FLSA). Neither party points to any statute that excludes the officers from the FLSA. Accordingly, the Authority denies the exception to the Arbitrator’s finding that the FLSA, along with § 5-1304, governs compensation for overtime work performed by the Park Police.

3. The FEPCA does not govern compensation of Park Police officers for performing overtime work.

Before 1974, the rights of most federal employees to receive overtime compensation was governed by the Federal Employees Pay Act, at 5 U.S.C. §§ 5541-5550a (FEPA). *U.S. Dep’t of Air Force v. FLRA*, 952 F.2d 446, 448 n.1 (D.C. Cir.1991). However, the definition of “employee” under the FEPA excludes some categories of employees including U.S. Park Police. See 5 U.S.C. § 5541(2)(C)(iv)(II) (U.S. Park Police excluded from the definition of “employee” except for purposes of §§ 5545(a) (night work) and 5546 (Sunday pay)).

3. The Agency does not claim that the officers are employed in a bona fide executive, administrative or professional capacity for purposes of the FLSA.

For federal employees covered by the FEPA who held positions that were not expressly exempted from the FLSA, agencies ensured compliance with both the FEPA and the FLSA by requiring that compensation be computed under both statutes and paying the non-exempt employees the greater amount. *Doe v. U.S.*, 513 F.3d 1348, 1356 (Fed. Cir. 2008). In 1990, the FEPCA amended the FEPA, providing that federal employees who are covered by the overtime pay provisions of the FLSA are not subject to the overtime pay rates and computations established in FEPA. FEPCA, Pub. L. No. 101-509, § 529, title II, § 210, 104 Stat. 1427, 1460 (1990) (codified as amended at 5 U.S.C. § 5542(c)); *IFPTE, Local 529*, 57 FLRA 784, 785 (2002). The officers, being excluded from the FEPA, also are excluded from the FEPCA. Accordingly, the Authority finds that the FEPCA does not govern compensation for overtime work performed by the Park Police.

4. The overtime pay provisions of 5 C.F.R. Part 551 do not govern compensation of Park Police officers for performing overtime work.

The FEPCA, at 5 U.S.C. § 5542(c), authorizes OPM to promulgate regulations governing overtime pay for FLSA nonexempt employees, which are in Subpart E of 5 C.F.R. Part 551. The regulations, at 5 C.F.R. § 551.501(a)(4) and (5), state that the overtime compensation provisions of Part 551 do not apply to an individual who is not an “employee” as defined in the FEPA. See also 57 Fed. Reg. 59,277 (Dec. 15, 1992) (new § 551.501(a)(4) created to clarify that the overtime provisions in Part 551 do not apply to, among others, U.S. Park Police). Accordingly, the Authority finds the award deficient to the extent that the Arbitrator found that the overtime pay provisions of Part 551 are applicable to the overtime compensation of Park Police officers.

5. As found by the Arbitrator, § 5-1304 of the D.C. Code and the FLSA jointly govern the compensation of Park Police officers for performing overtime work.

Having determined that the FLSA does not repeal § 5-1304 of the D.C. Code, we will address whether the FLSA preempts § 5-1304. We note here that all U.S. Courts of Appeals that have considered the issue have reached the same conclusion — state overtime wage law is not preempted by the FLSA. *Overnite Transp. Co. v. Tianti*, 926 F.2d 220, 222 (2nd Cir.), cert. denied, 502 U.S. 856 (1991). See also *Avery v. City of Talladega, Ala.*, 24 F.3d 1337 (11th Cir.1994); *Pacific Merchant Shipping Ass’n v. Aubry*, 918 F.2d 1409, 1420 (9th

Cir.1990) *cert. denied* 504 U.S. 979 (1992) (*Aubry*); *Williams v. W.M.A. Transit Co.*, 472 F.2d 1258 (D.C. Cir. 1972); *Cent. Delivery Serv. v. Burch*, 355 F. Supp. 954 (D.Md.), *aff'd mem.*, 486 F.2d 1399 (4th Cir.1973). Congress' intent to allow state regulation to coexist with the FLSA can be found in § 18(a) of the FLSA, 29 U.S.C. § 218(a), which explicitly permits states to mandate greater overtime benefits.⁴ The purpose behind the FLSA is not to preempt conflicting state law but, instead, "to establish a national floor under which wage protections cannot drop." *Aubry*, 918 F.2d at 1425. The FLSA does not preempt more generous protections offered by states. *Id.* Accordingly, the Authority finds that the Arbitrator determined correctly that § 5-1304 of the D.C. Code and the FLSA jointly govern the compensation of Park Police officers for performing overtime work.

6. Item 4 of the Arbitrator's remedy is contrary to law.

As discussed above, the FLSA and § 5-1304 of the D.C. Code should be jointly applied in a manner that treats the FLSA provision as the minimum benefit to which an employee is entitled. Under such an application, the Park Police officers would be entitled to the FLSA benefit of premium pay at the rate of time and one-half.⁵ Regarding fractional hours of overtime work, both the D.C. Code and 5 C.F.R. Part 551 contain provisions on how they are to be credited when calculating overtime pay. However, as discussed, *supra*, the overtime pay provisions of Part 551 do not govern the overtime compensation of the Park Police. Therefore, only the D.C. Code governs for purposes of determining how fractional hours are credited when calculating overtime pay. As such, item 4 of the Arbitrator's remedy, which requires that the Agency implement a means of determining which statute provides the greater overtime pay benefit when fractional hours are involved, is contrary to law. Accordingly, item 4 of the remedy is set aside.

4. 29 U.S.C. § 218(a) provides, in relevant part, that "No provision of this chapter . . . shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under [the FLSA] or a maximum work week lower than the maximum work week established under [the FLSA]."

5. As for compensatory time, the Park Police would be entitled to the FLSA provision, which permits compensatory time in lieu of overtime only when the employee requests it, over the less beneficial D.C. Code provision, which requires the employee to accept compensatory time for overtime hours worked except for special events, special assignments or court duty.

- D. The Arbitrator did not exceed his authority.

Arbitrators exceed their authority when they resolve an issue not submitted to arbitration. *See U.S. Dep't of the Interior, Nat'l Park Serv., Golden Gate Nat'l Recreation Area, S.F., Cal.*, 55 FLRA 193, 194 (1999). However, arbitrators do not exceed their authority by addressing an issue that is necessary to decide a stipulated issue, *NATCA, MEBA/NMU*, 51 FLRA 993, 996 (1996), or by addressing an issue that necessarily arises from issues specifically included in a stipulation. *See Air Force Space Div., L.A. Air Force Station, Cal.*, 24 FLRA 516, 519 (1986). In determining whether an arbitrator has exceeded his or her authority, the Authority accords an arbitrator's interpretation of a stipulated issue the same substantial deference that it accords an arbitrator's interpretation and application of a collective bargaining agreement. *See U.S. Info. Agency, Voice of Am.*, 55 FLRA 197, 198 (1999).

The Agency alleges that the Arbitrator exceeded his authority when he "effectively repealed" § 5-1304 of the D.C. Code by finding that the FLSA, as well as § 5-1304, governs the overtime compensation of Park Police officers. Exceptions at 15. However, the Arbitrator did nothing more than address the stipulated issues, that is, which law(s) govern and what the appropriate remedy would be. In fact, contrary to the Agency's claim, the Arbitrator explicitly rejected the Union's argument that the FLSA and FEPCA impliedly repealed the D.C. Code provision. Award at 14. Accordingly, the Authority denies the exception.

V. Decision

The portion of the award finding that 5 C.F.R. Part 551 governs the overtime pay of the Park Police Officers is set aside. The remaining exceptions are denied.