64 FLRA No. 156

NATIONAL TREASURY
EMPLOYEES UNION
(Union)

and

UNITED STATES
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
(Agency)

0-AR-4212

_____

DECISION

May 28, 2010

_____

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 M. David Vaughn filed by the Union and the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Agency filed an opposition to the Union's exceptions and the Union filed an untimely opposition to the Agency's exceptions.[1]

The Arbitrator found that the Agency had violated §§ 6.A.3 and 6.A.4 of Article 10 of the parties' agreement by advising all managers and employees that it would process employees' dues revocation forms even if the forms had not been not signed or initialed by a Union official.[2] For the reasons that follow, we deny the exceptions filed by both the Agency and the Union.

II. Background and Arbitrator's Award

Federal employees represented by unions are not required to join a union or pay dues. 5 U.S.C. § 7101 *et seq*. However, agencies are required to honor an employee's voluntary request for the withholding of dues and must transfer the withheld dues to the union without any administrative charges. Award at 4. Dues allotments may be revoked only in one year increments -- *i.e.*, once an employee requests that dues be withheld from his or her paycheck, he or she may not revoke such a withholding for one year. 5 U.S.C. § 7115.

Article 10, §§ 6.A.3 and 6.A.4 of the parties' agreement sets forth the process by which employees may revoke their withholding request. Award at 3-4. Pursuant to these provisions, employees must complete and sign an SF-1188 (dues revocation form or form).[3] *Id*. The form then must be initialed or signed by the Union's chapter president or his or her designee. *Id*. If the form has not been initialed or signed by such person, the Agency may not process the form, but must return it "to the employee and direct the employee to the proper Union official for initialing." *Id*.

The parties' agreement expired on June 30, 2006. *Id.* at 8. At that time, the Agency notified the Union that it would continue to honor the mandatory provisions of the expired agreement, but that it would "withdraw from, and no longer honor, certain permissive subjects of bargaining and provisions that were unenforceable because, in its view, they violated law or regulation." *Id*. On July 13, the Agency notified the Union that it had determined that Article 10, §§ 6.A.3 and 6.A.4 of the parties' agreement were contrary to law and, thus, unenforceable. *Id.* at 8-9. The Agency stated that it believed that the provisions were contrary to law because, by requiring the signature of a Union official on the dues revocation form before the form could be processed, the provisions interfered with the rights of employees to freely discontinue membership in a labor organization in violation of §§ 7102 and 7115 of the Statute. *Id.* The Agency notified all employees by e-mail that revocation forms that were not initialed by a Union official would no longer be returned, but would be immediately processed. *Id.* at 9.

The Union filed a grievance asserting, among other things, that the Agency's actions: (1) violated Article 10 of the parties' agreement and § 7116(a)(1) and (2) of the Statute and (2) constituted an unfair labor practice (ULP) under § 7116 (a)(1) and (5) of

1. See *infra* Section III.

2. The language of §§ 6.A.3 and 6.A.4 of Article 10 is set forth in the attached Appendix.

3. The SF-1188 is a standard form developed by the United States Office of Personnel Management that may be used by agencies to process dues revocation requests. Award at 5.

the Statute. *Id.* The matter was not resolved, and the issue was submitted to arbitration. *Id.* At the arbitration hearing, the parties stipulated to the following issues:

> (1) Did the Agency violate Article 10 of the National Agreement by advising all managers and employees on July 14, 2006, that the Agency would process employees' dues revocation forms (SF 1188) even if the forms lacked a Union official's signature or initials?
>
> (2) Did the Agency violate the Statute (Title 5 U.S.C. § 7116(a)(1), (2) and (5)[)] by: (i) patently breaching Article 10 by advising all managers and employees on July 14, 2006, that the Agency would process employees' dues revocation forms (SF 1188) even if the forms lacked a Union official's signature or initials; (ii) interfering with and/or coercing employees in the exercise of their rights in violation of 5 U.S.C. § 7116(a)(1); and (iii) interfering with the Union's right to dues allotment under 5 U.S.C. § 7115 of the Statute?
>
> If so, what shall be the remedy?

Award at 2.

The Union requested that, if its grievance was sustained, the Arbitrator: (1) direct the Agency to cease and desist from violating the terms of the agreement; (2) order the Agency to post a notice admitting that its actions constitute a ULP in violation of the Statute; (3) order restoration of the *status quo ante*, which, in its view, among other things, required the Agency to reimburse retroactively the Union for all the dues that it would have received but for the Agency's violation; and (4) order the Agency to pay seventy-five percent of the fees and expenses of the Arbitrator, pursuant to the terms of the parties' agreement. *Id.* at 12-13.

In his award, the Arbitrator first determined that the initialing provisions of Article 10, §§ 6.A.3 and 6.A.4 did not interfere with, restrain or coerce employees in the exercise of their right to freely revoke the withholding of Union dues from their paychecks. *Id.* at 16-19. In making this determination, the Arbitrator noted, among other things, that employees can obtain a copy of the dues revocation form from a variety of sources, *see id.* at 17; that "nothing in the language of Article 10" requires an employee to obtain the signature of the Union official in person, *see id.*; and that, although it is possible that a Union official, when discussing revocation with an employee, may

> act in such a way as to create a coercive environment that would violate an employee's statutory right to freely withhold his support from the Union by revoking his dues withholding, . . . [s]uch an occurrence . . . would simply indicate that a particular Union official might have gone beyond the bounds of Article 10 . . . .

Id. at 18. Accordingly, the Arbitrator found the provisions were lawful. *Id.* at 19.

The Arbitrator determined that, because the provisions were lawful, the Agency violated Article 10 when it refused to comply with them. *Id.* The Arbitrator also held that the Agency's failure to abide by the lawful terms of the agreement constituted a patent breach of the agreement and, thus, violated § 7116(a)(1), (2) and (5) of the Statute. *Id.* The Arbitrator found that the Agency's actions, however, did not interfere with or coerce employees in the exercise of their statutory rights. *Id.* The Arbitrator noted that the Agency's actions "did little more than abet the completion of a transaction -- revocation of dues withholding -- that the employee had already freely initiated" and that the "Union presented no evidence that the Agency intimidated employees into submitting a revocation form" or in any way "encouraged employees to revoke their dues withholding." *Id.* at 19-20.

The Arbitrator also determined that the Agency violated "the Union's right to receive dues allotted by employees." *Id.* at 20. The Arbitrator noted that, although the Union does not have a statutory right to receive dues from the employees it represents, it does have a right to receive, without interference from the Agency, the dues from employees who voluntarily have decided to pay them. According to the Arbitrator, "[i]t is possible" that, but for the Agency's actions, "at least some of the employees whose revocation forms were processed without a Union[] official[']s initials would have changed their minds about their revocations[.]" *Id.*

The Arbitrator found that, although a return to the *status quo ante* is appropriate, the terms of the remedy proposed by the Union were not. *Id.* at 21-22. The Arbitrator noted that the Union's requested remedy -- reinstatement of dues withholding for all

employees whose revocation forms were processed without a Union official's initials and retroactive payment to the Union of those dues that would have been withheld had the revocations not been processed -- is inappropriate because it assumes that, but for the Agency's actions, all of the affected employees would have opted to withdraw their revocations. *Id.* at 21. The Arbitrator noted that this assumption is both purely speculative and belied by past practice. *Id.* In addition, the Arbitrator noted that

> [t]he fact that the Agency may have deprived the Union of a contractual opportunity to persuade employees -- some of whom might have been receptive to the Union's efforts -- to withdraw their revocations is not a lawful reason to deprive those employees who would have stuck with their original decision[,] of their statutory right to freely withdraw their support from the Union.

Id. at 21-22. Moreover, the Arbitrator determined that, because the Agency can be held liable only for dues that should have been, but were not, withheld, the Union's requested remedy would violate the Agency's sovereign immunity. *Id.* at 22.

Noting that a *status quo ante* remedy returns the parties to the point at which the improper action occurred, the Arbitrator ordered the Agency: (1) to provide the Union with a list of the employees who had revoked their dues withholdings during the relevant time period; and (2) to reinstate retroactively the dues withholding of any employee from whom it received a signed statement requesting retroactive reinstatement and pay those monies to the Union. *Id.* at 22. In addition, the Arbitrator ordered the Agency to cease and desist from refusing to comply with Article 10 of the parties' agreement, post a notice, signed by the Agency's Commissioner, admitting that it committed statutory violations, and pay seventy-five percent of the Arbitrator's fees and expenses. *Id.* at 23-25.

III. Preliminary Issue

Under 5 C.F.R. § 2425.1(c), an opposition to exceptions must be filed with the Authority within thirty days after the date of service of the exceptions. 5 C.F.R. § 2425.1(c). The Union filed its opposition thirty-one days after the date of service of the Agency's exceptions. Order to Show Cause at 1-2. The Authority issued an Order to Show Cause, requiring the Union to demonstrate why the Authority should consider its opposition. *Id.* In response, the Union concedes that its opposition was untimely, but asserts that the Authority should consider the opposition because the Agency will not be prejudiced by its untimely filing. Union's Response to Show Cause Order at 3-4.

Under 5 C.F.R. § 2429.23(b), a waiver of an expired time limit must be based upon a showing of "extraordinary circumstances" justifying the waiver. 5 C.F.R. § 2429.23(b). Although the Union demonstrates that an inadvertent error occurred in its internal mail room, such an error does not establish an extraordinary circumstance that would justify a waiver of the expired time limit. *See, e.g., U.S. Dep't of Veterans Affairs Hosp., Bedford, Mass.*, 42 FLRA 1364 (1991) (delay resulting from union's internal administrative mail procedures does not establish extraordinary circumstances warranting reconsideration of the Authority's order dismissing the union's exceptions when it failed to respond to a deficiency notice within the required time period). Accordingly, the Union has not shown that extraordinary circumstances warrant waiving the expired deadline. As a result, we do not consider the Union's opposition to the Agency's exceptions.

IV. Positions of the Parties

A. Agency's Exceptions

The Agency alleges that the provisions of Article 10 are contrary to law because they unreasonably interfere with an employee's right to freely join or refrain from joining a union in violation of 5 U.S.C. §§ 7102 and 7115. Agency's Exceptions at 8. The Agency argues that the only condition imposed by § 7115(a) of the Statute is that an employee's withholding may not be revoked for a period of one year. *Id.* at 9 (citation omitted). As such, the Agency asserts that § 7115(a) provides no "particular means for initiating or revoking an employee's dues withholding authorization" and the Office of Personnel Management's regulations provide only that an employee must personally authorize a change or cancellation of the allotment. *Id.* (citing 5 C.F.R. § 550.312(c)).

The Agency contends that the Authority has found that contractual provisions regarding dues withholding that are inherently coercive are unenforceable and unlawful. *Id.* at 10 (citing *Dep't of the Navy, Portsmouth Naval Shipyard, Portsmouth, N.H.*, 19 FLRA 586, 589 (1985) (*Portsmouth*)). According to the Agency, in *Portsmouth*, the Authority found that a provision requiring employees to obtain revocation forms from

the union office, sign those forms in the union office, and submit the forms to the union office was inherently coercive. *Id.* at 10-11 (citing *Portsmouth*, 19 FLRA at 589-91). On the other hand, the Agency states, the Authority found that a provision requiring employees to submit a timely revocation form to the union was not coercive. *Id*. at 11 (citing *AFGE, AFL-CIO*, 51 FLRA 1427, 1437 (1996) (*AFGE, AFL-CIO*)).

The Agency contends that the provisions at issue here are similar to the provision in *Portsmouth* because the provisions here, like the provision at issue in that case, "seemingly give the Union total control over the dues revocation process." Agency's Exceptions at 19-20. Moreover, according to the Agency, the provisions here go "well beyond what was found permissible in [*AFGE*], *AFL-CIO*." *Id.* at 13 (citing *AFGE, AFL-CIO*, 51 FLRA at 1437). According to the Agency, in that case, the provision's only purpose was "to provide the requisite written notice of an employee's desire to revoke his or her dues withholding authorization." Agency's Exceptions at 13. In contrast, the Agency states, the provisions here are used to ask employees to reconsider their revocation decisions and to "hold employees 'accountable' by requiring them to explain their reasons for wanting to leave the [U]nion." *Id*. at 16. The Agency alleges that this creates an inherently coercive process, thereby rendering the provisions unenforceable. *Id.* at 17-19.

Further, the Agency argues that it did not repudiate the parties' agreement in violation of § 7116(a)(1), (2), and (5) of the Statute. *Id.* at 20-21. According to the Agency, because the provisions at issue were unlawful, it was not obligated to follow them and, accordingly, did not repudiate the contract when it refused to comply with them. *Id*. at 20-22.

The Agency also contends that the Arbitrator exceeded his authority by ordering that a posting be signed by the Agency's Commissioner. *Id*. at 22. The Agency argues that the decision to declare the provisions unenforceable was made by the Agency's Chief Human Capital Officer (CHCO) and that, if a posting is required, it should be signed by the CHCO, not the Commissioner. *Id.* at 23.

B. Union's Exceptions

The Union contends that the portion of the award finding that the Union was not entitled to reimbursement of dues from all of the employees whose revocation forms were processed without a Union official's signature is contrary to law. Union's Exceptions at 3. The Union argues that the Arbitrator erred when he considered the intent of the employees seeking revocation. *Id.* at 7. According to the Union, the Arbitrator should have considered only the Union's statutory right to receive the dues, absent a lawful revocation. *Id.* at 7-9, 15 (citing *Def. Logistics Agency*, 5 FLRA 126 (1981) (*DLA*)).

The Union also argues that the award is contrary to law because the principle of sovereign immunity does not bar the Agency from compensating the Union for its violation of the parties' agreement. Union's Exceptions at 7-9, 15. The Union asserts, in this regard, that the Authority has rejected the principle that sovereign immunity protects an agency from paying dues reimbursement to a union. *Id.* at 13 (citation omitted). The Union further asserts that there is "strong precedent" in D.C. Circuit and Authority decisions that sovereign immunity does not apply to orders compelling an agency to reimburse a union for dues wrongfully withheld. *Id*. at 15 (citing *NTEU v. FLRA*, 856 F.2d 293 (D.C. Cir. 1988)).

The Union also asserts that the award is contrary to law by failing to recognize that employees have the right to seek waiver of any effort by the Agency to seek repayment of dues. Union's Exceptions at 17. Further, the Union argues that the award is inconsistent with relief available to parties in the private sector. *Id.* at 19.

Accordingly, the Union requests that the Authority modify the award to require the Agency: (1) to reimburse the Union for the dues that it would have received had the Agency not violated the contract and (2) to reinstate dues withholdings of the employees whose dues revocation forms were processed in violation of Article 10 of the parties' agreement. *Id*. at 20.

C. Agency's Opposition

The Agency reiterates its assertion that the parties' agreement contained unlawful provisions that required the Agency to process only those revocation requests for employees who had obtained the signature of a Union official on the revocation form. Agency's Opp'n at 1. Accordingly, the Agency argues that, once it determined the provisions were unlawful, it acted properly in refusing to abide by them and that it correctly processed the dues revocation request forms received without a Union official's signature. *Id.* at 1-2.

The Agency also argues that the Union's exceptions provide no basis for vacating the Arbitrator's ordered remedy. *Id.* at 2. The Agency contends that the Union's requested remedy violates sovereign immunity. *Id.* at 8. According to the Agency, sovereign immunity provides that the "United States is immune from liability for money damages except to the extent it consents to be sued." *Id.* at 9 (citing *Dep't of the Army v. FLRA*, 56 F.3d 273, 275 (D.C. Cir. 1995) (*Dep't of the Army*)). The Agency asserts that "a waiver of . . . sovereign immunity must be unequivocally expressed in statutory text." Agency's Opp'n at 9 (quoting *Lane v. Pena*, 518 U.S. 187, 192 (1996)). Accordingly, the Agency contends that any award ordering an agency to provide monetary damages must be supported by statutory authority. Agency's Opp'n at 9 (citing *Dep't of the Treasury, IRS, Wash, D.C.*, 61 FLRA 146, 151 (2005); *U.S. Dep't of Health & Human Servs., Food & Drug Admin.*, 60 FLRA 250, 252 (2004)). The Agency contends that, because there is no such authority here, the Arbitrator acted properly in denying the Union's request that the Agency pay the Union monetary damages. Agency's Opp'n at 10-12, 20.

Further, the Agency argues that the cases cited by the Union provide no support for the Union's position. According to the Agency: (1) the Authority does not discuss sovereign immunity in any of the cases; (2) two of the cases involve an agency's refusal to honor dues withholding requests, not revocation requests; (3) two of the cases involve refusals to comply with the one-year statutory revocation requirement; and (4) one case was decided before the D.C. Circuit's decision in *Dep't of the Army*, 56 F.3d at 277-78. Agency's Opp'n at 12-19.

The Agency also alleges that the remedy sought by the Union does not constitute equitable relief and that the Union cannot raise such an argument now without having first raised it before the Arbitrator. *Id.* at 20-21. The Agency contends that the Union's requested damages are not equitable relief because such relief would require the Union to receive a payment that is more than "the very thing to which it was due." *Id.* at 21-22, 27. Moreover, even assuming that the Agency breached the parties' agreement, the Agency contends that the equitable relief to which the Union would be entitled is notice and an "opportunity to talk employees out of revoking their dues withholdings." *Id.* at 23. The Agency disputes the Union's assertion that the Arbitrator's remedy is somehow "unfair" to employees because employees must "'retroactively reimburse[e]' the Union" for past dues, noting that the decision to retroactively pay dues is purely voluntary. *Id.* at 25-26. According to the Agency, the Union's argument constitutes nothing more than "disagreement with the Arbitrator's ordered remedy." *Id.* at 26.

The Agency further asserts that the Authority has provided arbitrators with broad discretion for fashioning remedies. *Id.* at 27 (citing *AFGE, Local 2274*, 57 FLRA 586, 589 (2001)). According to the Agency, because the Union has cited no legal authority which compelled the Arbitrator to grant its requested remedy, the Union has failed to establish that the Arbitrator's remedy is deficient. Agency's Opp'n at 27-28.

Finally, the Agency contends that the Union's reliance on private sector law in this case is misplaced because such cases do not consider sovereign immunity or apply the same law. *Id.* at 29-30.

V. Analysis and Conclusions

A. The award is not 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.*

When a grievance under § 7121 of the Statute involves an alleged ULP, the arbitrator must apply the same standards and burdens that would be applied by an administrative law judge in a ULP proceeding under § 7118 of the Statute. *See U.S. Dep't of Justice, Fed. Bureau of Prisons, Wash., D.C.*, 64 FLRA 559, 560 (2010). In a grievance alleging a ULP by an agency, the union bears the burden of proving the elements of the alleged ULP by a preponderance of the evidence. *See AFGE, Nat'l Border Patrol Council*, 54 FLRA 905, 909 (1998). However, as in other arbitration cases, including those where violations of law are alleged, the Authority defers to an arbitrator's findings of fact.

See, e.g., U.S. Dep't of Commerce, Patent & Trademark Office, 52 FLRA 358, 367 (1996).

1. Sections 6.A.3 and 6.A.4 of Article 10 of the parties' agreement are lawful.

The Agency alleges that the Arbitrator's award is contrary to law because the Arbitrator found that Article 10, §§ 6.A.3 and 6.A.4 of the parties' agreement regarding the revocation of dues withholding were lawful. *See* Agency's Exceptions at 8. The Agency contends that, because the provisions require the signature of a Union official on the revocation form, the provisions unreasonably interfere with an employee's right to freely join or refrain from joining a union in violation of 5 U.S.C. §§ 7102 and 7115. *See id.*

Section 7115 of the Statute guarantees employees the right to revoke their dues withholding authorizations at annual intervals. *See* 5 U.S.C. § 7115.[4] Section 7115 itself provides no particular means for initiating or revoking an employee's dues withholding authorization. The Authority has recognized that "parties may define through negotiations the procedures for implementing [§] 7115" of the Statute, as long as those procedures do not infringe on employees' rights. *AFGE, AFL-CIO*, 51 FLRA at 1433 (citing *Fed. Employees Metal Trades Council, AFL-CIO, Mare Island Naval Shipyard*, 47 FLRA 1289, 1294 (1993)). Accordingly, any procedures negotiated by the parties for the processing of dues revocation requests must conform to the guarantee in § 7115 that employees remain free to revoke their authorizations at annual intervals. *See* 51 FLRA at 1433; *see also United Power Trades Org.*, 62 FLRA 493, 495 (2008). The Authority has held that procedures that interfere with, restrain, or coerce employees in the exercise of this right violate the Statute. *See* 51 FLRA at 1433-34.

The Authority has not addressed the specific requirement at issue here, but has addressed similar requirements. For instance, in *Portsmouth*, the Authority found that a provision requiring employees to obtain revocation forms from the union office, sign those forms in the union office, and submit the forms to the union office was inherently coercive. *See Portsmouth*, 19 FLRA at 589-91. On the other hand, in *AFGE, AFL-CIO*, the Authority held that a provision requiring employees to submit a revocation form directly to the local union did "not *per se* interfere with, restrain or coerce employees in the exercise of their right under [§] 7115 of the Statute to revoke their dues withholding authorizations[.]" *AFGE, AFL-CIO*, 51 FLRA at 1437; *see also AFGE, AFL-CIO*, 52 FLRA 52 (1996).

We believe that the facts and circumstances of this case are closer to those of *AFGE, AFL-CIO*, than those of *Portsmouth*. Like the situation in both *AFGE, AFL-CIO* and *Portsmouth*, the dues revocation form must be submitted to the Union. However, unlike the situation in *Portsmouth*, an employee can obtain a copy of the dues revocation form from a variety of sources and is not required to obtain the signature of the Union official in person. Further, as in *AFGE, AFL-CIO*, the provision itself is not inherently coercive. As the Arbitrator correctly noted, although it is possible that a Union official, when discussing revocation with an employee, may "act in such a way as to create a coercive environment that would violate an employee's statutory right to freely withhold his support from the Union by revoking his dues withholding . . . [s]uch an occurrence . . . would simply indicate that a particular Union official might have gone beyond the bounds of Article 10," not that the provisions themselves were unlawful. Award at 18.

Accordingly, we find that §§ 6.A.3 and 6.A.4 of Article 10 of the parties' agreement are lawful. As such, we deny the Agency's exception.

2. The Arbitrator's remedy is not contrary to law.

Where the arbitrator finds that a ULP was committed, the Authority defers to the judgment and discretion of the arbitrator in the determination of the remedy. *See NTEU*, 48 FLRA 566, 571 (1993). The Authority will not disturb that judgment when there is no basis to conclude that a particular requested remedy is compelled by statute. *See id.* Where law requires a particular remedy, however, an arbitrator's failure to award that remedy will be found to be contrary to law. *See id.*

4. Section 7115 provides in relevant part:

> (a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. . . . Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of [one] year.

Moreover, unless a party establishes that a particular remedy is compelled by statute, we review the remedy determinations of arbitrators in ULP grievance cases just as the Authority's remedies in ULP cases are reviewed by the Federal courts of appeals. *See id.* at 571-72. More specifically, we uphold the arbitrator's remedy determination unless the determination is "a *patent attempt* to achieve ends other than those which can fairly be said to effectuate the policies of the [Statute]." *Id.* at 572 (quoting *NTEU v. FLRA*, 910 F.2d 964, 968 (D.C. Cir. 1990) (*en banc*)). We have emphasized that this "is a heavy burden indeed." *Id.*

The Arbitrator, agreeing with the Union that a *status quo ante* remedy was appropriate, ordered the Agency: (1) to provide the Union with a list of the employees who had revoked their dues withholdings during the relevant time period; and (2) to reinstate retroactively the dues withholding of any employee from whom it received a signed statement requesting retroactive reinstatement and pay those monies to the Union. *See* Award at 22-23. The Union does not contest the Arbitrator's determination that *status quo ante* relief was appropriate. Rather, the Union contests the specifics of the *status quo ante* remedy ordered by the Arbitrator -- *i.e.*, the Union contends that the Arbitrator could, and thus should, have awarded different relief.

Although the Union contends that its requested relief was *permitted* by law, the Union cites no law -- statutory or otherwise -- that *compelled* the relief. Because the Union has failed to establish that its requested remedy was compelled by law, the Union has failed to establish that the Arbitrator committed legal error. *See, e.g., U.S. Dep't of the Treasury, IRS, Wash., D.C.*, 64 FLRA 426, 436 (2010) (union failed to establish that its requested remedy was compelled by statute); *NTEU*, 48 FLRA at 571 (Authority will not substitute its judgment for that of the arbitrator where there is no basis in the record for concluding that a remedy is compelled by the Statute). Moreover, the Union makes no claim that the remedy awarded by the Arbitrator was a "*patent attempt* to achieve ends other than those which can fairly be said to effectuate the policies of the [Statute]." *NTEU*, 48 FLRA at 572 (quoting *NTEU v. FLRA*, 910 F.2d at 968).

Further, the Union offers no support for its contention that the Arbitrator erred when he considered the intent of the employees seeking revocation. The cases cited by the Union are consistent with the remedy awarded by the Arbitrator here. In each of the cited cases, the remedy awarded was an attempt to make the union whole -- which is precisely what the Arbitrator did here. *See* Award at 22 ("A return to the *status quo ante* . . . means a return to the point at which the improper action occurred."). This argument, thus, is nothing more than a reiteration of the Union's argument above -- that, because, in its view, the Arbitrator could have awarded different relief, he should have. As noted, however, this is not a sufficient basis to overturn the Arbitrator's award.

Finally, we reject the Union's contention that the award does not preserve employees' statutory and regulatory rights to seek a waiver of their obligation to pay dues retroactively. In this regard, the award preserves employees' rights not to pay retroactive dues. *See* Award at 22 (providing for the Union to supply the Agency with a "signed statement from each employee *who wishes to reinstate, retroactively, his dues withholding*" (emphasis added)). Thus, the Union has not demonstrated that the award is deficient on this ground.

Based on the foregoing, we find that the award is not contrary to law. Accordingly, we deny the Union's exception.[5]

B. The Arbitrator did not exceed his authority by ordering a notice posting to be signed by the Commissioner.

As discussed previously, in cases where a grievance resolves a ULP allegation and the arbitrator finds that a ULP was committed, the Authority defers to the judgment and discretion of the arbitrator to determine an appropriate remedy, and will uphold the arbitrator's remedy unless the determination is "a *patent attempt* to achieve ends other than those which can fairly be said to effectuate the policies of the [Statute]." *NTEU*, 48 FLRA at 572 (quoting *NTEU v. FLRA*, 910 F.2d at 968).

The Agency contends that the Arbitrator exceeded his authority by requiring that the posting be signed by the Agency's Commissioner, rather than the Agency's CHCO. Agency's Exceptions at 23. The Authority, however, "typically directs that a posting be signed by the highest official of the activity responsible for the violation because, when the highest official signs a notice, a respondent

5. In light of this finding, we need not address the Union's arguments that its requested remedy would not be barred by sovereign immunity and would be consistent with relief available in the private sector.

indicates that it acknowledges and intends to comply with its statutory obligations." *U.S. Dep't of Labor, Wash., D.C.*, 61 FLRA 825, 826 (2006) (citing *U.S. Dep't of Veterans Affairs*, 56 FLRA 696, 699 (2000)). Moreover, the Authority has held that the Commissioner of the Internal Revenue Service (IRS) is an appropriate signatory on a posting relating to actions taken by the Agency's national labor relations office involving the interpretation and application of the parties' nationwide agreement. *See U.S. Dep't of the Treasury, IRS, Wash., D.C.*, 56 FLRA 906, 914 (2000). Applying the foregoing standard, the Agency fails to establish that the Statute compels a signatory other than the Commissioner of the IRS. Also, the Agency fails to establish any basis for finding that requiring the Commissioner to sign the posting constitutes a patent attempt to achieve ends other than those that effectuate the policies of the Statute. Accordingly, we deny the Agency's exception.

VI. Decision

The Agency's exceptions and the Union's exceptions are denied.

APPENDIX

Article 10 Dues Withholding

. . . .

Section 6 Action and Effective Dates

. . . .

A. The effective dates for actions under this Agreement are as follows:

. . . .

3. Revocation notices for employees who have had dues allotments in effect for more than one (1) year must be submitted to the payroll office during USDA pay period fifteen (15) each year. Revocations will become effective during USDA pay period eighteen (18). Revocations may only be effected by submission of a completed SF-1188 that has been initialed by the chapter president or his or her designee. If the SF-1188 is not initialed, the Employer shall return the SF-1188 to the employee and direct the employee to the proper Union official for initialing. To revoke such dues withholding, employees must have had dues withheld for at least one (1) year.

4. Revocation notices for employees who have not had dues allotments in effect for one (1) year must be submitted on or before the one (1) year anniversary date of their dues allotment. Revocations may only be effected by submission of a completed SF-1188 that has been initialed or signed by the chapter president or his or her designee. If the SF-1188 is not initialed or signed, the Employer shall return the SF-1188 to the employee and direct the employee to the proper Union official for initialing. The SF-1188 will become effective the first full pay period after employee's anniversary date.

Award at 3-4.