

Federal Labor Relations Authority
Quarterly Digest Report: October 1, 2023 – December 31, 2023



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: *AFGE, Loc. 1012*, 73 FLRA 704 (2023)

The Arbitrator denied a grievance alleging the Agency violated the parties' collective-bargaining agreement by changing certain employees' break areas. The Union filed exceptions to the award on essence, bias, and fair-hearing grounds. The Authority partially dismissed the Union's bias and fair-hearing exceptions, and denied the remaining exceptions.

CASE DIGEST: *SSA*, 73 FLRA 708 (2023)

The Arbitrator issued: a merits award, finding the Agency discriminated and engaged in reprisal against the grievant; a compensatory-damages award; and a punitive-damages award. The Agency filed exceptions to the compensatory-damages and punitive-damages awards on exceeded-authority, contrary-to-law, and essence grounds. The Authority: (1) found the exceptions were timely filed; (2) denied a request by the Arbitrator to file two amicus-curiae briefs under 5 C.F.R. § 2429.9; (3) partially dismissed and partially denied the exceeded-authority exception; (4) granted the contrary-to-law exception and set aside the punitive-damages award; and (5) denied the essence exception.

CASE DIGEST: *AFGE, Loc. 3184*, 73 FLRA 715 (2023)

The Arbitrator sustained a grievance challenging a suspension and later awarded limited attorney fees (fee award). In *AFGE, Local 3184*, 73 FLRA 471 (2023), the Authority granted the Union’s nonfact and contrary-to-law exceptions to the fee award, and remanded the matter to the parties for resubmission to the Arbitrator for further findings regarding the attorney-fees issue.

In a remand award, the Arbitrator awarded attorney fees, but did not include any fees requested for the post-arbitration litigation of the fee dispute. The Union filed an exception to the remand award on contrary-to-law grounds. Because there was no basis for concluding that the Union knew or should have known to make arguments to the Arbitrator specifically about its entitlement to attorney fees for post-arbitration litigation, the Authority rejected the Agency’s claim that the Union could not make such arguments for the first time in its exceptions. On the merits, because the remand award was not a fully articulated, reasoned decision, the Authority granted the Union’s contrary-to-law exception. Further, because the Authority could not determine from the record the reasonableness of the request for the fee-dispute litigation, it remanded the matter to the parties for resubmission to an arbitrator to resolve that issue.

CASE DIGEST: *NTEU, Chapter 14*, 73 FLRA 718 (2023)

The Union filed a motion for reconsideration of the Authority’s decision in *NTEU, Chapter 14*, 73 FLRA 613 (2023) (*Chapter 14*). The Authority found the motion did not establish extraordinary circumstances warranting reconsideration, because it merely attempted to relitigate the Authority’s conclusions in *Chapter 14* and raised arguments that the Union could have made, but did not make, in its exceptions. Therefore, the Authority denied the motion.

CASE DIGEST: *AFGE, Loc. 987*, 73 FLRA 722 (2023)

The Arbitrator found the grievance arbitrable and denied it on the merits. The Authority found that the parties’ agreement expressly and unequivocally precluded arbitrators from resolving both threshold arbitrability issues and issues concerning a grievance’s merits. Accordingly, the Authority granted the Union’s exceeded-authority exception, set aside the Arbitrator’s merits findings, and remanded the dispute to the parties.

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Victorville, Cal.*, 73 FLRA 725 (2023)

The Union filed a grievance alleging the Agency was selecting employees for overtime in a manner that conflicted with the parties' collective-bargaining agreement. After the Arbitrator sustained the grievance, the Agency filed essence and contrary-to-law exceptions. In its essence exception, the Agency argued the grievance was untimely because the Union was aware of the grieved event earlier than the date the Arbitrator identified. In its contrary-to-law exception, the Agency argued the Arbitrator improperly placed the burden on the Agency to defend its overtime-selection actions. Because the Agency merely challenged a factual finding underlying the timeliness determination, the Authority denied the essence exception. As the Agency failed to demonstrate that the Arbitrator was obligated to evaluate the evidence differently, the Authority denied the contrary-to-law exception.

CASE DIGEST: *Defense Health Agency & AFGE, AFL-CIO et al.*, 73 FLRA 728 (2023)

After the Department of Defense transferred employees from various military branches to the Defense Health Agency (DHA), an FLRA Regional Director (the RD) issued a decision and order finding the DHA is the successor employer of those employees. The RD also considered four proposals for dividing the transferred employees among interested incumbent unions. Finding the Association of Civilian Technicians (ACT) and the National Association of Independent Labor submitted proposals that would not result in appropriate units, the RD rejected them.

The RD then determined the American Federation of Government Employees and the National Federation of Federal Employees submitted a joint proposal that would result in three appropriate units. Additionally, he found these unions represented a sufficiently predominant percentage of the proposed units to render representation elections unnecessary. Consequently, the RD approved this proposal and certified the three units. ACT filed an application for review of the RD's decision. Because ACT did not explain how the RD erred or support its argument, the Authority denied the application.

CASE DIGEST: *FEA, Stateside Reg.*, 73 FLRA 747 (2023)

The Union grieved the Agency's decision to change certain excepted-service positions to competitive-service positions when it filled vacancies or new positions. In an initial award, the Arbitrator found that the grievance was not substantively arbitrable. In *Federal Education Association, Stateside Region*, 73 FLRA 32 (2022), the Authority granted the Union's contrary-to-law exception challenging that determination, and remanded the matter to the parties for resubmission to the Arbitrator to render a decision on the grievance's merits.

In a remand award, the Arbitrator denied the grievance, finding that the Agency's action did not violate law or the parties' collective-bargaining agreement. The Union filed exceptions to the remand award on nonfact, bias, essence, and contrary-to-law grounds. Because the Union did not demonstrate that the remand award was deficient, the Authority denied the exceptions.

CASE DIGEST: *AFGE, Loc. 2053, Council 243, 73 FLRA 752 (2023)*

The Arbitrator issued an award dismissing, as untimely, a Union grievance alleging the Agency failed to pay overtime under the Fair Labor Standards Act (FLSA). The Union filed exceptions alleging the award was contrary to law and public policy. The Authority denied the exceptions, holding that arbitrators may lawfully enforce contractual time limits for filing grievances that are shorter than the FLSA's filing periods. Chairman Grundmann concurred.

CASE DIGEST: *AFGE, Loc. 2338, 73 FLRA 756 (2023)*

After the parties informally resolved several issues related to a grievance, and the Agency provided most of the grievance's requested remedies, the Union submitted the grievance's remaining, unresolved requests for compensation to arbitration. The Arbitrator denied the requests for additional compensation. The Union filed exceptions on ambiguous-and-contradictory, contrary-to-law, exceeded-authority, and essence grounds. The Authority denied the exceptions because they failed to demonstrate the award was deficient.

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Correctional Inst., Englewood, Colo., 73 FLRA 762 (2023)*

The Arbitrator determined that the Agency violated the parties' collective-bargaining agreement and law when it failed to provide hazard-pay differential for bargaining-unit employees due to ambient exposure to COVID-19 in the correctional facility, and awarded backpay. The Agency filed exceptions to the backpay remedy on contrary-to-law grounds. The Authority found the backpay remedy was contrary to law, and set aside that portion of the award. Because the Authority left the Arbitrator's contractual-violation finding undisturbed but set aside the only remedy, the Authority remanded the matter to the parties for resubmission to the Arbitrator, absent settlement, for an appropriate remedy, if any.

CASE DIGEST: *AFGE, Loc. 2344, 73 FLRA 765 (2023)*

The Arbitrator issued an award finding the Agency did not violate the parties' collective-bargaining agreement by allowing a supervisor, instead of bargaining-unit employees, to work overtime. The Union filed exceptions to the award on essence, contrary-to-law, and bias grounds. The Authority partially dismissed the Union's contrary-to-law and bias exceptions because the Union raised arguments that it failed to present to the Arbitrator. Because the Union's remaining arguments failed to demonstrate that the award was deficient, the Authority denied the remaining exceptions.

CASE DIGEST: *AFGE, Local 2031, 73 FLRA 769 (2023)*

In this case, the Authority considered the negotiability of one proposal. Because the Agency failed to support its argument that the proposal was outside the duty to bargain, the Authority found that the Agency waived its nonnegotiability argument. Consequently, the Authority concluded that the proposal was within the Agency's duty to bargain. Chairman Grundmann concurred.

CASE DIGEST: *AFGE, Loc. 2369, 73 FLRA 772 (2023)*

The Arbitrator issued an award finding the Agency did not violate the parties' collective-bargaining agreement by denying the grievant, a part-time employee, the opportunity to earn more than three credit hours on a Saturday. The Union filed exceptions. The Authority found the Union's arguments sufficiently raised essence exceptions, but the Authority denied the exceptions on the merits because the Union failed to demonstrate the award was deficient.