FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

OALJ 16-05

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL COMPLEX
TUCSON, ARIZONA
RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3955, AFL-CIO
CHARGING PARTY

Case No. DE-CA-14-0634

Alicia E. Weber
Greg A. Weddle
For the General Counsel

Steven R. Simon
For the Respondent

Kenneth Coleman
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION

STATEMENT OF THE CASE

This case arose under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §§ 7101-7135 and the revised Rules and Regulations of the Federal Labor Relations Authority (FLRA/Authority), part 2423.

On September 18, 2014, the American Federation of Government Employees, Local 3955, AFL-CIO (Union) filed an unfair labor practice (ULP) charge against the United States Department of Justice, Federal Bureau of Prisons, Federal Correctional Complex, Tucson, Arizona (Respondent) with the Acting Regional Director of the Authority's Denver Region who transferred the charge to the Chicago Region. (G.C. Ex. 1(a) & 1(b)). After an investigation of the charge, the Chicago Regional Director issued a Complaint and Notice of Hearing on November 10, 2014, alleging that the Respondent violated § 7116(a)(1) and (8) of the Statute by failing to comply with arbitration awards issued by Arbitrator Douglas P. Hammond (Arbitrator) requiring the Respondent to pay bargaining unit employees for pre- and post-shift work as well as liquidated damages and other remedies. (G.C. Ex. 1(c)). The Respondent timely filed an Answer to the Complaint admitting some of the Complaint's factual allegations but denying that it violated the Statute. (G.C. Ex. 1(d)).

A hearing in this matter was held on March 18, 2015, in Tucson, Arizona. All parties were represented and afforded an opportunity to be heard, to introduce evidence, and to examine witnesses. Both the General Counsel and Respondent filed post-hearing briefs which I have fully considered.

The GC also filed an unopposed motion to reopen the record and admit an additional exhibit (G.C. Ex. 20) which consists of four pages containing copies of email messages dated February 10, 2014, February 14, 2014, March 7, 2014, and March 25, 2014. After review of the GC's unoppossed motion, I granted the motion and exhibit 20 was admitted into evidence.

Based on the entire record, including my observations of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute. (G.C. Exs. 1(c) & (d)). At all times material to this matter, Jason A. Ludwick was the Human Resource (HR) Manager and Felicia Ponce was the Associate Manager, and these individuals were supervisors, management officials and/or agents of the Respondent within the meaning of § 7103(a) (10) and (11) of the Statute. (G.C. Exs. 1(c) & (d)).

The American Federation of Government Employees, Council of Prison Locals, AFL-CIO (AFGE) is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the certified exclusive collective bargaining representative of a nationwide unit of Federal Bureau of Prisons employees which includes employees of the Respondent. (G.C. Exs. 1(c) & (d)). The Union, AFGE Local 3955, is an agent of AFGE for purposes of representing employees at the Respondent. (G.C. Exs. 1(c) & (d)). Esther White was employed by the Respondent as a Correctional Officer from 1990 to 2011, and she was the Local Union President from 2007 to 2011. (Tr. 29). Since 2011, Ms. White has been a Union member of the Portal Committee which, as discussed below, was established pursuant

to the Arbitrator's awards at issue in this matter. (Tr. 29). Walter Shannon has been employed by the Respondent as an electronics technician since approximately 2000, and he served as the Local Union President from January of 2013 to January 2015 (Tr. 64-65).

The Respondent administers the Bureau of Prisons Federal Correctional Complex in Tucson, Arizona (FCC Tucson). (G.C. Ex. 2 at 6). FCC Tucson includes a maximum security United States Penitentiary (USP), a medium security Federal Correctional Institution (FCI) and a minimum security "Camp." *Id.* There are approximately 430 bargaining unit employees at FCC Tucson with a little more than half of those employees classified as Correctional Officers (COs).

The Arbitrator's awards with which the Complaint alleges that the Respondent has failed to comply arose out of a grievance (portal-to-portal or pay grievance) filed on May 5, 2008 by Local President White under the parties' collective bargaining agreement (CBA) alleging that the Respondent violated the Fair Labor Standards Act (FLSA)[1] and the Federal Employees Pay Act (FEPA).[2] (G.C. Exs. 1(c) & (d); Tr. 29). The Arbitrator issued his first opinion and award on July 19, 2011 (2011 Award) (G.C. Ex. 2). On timely exceptions filed by the Respondent, the Authority modified the 2011 award in *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Tucson, Ariz.*, 66 FLRA 355 (2011) (*FCC Tucson*). Thereafter, the Arbitrator issued two supplemental opinions and awards – on November 16, 2012 (2012 Award) and February 25, 2014 (2014 Award). (G.C. Exs. 4 & 5). No exceptions were filed to either the 2012 or the 2014 award.

Stipulations

The Respondent offered the following stipulations at the hearing which were admitted to the record without objection:

1. Respondent has paid a total of $6,778,013.67 pursuant to compliance in FMCS-08-56902 to date.

2. Respondent has made no payments since February 2014.

3. Since February 2014 Respondent has provided the Union the SSA Form 131 and ongoing read-only access to the Custody Department Roster Program.

4. Our best estimate of the number of double shifts worked where one shift was worked in the premises of FCC Tucson and where one shift was worked outside FCC Tucson between May 3, 2005 and September 30, 2013 is 4,408 approximately.

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[1] 29 U.S.C. § 201-219

[2] 5 U.S.C. § 5541-5550b.

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5. Respondent stipulates that a reasonable approximation of the number of work hours expended on attempted compliance efforts in FMCS-08-56902 since February 2014 is 104 hours.

6. The Shannon-Ludwick agreement was a verbal agreement.

(Stip.; Tr. 17-18).

The 2011 Award

The Union's portal-to-portal grievance was heard by the Arbitrator over 15 days after which the parties filed "[e]xtensive post-hearing briefs" with attached documents. (G.C. Exs. 2 at 1-2). The parties stipulated that the grievance presented threshold arbitrability issues as to whether the Union complied with a requirement in the parties' agreement to attempt informal resolution at the lowest level before filing a grievance and whether the grievance provided the Respondent with sufficient notice of the alleged violations. (*Id.* at 2). They also stipulated that if the grievance cleared these threshold hurdles, the issue presented to the Arbitrator was whether the Respondent violated the FLSA or the FEPA. (*Id.*). The Union claimed that the Respondent failed to compensate employees at the applicable overtime rates for work activities that they were required to perform before and after their regular shifts, and the Respondent countered that any such time is de minimis, voluntary and non-compensable. (*Id.* at 44-45). The Arbitrator rejected the Respondent's arbitrability defenses, and he distilled the pay dispute to two basic questions: (1) "Does the Agency implicitly require bargaining unit employees to regularly work beyond 8 hours, on an everyday basis, due to the designed schedule?" and (2) "Are the assigned duties of these employees such that they are required to work both preliminary and postliminary as a part of their normal and principal activities." (*Id.* at 10-13, 46).

After reviewing the evidence and the parties' arguments, the Arbitrator found that all employees at FCC Tucson are required to have certain equipment, including radios with working batteries and keys, while on duty and that they receive the required equipment when they arrive for work at a control center or from outgoing employees. (G.C. Ex. 2 at 46). The Arbitrator noted that the Authority has held that time spent by correctional employees traveling to and from duty posts after receiving equipment at the control center is compensable. (*Id.*; citing *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Jesup, Ga.*, 63 FLRA 323 (2009) (*FCI Jesup*).[3] Based on the evidence presented, the Arbitrator found that the pre-shift and post-shift time spent by employees once they arrive at the control center is properly compensable as it constitutes work performed primarily for the benefit of their employer, and he rejected the Respondent's claims that such time is de minimis.

[3] In *FCI Jesup*, the Authority set aside an arbitrator's award of overtime pay to correctional employees for time spent waiting in a "key line" prior to the start of their shifts because the arbitrator did not find that the employees were required to arrive at a particular time to begin waiting which is necessary to remove a case from the general rule established by *IBP, Inc. v. Alvarez*, 546 U.S. 21, 41 (2005) that time spent waiting to begin work is non-compensable under the FLSA. 63 FLRA at 328.

(*Id.* at 47, 50-52). The Arbitrator further found that the Respondent has long been aware, through prior arbitration awards and Authority decisions, of the Union's concern over pay for time worked but has "willfully ignored" its responsibility "to schedule employees in a fair and reasonable manner, insuring pay for time worked within the realm of the employees' principal activities." (*Id.* at 52). The Arbitrator concluded that the Respondent was in violation of the FLSA and that back pay, commencing three years prior to the filing of the grievance was warranted. (*Id.*). He set the parameters for back pay at 30 minutes for each shift worked at the USP and 20 minutes for each shift worked at the FCI and Camp. (*Id.*). Noting that there are "myriad details to be considered in establishing the amount to be paid to each eligible employee," the Arbitrator stated that he would require the parties to "meet and negotiate" the amount of back pay due each employee covered by the award and that the Respondent would be required to provide all documentation and information necessary to make back pay determinations. (*Id.* at 53). Finally, he concluded that due to the Respondent's "intentional and willful violation of the FLSA, it was liable for liquidated damages and the Union's reasonable attorney's fees." (*Id.*). Accordingly, the Arbitrator awarded the following remedy:

- 20 minutes pay at the appropriate overtime rate to all bargaining unit employees in the classifications and departments listed in an attached appendix for all shifts worked at the FCI and Camp from May 3, 2005, three years prior to the filing date of the grievance, as allowed by the FLSA, until such time as the Respondent is in compliance with the FLSA
- 30 minutes pay at the appropriate overtime rate to all bargaining unit employees in the classifications and departments listed in an attached appendix for all shifts worked at the USP from the initial date of operation of that facility or three years prior to the filing date of the grievance, as allowed by the FLSA, until such time as the Respondent is in compliance with the FLSA
- Establishment of a joint labor/management committee, comprised of no less than three (3) nor more than five (5) Union representatives serving on official time, and no less than three (3) nor more than five (5) Agency representatives, to jointly determine by no later than September 30, 2011 the amount of compensation to be paid to eligible employees covered under the Award. The Agency will provide "all necessary documentation, names, rates of pay (including pay grade and step) to insure compliance with this order."
- To the extent allowed by law or Court decision, the compensation shall include interest and shall be computed in accordance with the requirements of 5 C.F.R. §§ 550.805 – 550.806.
- The Arbitrator shall retain jurisdiction for the purpose of assuring conformity and completion of all requirements of this Decision and Award.
- In the event the parties are unable to resolve certain aspects of this Decision and Award, the parties will be required to present their last, best position, including the rationale for that position, to the Arbitrator who will select one of the two positions offered.

- To the extent allowed and required by the FLSA, other laws, Court decisions and/or administrative decisions, the Agency is liable for liquidated damages and reasonable and customary Union attorney's fees. The Arbitrator's jurisdiction shall continue for resolution of questions regarding damages or fees.

(*Id.* at 54-55). In exceptions filed with the Authority, the Respondent asserted that the Arbitrator exceeded his authority because the award provided relief to "non-affected" employees in the Religious and Recreation Departments and, further, that the award is contrary to law because it awarded both liquidated damages and interest. *FCC Tucson*, 66 FLRA at 355. The Union conceded these arguments, and the Authority accordingly issued its decision on November 16, 2011, modifying the award to exclude the award of all relief to non-affected employees and the award of interest. (*Id.* at 355-56).

Following the Authority's decision on the Respondent's exceptions, the parties held an initial meeting on December 8, 2011 to discuss compliance with the award. (Tr. 81; R. Ex. 36). At this meeting, the Respondent proposed that it would make the required back pay calculations and would provide the Union with access to the underlying documentation. (Tr. 83-85; R. Ex. 36). The Respondent also proposed that the cut-off date for back pay under the award is November 11, 2011, when the Authority issued its decision modifying the award. (*Id.*). The Union disagreed with the November 11, 2011, cut-off date, noting that the Arbitrator had awarded back pay until such time as the Respondent is in compliance with the requirements of the FLSA, and it suggested that the parties adopt the approach employed at other Bureau of Prisons facilities in similar FLSA cases where a "third party administrator" was utilized to review the records and calculate what affected employees are entitled to receive. (R. Ex. 36).

The parties next met to discuss implementation of the award on February 23, 2012, at which time the Union's attorneys presented an estimate, based on records provided by the Respondent, that the total due under the award was $12.6 million which the Union proposed would be distributed to affected employees by a third party administrator. (G.C. Ex. 4 at 5-6; Tr. 85-86, 90). After the meeting, Union attorney Michael Posner sent an email on February 24, 2012, to the Respondent's Labor Relations Specialist, William Branch, stating that the meeting was a "positive step towards resolving the amount of damages due pursuant to the arbitration decision" and that, given Mr. Branch's promise of "a substantive response by March 9, 2012[,] I anticipate that we will have this matter resolved soon." (R. Ex. 50). As promised, Mr. Branch responded by email dated March 9, 2012 with which he forwarded "our calculations and assumptions which we believe are pretty straightforward." (*Id.*). Attached to this email were three pages of calculations reflecting a total back pay estimate of $2,714,522.48 and liquidated damages estimate of $5,429,044.96 based on "Average Affected Staffing" numbers by pay period from 2005 to 2011 in the departments covered by the award. (*Id.* at 2-4). As Mr. Ludwick, the Respondent's HR Manager testified, the

attachments sent to the Union via Mr. Branch's email "were proposed ballpark figures, if you will, based upon rough estimates we performed prior to doing any individual calculations." (Tr. 89).[4]

Despite Mr. Posner's optimism about a speedy resolution, no agreement on how to implement the award was reached, and the Respondent began unilaterally making some payments to employees "once it became apparent that the settlement talks were not going to be fruitful . . . ." (Tr. 90). In April of 2012, the Union requested assistance from the Arbitrator regarding the parties' dispute of the payments due under the 2011 decision and award. (G.C. Ex. 4 at 7). The Respondent opposed further intervention by the Arbitrator, arguing that his role was *functus officio*, but the Arbitrator disagreed and scheduled a hearing for July 11, and 12, 2012. *(Id.)*.

On June 7, 2012, then Union President S.M. Mastin sent a memorandum to the Respondent's HR manager, requesting that the Respondent "refrain from any further disbursement of portal to portal payments until such time that the entire arbitration/ negotiation process has been completed." (G.C. Ex. 55). Local President Mastin also requested that the Respondent provide "the formula of how the agency arrived at the amount of payouts on staff and a listing of those staff and department(s) that have already received payments . . . [and] a listing of subsequent staff and departments that are forwarded to Grand Prairie for payments." *(Id.)*.[5] The Respondent did not comply with the Union's request to halt payments and, instead, continued to make individual calculations and payments "because we had to comply with the Arbitrator's award." (Tr. 91). In determining the amount of back pay owed to individual employees, the Respondent utilized Office of Personnel Management (OPM) Salary Tables (R. Ex. 43) which list basic and overtime rates of pay for the General Schedule by calendar year. (Tr. 91-94). The calculations were made by the Respondent's HR staff and then forwarded in batches of 10 to 24 employees to the payment center. (Tr. 96, 98). In this time frame, the Respondent offered to provide the Union with "supervised access" to the HR area where they could review the calculations and methodology as payment batches were completed, but the Union did not avail itself of this offer. (G.C. Ex. 4 at 3, 8; Tr. 96). The Respondent did, however, periodically send electronic discs containing the payment calculations to the Union's attorneys. (Tr. 98-100).[6]

The 2012 Award

The Arbitrator issued his second opinion and award on November 16, 2012. (G.C. Ex. 4). He rejected the Respondent's argument that he lacked jurisdiction over the parties' dispute regarding compliance with the 2011 award, stating that his retention of

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[4] At that time, Mr. Ludwick was the Assistant HR Manager. (Tr. 80). He became the HR Manager in November of 2012. *(Id.)*.

[5] Grand Prairie is the Respondent's payment processing center. (Tr. 99-100).

[6] The Respondent introduced copies of ten Federal Express mailing labels (R. Exs. 12-21) as evidence that electronic discs containing copies of the payment documents were forwarded to the Union's attorneys on ten dates between Jul 5, 2012 and July 23, 2013. (Tr. 101-03; *see also* G.C. Ex. 4 at 13).

jurisdiction in the 2011 award was "clear and unambiguous" and noting that the Respondent had not raised *functus officio* in its exceptions to the Authority and that the Authority had held that an arbitrator may retain jurisdiction, even without agreement of the parties, for the purpose of overseeing implementation of remedies. (*Id.* at 15). On the issue of whether the Respondent had complied with the 2011 award, the Arbitrator concluded,

> Just by beginning to merely pay employees according to the requirements of the decision and award does not satisfy the need for compliance. This is especially true when the ending date for these payments is unilaterally determined. The award set forth a number of the actions required of the parties. As noted above, the agency has failed to comply with most of these. They did not provide all the necessary information; they failed to involve the union in jointly determining the amounts owed to the employees; they chose to share, on a limited and untimely basis, the compiled information used to ascertain the proper payments; they failed to share, when appropriate, the steps taken to determine the payments; and they arbitrarily chose an ending date for the obligatory payments. The evidence shows and I find that the agency has failed to comply with the Decision and Award.

(*Id.* at 21-22). However, the Arbitrator further concluded that there was insufficient evidence and information for him to determine the appropriate ending date for payments, whether liquidated damages payments are subject to withholding, whether there had been an underpayment of the back pay owed to affected employees, and the amount of attorney's fees. (*Id.* at 23). He stated that he would provide the parties with an opportunity to resolve these issues and that, absent settlement, further hearings would be required to: "(1) determine a final amount of attorney's fees; (2) firmly determine an ending date for payment to eligible employees; (3) determine if the agency has complied with the disbursement of both the overtime payments and the liquidated damages; and (4) decide whether or not payment of liquidated damages is to be subject to payroll deductions." (*Id.* at 23). In his award, the arbitrator ordered the following:

- Within 10 (ten) days from the receipt of this award, the Agency will provide the Union with ALL necessary documents needed and used to determine the amount of money to be paid to each eligible employees [sic] as well as ALL documentation relating to the amounts already paid to eligible employees.
- The Agency will allow and include the Union, or its designated representative, to fully participate in the calculations of all payments to eligible employees. Union representatives will be on Official Time, when appropriate.
- Within 10 (ten) days from the receipt of this award, or if exceptions are filed with the FLRA, 10 (ten) days from the date of the Authority's decision, the parties shall meet, in good faith, and attempt to reach a mutually agreeable settlement regarding payment to eligible employees including a bilateral determination of an ending date for payment of the overtime penalty and the liquidated damages. Such payment shall include any additional payment to employees who were paid since the unilateral cutoff date of November 16, 201. Additionally, the parties shall attempt to reach an

> agreement regarding the customary and reasonable attorney's fees awarded in the Original Award. Union participants in this resolution process will be on Official Time, when appropriate.

(*Id.* at 24-25). The Arbitrator again retained jurisdiction "indefinitely or until such time as the parties mutually agree that full compliance with the Original Award and the instant Award has been met," and he ordered that a hearing would be held to determine the amounts due on the outstanding issues within 30 days of the date the parties declared impasse in their compliance negotiations. (*Id.* at 25). The Respondent did not file exceptions to the November 16, 2012 award. (Tr. 34, 131).

After the November 16, 2012 Award issued, there is no evidence that the Respondent took any specific steps to comply until January of 2013 when Walter Shannon took office as the newly elected Local President of the Union. (Tr. 65, 71-72; G.C. Ex. 5 at 7). In January of 2013, Mr. Ludwick met briefly with Mr. Shannon and explained the method the Respondent was using to make individual back pay calculations under the Arbitrator's awards. (Tr. 97; G.C. Ex. 5 at 7). According to Mr. Ludwick, Mr. Shannon indicated that he did not have any issue with the methodology, stating "something to the effect of: 'I don't have a dog in that fight.'" (Tr. 97). Mr. Shannon did ask to be informed when batches of calculations were forwarded to the payment center so that he could answer employee questions, and Mr. Ludwick agreed to do this. (Tr. 74, 97-98; G.C. Ex. 5 at 8). It appears that the Respondent then claimed that Mr. Shannon had agreed to the Respondent's back pay calculation methodology during his meeting with Mr. Ludwick, and the Union, represented by Mr. Shannon and Gary White, vehemently disputed this claim during a March 2013 Union Management Relations Meeting. (R. Ex. 3 at 2). At this meeting, the Union instead asserted:

> Gary White was at the LMR meeting and the only thing that occurred was the union was provided with a list of people that were being paid as the calculations were completed. Mr. Shannon had no position one way or another regarding the calculations method or payment as he has no active role in this arbitration. Mr. Ludwick either misunderstood or is deliberately misrepresenting the situation.

(*Id.*). On February 28, 2013, Union Steward Kelly Stampke wrote to the Respondent's Warden requesting compliance with the provisions in the Arbitrator's awards for Union participation in the back pay calculations. (G.C. Ex. 5 at 7).[7] There is no evidence that the Warden ever responded to this request. However, when a member of the Union's portal-to-portal committee requested official time to be present during back pay calculations, his request was denied. (*Id.*). Thereafter, the Respondent's HR staff continued to perform back pay calculations and periodically send batches of employee names to the payment center. (Tr. 98-100; G.C. Ex. 5 at 8).

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[7] Ms. Stampke was the Local Executive Vice President at the time the original award issued in 2011. (R. Ex. 36).

The 2014 Award

The Union returned to the Arbitrator and requested his assistance in resolving the Union's allegations that the Respondent was continuing to fail to comply with either the original 2011 award or the 2012 Award. (G.C. Ex. 5 at 5-6). In response, the Arbitrator conducted additional compliance hearings on July 30 and 31, 2013, which were followed by an Opinion and Award issued on February 25, 2014. (*Id.*). Mr. Ludwick testified at these hearings regarding the steps taken by the Respondent to comply with the Arbitrator's awards, and he explained that the Union had been provided with lists of employee names as they were processed for payment. (G.C. Ex. 5 at 8). These lists included employees' names, an accounting code, the fiscal years involved, and the total payment, but the individual calculations were not provided to the Union unless requested by the individual employee. (*Id.*). Mr. Ludwick also testified that approximately 76 current employees and 300 eligible former employees had yet to be paid and that the HR employees were currently spending about four hours per week outside of their normal responsibilities performing the back pay calculations required by the awards. (*Id.*).

After considering the evidence from the second round of compliance hearings and the parties' positions, the Arbitrator found that the Union had "supplied sufficient and convincing evidence that the Agency had failed to meet the requirements of the Awards in both earlier Decisions." (*Id.* at 13). Specifically, the Arbitrator determined that the Respondent had failed to pay eligible employees the appropriate amounts of overtime, improperly withheld taxes and other deductions from the award of liquidated damages, refused to pay awarded attorney's fees, and failed to share information with and include the Union in payment calculations. (*Id.*). However, the Arbitrator also found merit to the Respondent's argument that the overtime payments required by the awards did not include double shifts *outside* of the FCC Tucson premises as contended by the Union. (*Id.* at 13-14).

As for the Respondent's non-compliance, the Arbitrator rejected the Respondent's assertion that the January 2013 meeting between Mr. Ludwick and the newly-elected Local President, Mr. Shannon, satisfied the requirement of including the Union in the back pay calculations:

> The Agency claims that since Mr. Shannon asked no questions and only asked for copies of the payments sent for processing, that he fully participated and agreed with the method and means for payment. It is incredible to assume that such a complex process, involving thousands of shifts, [a]ffecting hundreds of employees, costing significant amounts of money, and covering almost 10 years, could possibly be explained, and understood, in 10 to 15 minutes. To characterize this brief encounter as full participation in the calculations and, by implication, an agreement to the methodology used by the Agency, is incorrect and beyond reason.

(*Id.* at 14-15). The Arbitrator stated that the Respondent had consistently held the Union at "arm[']s length" when the Union attempted to participate in the calculation process and that the Respondent had, after "minimal attempts" to resolve differences over calculation

methodology, decided to "deal with issues unilaterally and to ignore the requirement for Union involvement." (*Id.* at 15). He concluded that "[t]his is not compliance with the Awards in either Decision #1 or #2 or a basis for a sound and cooperative labor/management relationship." (*Id.*).

The Arbitrator noted that the Union has presented evidence in the compliance hearings of employees not being paid overtime "per the Award in Decision #1, for a second, or double shift, when worked during the same day and that the Respondent "admitted that mistakes had been made . . . and had been or would be corrected." (G.C. Ex. 5 at 9). He next determined that the Respondent had not complied with the liquidated damages provisions of the awards because its calculations that were submitted for payment did not differentiate between overtime pay, which is subject to withholding as wages earned, and liquidated damages which are not subject to withholding. (*Id.* at 9, 16). Consequently, state and Federal taxes including Social Security and Medicare had been withheld from employees' liquidated damages payments when processed by the payment center. (*Id.* at 9). The Arbitrator concluded that the Respondent "must return to the calculations of all eligible employees and modify the payment and amount of liquidated damages to comply with the IRS and other Federal Regulations pertaining to withholding requirements." (*Id.* at16).[8] He similarly concluded that the Respondent had incorrectly used the OPM Salary Tables which do not apply to overtime calculations under the FLSA so that it "underpaid a large number of . . . eligible employees whose overtime rate, pursuant to the FLSA, is greater than GS 10, Step 1." (*Id.*). Accordingly, the Arbitrator stated that the overtime payments that had incorrectly been calculated in reliance on the OPM Salary tables would have to be recalculated. (*Id.* at16-17). The Arbitrator additionally ruled that the Respondent's unilateral choice of the date of the Authority's decision as the end date for back pay was unacceptable and disregarded the requirement of the award that payments would continue until such time as the Respondent was in compliance with the FLSA and the award. (*Id.* at18). However, the Arbitrator acknowledged that the Union had sought a date certain for the end of payments, and he selected the end of the fiscal year – September 30, 2013 – as the "ending date for compliance with the Awards in Decision #1, #2 and #3. Finally, the Arbitrator again rejected the Respondent's *functus officio* challenge to his assertion of continuing jurisdiction over compliance, and he awarded the following corrective actions for those employees who had already received payments:

- Recalculate, apply and pay each eligible employee the correct and appropriate overtime rate in accordance with the FLSA and Title 5 C.F.R. Section 551.501.[9]

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[8] The Arbitrator noted that Rev. Rul. 72-768 provides that payments of liquidated damages, while taxable income, are not "wages" for Federal employment tax purposes including income tax withholding.

[9] Section 551.501 in pertinent part provides that "[a] An agency shall compensate an employee who is not exempt under subpart B of this part for all hours of work in excess of 8 in a day or 40 in a workweek at a rate equal to one and one-half times the employee's hourly regular rate of pay . . ." subject to certain exceptions. 5 C.F.R. § 551.501(a).

- Reimburse each eligible employee for the amount of money withheld as tax withholding or deductions from the liquidated damages portion of the payments. The appropriate IRS forms will be issued to each employee indicating the amount paid.
- Recalculate, apply and pay the overtime penalty, as described in items 3 and 4 of the Award in Decision #1, for all double shifts worked within the premises of FCC Tucson.

(*Id.* at19-20). For eligible employees who had not yet been paid, the Arbitrator ordered the Respondent to:

- Calculate, apply, and pay the appropriate overtime rate in accordance with the FLSA and Title 5 C.F.R. Section 551.501.
- Calculate, apply, and pay the overtime penalty, as described in items 3 and 4 of the Award in Decision #1, for all double shifts worked within the premises of FCC Tucson.
- Calculate, apply, and pay all eligible employee[s] liquidated damages without withholding taxes or other deductions. The appropriate IRS forms will be issued to each employee indicating the amount paid.

(*Id.* at 20). The Arbitrator ordered that the ending date for the Respondent's liability under his awards is September 30, 2013, and that "[a]ll eligible employees shall be paid for all required amounts, including overtime penalties and liquidated damages, as set forth in the Awards of the three Decisions, up to and including that date." (*Id.*). Additionally, he ordered that within ten days of the date of his decision (or within ten days of the Authority's decision in the event of an appeal) the parties shall convene a committee comprised of three but not more than five qualified representatives for each party to meet during regular working hours with the Union representatives on official time "to fully participate and complete all calculations and recalculations due to eligible employees as set forth herein." (*Id.* at 20). The award further states that the "work of this committee shall be finished and their results forwarded for processing no later than seventy-five (75) days from the date the work commences." (*Id.* at 20-21). Finally, the Arbitrator ordered the Respondent to pay the Union's attorneys $411,887.00 in fees and costs. (*Id.* at 21). The Respondent did not file exceptions to this decision and award.

On March 7, 2014, Associate Warden Felicia Ponce sent an email to Mr. Shannon in which she referenced the Arbitrator's February 25, 2014, decision and award and stated that "the HRM office is seeking guidance as to how we can comply with the decision. If you have any questions or suggestions please let me know." (G.C. Ex. 12). Mr. Shannon forwarded this email to Esther White who then sent an email dated March 10, 2014, to Mr. Ludwick in which she identified the Union's committee members and requested that a meeting be scheduled in compliance with the Arbitrator's February 25, 2014, award. (G.C. Exs. 6, 12; Tr. 35, 66-67). Thereafter, Mr. Ludwick and Ms. Ponce met with Mr. Shannon and Local Vice President Gary White on March 18, 2014. (G.C. Ex. 15). At this meeting, Mr. Ludwick indicated that the Respondent could not meet the 75-day compliance time frame established

by the Arbitrator, and Mr. Shannon stated he was delegating all responsibility for implementing the awards to Ms. White and the members of the Union's portal committee. (Tr. 72). It was agreed at this meeting that Mr. Ludwick would contact Ms. White "to coordinate and schedule a meeting regarding the calculation methodology for all future calculations." (*Id.*). After an exchange of emails, an initial meeting was scheduled for March 25, 2014. (G.C. Ex. 7; Tr. 36-39).[10]

At the start of the March 25, 2014 meeting, the Respondent provided the Union with a document entitled "Portal Compliance Meeting Minutes" (G.C. Ex. 8) which had been partially completed in advance of the meeting with "Discussion" section which outlined the Respondent's plan for complying with the February 25, 2014, award. (Tr. 40-41). Specifically, the Respondent's initial proposal was that the calculations/recalculations "should be limited to those staff who were assigned to an affected department at FCC Tucson between the dates of May 6, 2005 and July 19, 2011, the date of the Arbitrator's initial decision." (G.C. Ex. 8 at 1). The Respondent's "Discussion" then stated, in apparent reference to the liquidated damages provisions of the award, that "[f]or current FCC Tucson staff who have already received payment, in order to comply with the Arbitrator's Award . . ., these payments must be reversed and new W-2s will be generated to account for the taxes that may have been withheld from each individual affected staff member's payment at the time the initial calculations were processed." (*Id.*). Mr. Ludwick explained at the meeting that this meant that in order to comply with the Arbitrator's order that the liquidated damages payments be recalculated without withholding, *all* payments that had previously been made, whether for back pay or liquidated damages, would have to first be "reversed" and the monies "recouped" from the employees because there was no "clean" way for the Respondent to differentiate between the back pay and liquidated damages payments because they were all processed in a "lump sum." (Tr. 106-09). The "Discussion" continued that the Respondent would identify employees who had worked a regular, eight-hour shift in conjunction with a second or :double" eight-hour shift (16 hours total) "within the confines of the institution" and credit those employees with an additional 20 or 30 minutes time as applicable and, further, that all employees who had received payments would be credited for the time between November 16, 2011 and September 30, 2013, that they were assigned to an affected department at FCC Tucson. (G.C. Ex. 8 at 1-2). Lastly, the "Discussion" stated that the Respondent would differentiate between back pay and liquidated damages in all future calculations, that employees would be issued the appropriate IRS and Social Security forms, and that calculations would done first for current employees and then for former employees. (*Id.* at 2). The Union caucused and returned with some concerns that were added to the minutes, and the meeting ended with the Union stating that it would submit a counter-proposal. (*Id.* at 2-3; Tr. 41-43).

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[10] The record shows that in addition to dealing with the Union regarding compliance, the Respondent's HR Department was also fielding inquiries from employees and former employees who wanted to know when they would receive their back pay. (G.C. Exs. 19 & 20). When asked when they could expect payment, the Respondent explained that the Union disagreed with the back pay calculation methodology and that the Respondent could not perform individual calculations until an agreement was reached with the Union. (*Id.*).

The Union's counter-proposal was submitted on March 27, 2014. (G.C. Ex. 9). In response to the positions advanced by the Respondent at the March 25, 2014 meeting, the Union stated that the back pay calculations/recalculations under the Arbitrator's 2014 Award should not be limited to employees who were assigned to departments covered by the award prior to July 19, 2011, the date of the initial award as suggested by the Respondent, but rather to all affected employees assigned to covered departments between May 3, 2005 and September 30, 2013, the end date established by the 2014 Award. (*Id.* at 1). The Union stated that the 2014 Award requires that all back overtime pay calculations should be based on one and one half times the employee's regular hourly rate and that the "overtime cap" previously applied by the Respondent was incorrect. (*Id.*). The Union further stated that the 2014 Award mandates that all shifts worked at FCC Tucson, including "double shifts" worked one after the other, are covered by the back pay recalculation, and it added that shifts worked outside of the "immediate confines of FCC Tucson" such as a shift worked at a local hospital would not be considered a shift worked at FCC Tucson for purposes of compliance with the award. (*Id.*). The Union said that it recognized that the recalculation of the liquidated damages awards presented a "complicated issue," but it questioned the Respondent's statement that this process would take several months and requested the Respondent to provide a "reasonable date by which they believe the processes will be completed." (*Id.* at 2). The counter-proposal then outlined a suggested order for the recalculations beginning with employees who had yet to be paid, and it proposed that Union Committee Member James Crutcher be approved for official time and assigned to the HR Department to oversee the calculations/recalculations, that he be given access to (and allowed to copy with redactions for privacy) any documents and/or lists used by the Respondents in making the recalculations in order to prove compliance or noncompliance to the rest of the Union's Portal Committee. (*Id.* at 2-3). The Union stated that that this proposed arrangement would release the Respondent from having to forward calculations and documents to the Union's attorneys. (*Id.* at 3). Finally, the Union proposed a one-year time limit after completion of the recalculations and payments for any individuals or their estates to protest their non-inclusion and that there would be no liability on either party after expiration of this period. (*Id.* at 3).

After the Union submitted its counter-proposal, a second meeting was scheduled for April 9, 2014. (G.C. Ex. 10). By emails dated April 3, 2014 and April 4, 2014, to Mr. Ludwick, Ms. White requested that the Respondent provide the Union with any documentation that it intended to use at the meeting. (*Id.* at 1-2). Mr. Ludwick responded that it had provided its information at the meeting on March 25, 2014, and did not have anything further to provide at that time. (*Id.* at 1). The April 9, 2014, meeting failed to produce any resolution of the parties' differences over compliance with the Arbitrator's awards. (G.C. Ex. 11; Tr. 47-48, 112-13). In particular, the parties disagreed over whether employees who began work after July 19, 2011, the date of the first award, were eligible for back pay, and they disagreed on whether the Respondent could rely on the OPM Salary Tables, which specify overtime rates at less than one and one half times the regular rate for employees in some grade levels, in calculating back pay. (*Id.*). The Union argued that the 2014 Award covers all affected employees assigned to covered departments at any time between May 6, 2005 and September 30, 2013, and that the Arbitrator ordered that all overtime payments be calculated at a time and one half rate and not the rates set forth in the

OPM salary tables. (*Id.*). The Respondent countered that only employees hired and on board by July 19, 2011 are covered and that using the OPM tables was not an arbitrary cap on overtime because "the FLSA portion of the calculations is covered under the liquidated damages portion of the award decision for what the arbitrator deemed a willful violation of the FLSA." (G.C. Ex. 11 at 1). Mr. Ludwick explained to the Union that "we utilized the OPM pay charts, and that's an official source document . . . not some pie-in-the-sky figure that we came up with. It's an official document that – and it's available to anyone on opm.gov." (Tr. 113). The next area of disagreement involved double shifts. The Union's position was that where an employee worked double shifts (e.g., a regular shift inside FCC Tucson followed by an overtime shift at a hospital outside the confines of FCC Tucson), the employee would be entitled to back pay pursuant to the Arbitrator's awards for the first shift inside FCC Tucson but not for the second, overtime shift worked outside of FCC Tucson. (Tr. 50-51). The Respondent asserted that the Arbitrator's 2014 Award "only covers double shifts within the premises of FCC Tucson" and that employees "who worked a hospital shift in conjunction with a shift within the confines of FCC Tucson may have been paid for travel time." (G.C. Ex. 11 at 1). According to the Respondent, a recalculation for those employees who worked double shifts, one inside FCC Tucson followed by one outside, "may result in staff not receiving 20 or 30 minutes on those days or even that the staff may actually owe money to the Agency due to the fact that they may have erroneously received compensation for travel time to or from work, which is not compensable." (*Id.* at 1-2). The minutes of the April 9, 2014, meeting sum up the parties' differing views on this issue as follows:

> The Union asserts that affected staff should receive 20 or 30 minutes for each shift worked at FCC Tucson, even on days in which an employee was paid overtime. The Agency's position is that the whole idea behind portal to portal is that staff allegedly performed work without compensation and that if the staff were already paid overtime they should not be paid again. For example, if the staff member's time and attendance record reflects that they were compensated, say, 30 minutes of overtime on a given day at the USP, then they were already compensated and would not receive an additional 30 minutes of overtime.

(*Id.* at 2). At the conclusion of this meeting, the Union indicated it would pursue the matter of compliance with the Authority. (*Id.*). The instant unfair labor practice case ensued. No further discussions took place between the parties until after the unfair labor practice complaint was issued. (Tr. 52, 36). The parties did agree to post-complaint mediation and postponement of the hearing, but no settlement was reached. (G.C. Ex. 1(e)).

As set forth above, the Respondent stipulated that it has made no payments since February 2014 and that the information provided to the Union since February 2014 consists of SSA Form 131 and ongoing "read-only" access to the Custody Department Roster Program. (Stip. ¶2). The Custody Department records provided to the Union showed the names of employees who had received payments but only in that department and not the other departments covered by the awards, and these records only went back to 2012. (Tr. 75-76).

POSITIONS OF THE PARTIES

General Counsel

The General Counsel alleges that the Respondent violated § 7116(a)(1) and (8) of the Statute by failing to comply with the unambiguous terms of the Arbitrator's final and binding award issued on February 25, 2014, and instead pursued a course of avoiding its payment obligations and attempting to inject ambiguity into the award where none exists. Specifically, the General Counsel states that the Respondent has engaged in *per se* noncompliance with the Arbitrator's unambiguous order that it: (1) recalculate, apply and pay each eligible employee the correct overtime rate in accordance with the FLSA and 5 C.F.R. § 551.501; (2) reimburse each employee for amounts withheld as withholdings or deductions from the liquidated damages portion of the payment; and (3) recalculate, apply and pay the overtime penalty for all double shifts worked within the premises of FCC Tucson. In this regard, the General Counsel points out that despite the clear statement of the Arbitrator that the appropriate overtime rate is one and one half the employee's regular rate of pay, the Respondent has persisted in applying the OPM Salary Tables which establish overtime rates for some affected employees that are less than 150 percent of their regular rates. The General Counsel further contends that the Respondent's position that it must recoup all of the monies previously paid to employees in order to reimburse them for taxes withheld from the liquidated damages payments constitutes noncompliance because it amounts to imposition of an unlawful precondition that the award does not require. The General Counsel cites the following as additional actions demonstrating noncompliance with the clear requirements of the February 25, 2014, award: (1) refusing to pay all employees who worked in covered departments between May 3, 2005 and September 30, 2013, by unilaterally insisting that employees hired after November 16, 2011, are not covered; (2) refusing to pay employees for all shifts worked within FCC Tucson by raising "bizarre" and "senseless" claims that payment for double shifts would involve inappropriate payment for travel time and would necessitate recoupment of overpayments from affected employees; and (3) unilaterally stopping payments and making future payments contingent on reaching an agreement with the Union which is not required by the award.

The General Counsel urges rejection of the Respondent's various defenses as internally inconsistent, wholly lacking in merit and amounting to an impermissible collateral attack on and attempt to relitigate the Arbitrator's award. In particular, the General Counsel states that the Respondent's argument that it reached an agreement on the payment methodology in the brief January 2013 meeting between Mr. Ludwick and Mr. Shannon was rejected by the Arbitrator in his 2014 Award and that the Respondent's claim in this proceeding that the putative Shannon-Ludwick agreement relieved it from taking the steps required to comply with the award represents as an impermissible collateral attack on the award. With regard to the Respondent's claim that it was precluded from implementing the terms 2014 Award because the parties failed to reach any agreement on the methodology for calculating and recalculating the back pay awarded by the Arbitrator, the General Counsel submits that, unlike the prior awards, the February 25, 2014, award contains no language requiring the parties to negotiate and jointly determine payment methodology and unambiguously orders the Respondent to complete all payments subject only to the creation

of a labor-management committee to "participate and complete" payment calculations. In the General Counsel's view, the Arbitrator's order in the 2014 Award that the parties establish a labor-management committee was not a mandate for negotiations but rather a means to permit Union oversight and a remedy for the Respondent's prior noncompliance. While it disputes the Respondent's position that the Union failed to bargain over payment methodology in good faith following the 2014 Award, the General Counsel submits that any refusal by the Union would only waive the Union's right to *participate* in the payment calculation process and would not relieve the Respondent of its obligation to complete the calculations/recalculations and payments required by the award. Regarding the Respondent's arguments that the Arbitrator lacked jurisdiction to issue either of his two compliance awards, the General Counsel initially counters that any jurisdictional challenges must fail because the Respondent admitted in its answer to the complaint that the Arbitrator retained jurisdiction and that the Union invoked his retained jurisdiction. The General Counsel further asserts that the Arbitrator acted consistently with Authority precedent that an arbitrator may retain jurisdiction for purposes of clarifying and interpreting an award and to oversee implementation of remedies, and it contends that the Respondent's specific jurisdictional challenges have no merit. As to the Respondent's argument that the Arbitrator lacked jurisdiction to order reimbursement for incorrect tax withholding from the liquidated damages payments because such relief would violate the Anti-Deficiency Act, the General Counsel responds that this argument is a challenge to the Arbitrator's remedy, not his jurisdiction, that the Authority has held cannot be raised in compliance proceeding. The General Counsel similarly responds that the claim that the Arbitrator violated the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes and Federal Mediation and Conciliation Service (FMCS) regulations by setting an end date for compliance without consent of both parties is also a challenge to the Arbitrator's remedy which fails because the Respondent has not shown that the Arbitrator lacked statutory jurisdiction or that his alteration of the remedy was contrary to law. Moreover, the General Counsel notes, the Authority has held that an arbitrator's retention of jurisdiction to set an end date for recovery is appropriate and not a basis for challenging an award. Finally, the General Counsel argues that the Respondent's other "jurisdictional" challenges – (a) that the award is impossible to implement because it sets impossible time constraints for compliance and perpetuates conflict between the parties by requiring the parties to jointly resolve payment issues and (b) that the arbitrator's "putative exercise" of retained jurisdiction is void by its own terms – are issues that the Authority has ruled cannot be raised in a compliance proceeding.

As a remedy, the GC requests that the Respondent be ordered to fully comply with the Arbitrator's final and binding award by completing all required calculations and recalculations, as set forth in a proposed order, and forwarding the results for processing within 75 days of the decision. The General Counsel also requests that the Respondent be ordered to pay interest on the non-liquidated damages portion of the award from the date of its noncompliance, noting that the Authority has approved an interest award in a compliance proceeding even where the underlying award did not provide for interest. Lastly, the General Counsel requests that the Respondent be ordered to post a Notice signed by the Warden, and disseminate a copy of the notice through its email system to bargaining unit employees.

Respondent

The Respondent raises multiple defenses to the complaint that it has violated the Statute by not complying with the Arbitrator's awards. First, it submits that the awards are unenforceable because the Arbitrator mandated a negotiated remedy which is not sufficiently specific to be capable of enforcement. Second, the Respondent asserts that it is in compliance with the awards because it met with the Union in accordance with the Arbitrator's mandate that the parties negotiate the back pay remedy, reached an agreement on compliance with Local President Shannon and proceeded with back pay calculations and disbursements in accordance with the Shannon-Ludwick agreement until "the Arbitrator purported in the Second Compliance Award to find such agreement invalid." (R. Br. at 6). Additionally, the Respondent states that to the extent that all back pay due under the awards has not been processed, "the awards cannot be enforced 'until the back pay is fixed after a hearing' by the Arbitrator or otherwise resolved through negotiations." (*Id.*; quoting *NLRB v. New York Merchandise*, 134 F.2d 949, 952 (2d Cir. 1943)). Third, the Respondent contends that the Arbitrator's awards do not have preclusive effect, and it seeks findings in this proceeding that: (1) it reached an agreement with Local President Shannon on back pay calculation methodology and procedure; and (2) that it did not improperly "cap" or otherwise inappropriately limit the amounts of back overtime due employees because it "made accurate calculations using applicable payroll data and OPM pay tables." (*Id.* at 7).

The Respondent also asserts that the 2014 Award is *ultra vires* because the Arbitrator lacked statutory jurisdiction. In this regard, the Respondent claims that the Arbitrator lacked statutory jurisdiction to order reimbursement for income tax withholdings from the liquidated damages payments, asserting that liquidated damages are taxable income and that the reimbursement order contravenes the Anti-Deficiency Act, 31 U.S.C. § 1341, and the Purpose Act, 31 U.S.C. § 1301, because Congress has not appropriated funds for the ordered reimbursements. The Respondent additionally argues that, absent consent of both parties, the Arbitrator lacked jurisdiction to clarify the original award by altering the recovery date. In support of this argument, the Respondent relies on § 1404.4(b) of the FMCS Regulations, 29 C.F.R. § 1404.4(b), which requires arbitrators to conform to the Code of Professional Responsibility which states that "[n]o clarification or interpretation of an award is permissible without the consent of both parties." (R. Br. at 9; quoting § 6.D.1 of the Code which is in evidence at R. Ex. 58). The Respondent states that it objected to the Arbitrator's retention of jurisdiction, and it asserts that the Arbitrator's action in setting an arbitrary end date of September 30, 2013, for recovery materially altered the original award without consent of both parties in violation of the FMCS regulation and the Code of Professional Responsibility. Moreover, the Respondent notes, Authority case law holds that the recovery period under the FLSA ends with the close of the original record so that its decision to end recovery as of the date of the Authority's decision in November of 2011 provided a "greater recovery period than a reasonable construction of the original Award would allow." (R. Br. at 10). The Respondent's final "jurisdictional" claim is that the award "cannot be interpreted to require Respondent to do the impossible." (*Id.*). That is, the Respondent states that the "net effect of the three Awards . . ., in the absence of an agreement as to the backpay

calculation methodology and payout procedure, was to perpetuate conflict indefinitely . . . [and] categorically proves that Respondent cannot possibly complete the backpay calculations and payouts unless and until the Union returns to the bargaining table and bargains in good faith to reach an agreement on compliance, or the Shannon-Ludwick agreement is enforced." (*Id.* at 11). In conclusion, the Respondent requests a finding that the Shannon-Ludwick is enforceable and dismissal of the complaint. Alternatively, in the event that a violation of the Statute is found, the Respondent asks that the remedy be limited to a posting. The Respondent also requests that "exact specific instructions" be provided "if a remedy regarding backpay calculations and payout procedures beyond a simple requirement to return to the bargaining table" is ordered. (*Id.* at 12).

ANALYSIS AND CONCLUSION

The Statute mandates that an agency "shall take the actions required by" an award that has become final and binding. 5 U.S.C. § 7122(b). "An arbitration award becomes final and binding 'for all purposes,' and cannot be challenged by any means, if exceptions are not filed within the required period." *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Coleman, Fla.*, 67 FLRA 632, 635 (2014) (citations omitted). The Authority has long held that, generally, once an arbitration award becomes final and binding, it must be complied with and failure to do so constitutes a violation of the Statute. *See, e.g., U.S. Dep't of Transp., FAA, Nw. Mountain Region, Renton, Wash.*, 55 FLRA 293, 296-97 (1999) *(FAA)*. The Authority has also consistently held that it will not review the merits of an arbitration award in an unfair labor practice proceeding, because "to allow a respondent to litigate matters that go to the merits of the award would circumvent [c]ongressional intent with respect to statutory review procedures and the finality of arbitration awards." 55 FLRA at 296. Thus, generally speaking, the "only issue for resolution . . . [in a ULP alleging failure to comply with a final and binding arbitration award is] whether the Respondent . . . failed to comply with the Arbitrator's award." *Dep't of HHS, Soc. Sec. Admin.*, 41 FLRA 755, 765 (1991), *enforced*, 976 F.2d 1409 (D.C. Cir. 1992). The one exception to this general rule is where a respondent raises an issue that the arbitrator lacked *statutory* jurisdiction to issue the award. 976 F.2d at 1409 (concluding that the Authority properly considered the existence of a statutory, as opposed to a contractual, bar to the arbitrator's jurisdiction in ULP proceedings for enforcement of a final and binding award); *USDA, Food & Consumer Serv., Dallas, Tex.*, 60 FLRA 978, 981 (2005) (in reviewing exceptions to an arbitration award where the issue of the arbitrator's statutory jurisdiction is presented to the Authority, it is required to address the issue regardless of whether the issue was also presented to the arbitrator). On the other hand, the *contractual* basis for an award cannot be challenged in a ULP proceeding alleging failure to comply with an arbitrator's award. *See, e.g., Broad. Bd. of Governors*, 68 FLRA 342, 344 (2015).

In the instant matter, the Respondent's defenses present two basic issues that are cognizable in a ULP proceeding to enforce an arbitration award: (1) that it has complied with the awards; and (2) there are statutory bars to the Arbitrator's jurisdiction and orders. After careful consideration of the evidence in light of the guidance provided by the applicable case precedent, I find no merit to the Respondent' defenses.

Determining whether an agency has adequately complied with an arbitration award "depends, in part, on the clarity of the award." *See U.S. Dep't of the Treasury, IRS, Austin Compliance Ctr., Austin, Tex.*, 44 FLRA 1306, 1315 (1992), *recon. denied*, 45 FLRA 525 (1992). "When the award is ambiguous, the test of compliance is whether the agency's action is consistent with a reasonable construction of the award." *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Marianna, Fla.*, 59 FLRA 3, 4 (2003) (citations omitted).

The Respondent not only contends that the awards are ambiguous, it argues that they are unenforceable because the Arbitrator mandated a negotiated remedy which is not sufficiently specific to be capable of enforcement. While that characterization may be true of the original award and the 2012 Award,[11] it completely misreads the 2014 Award. As the General Counsel correctly points out, there is nothing in the 2014 Award that orders the parties to negotiate the remedy. Rather, the Arbitrator specified the remedy in paragraphs 3 and 4 of his order and, unlike his earlier awards where the parties were ordered to "jointly determine" the back pay due or to attempt to reach a "mutually agreeable settlement" on back pay, the 2014 award only required establishment of a labor-management committee "to fully participate and complete all calculations and recalculations due to eligible employees as set forth herein." (G.C. Ex. 5 at 20). Given the parties' history of being unable to reach any agreement on back pay after the original award and the 2012 Award, I find that the Respondent's position that the 2014 Award requires the parties to continue their futile efforts to negotiate the back pay remedy represents a patently unreasonable interpretation of that award. As the General Counsel contends, the Arbitrator's order in the 2014 Award that the parties establish a labor-management committee was not a mandate for further negotiations but a means of simply providing the Union with an opportunity to monitor the steps taken by the Respondent to implement the requirements of the award.

I similarly find no merit to the Respondent's argument that the Arbitrator's awards cannot be enforced because precise back pay calculations have not been "fixed" as required by *NLRB v. New York Merchandise*, 134 F.2d 949 (2d Cir. 1943). This argument completely misreads the cited case and ignores important factual differences between the instant matter and the enforcement petition before the Court. In *New York Merchandise*, the NLRB sought enforcement of an order in an unlawful termination case for reinstatement with back pay. However, the Court found that there were unresolved factual issues raised by the employer as to whether the discharged employee's position still existed or whether he would have been terminated at some point for legitimate business reasons. Accordingly, the Court determined that "the issues of [the terminated employee's] reinstatement and back pay will be referred to

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[11] In the original 2011 award, the arbitrator ordered the parties to "jointly determine by no later than September 30, 2011, the amount of compensation to be paid to eligible employees covered under the Award." (G.C. Ex 2 at 54). And in his 2012 compliance award, the Arbitrator ordered the parties to meet "in good faith, and attempt to reach a mutually agreeable settlement regarding payment to eligible employees including a bilateral determination of an ending date for payment of the overtime penalty and the liquidated damages. " (G.C. Ex. 4 at 25). Both awards can be reasonably construed as providing for negotiations over the remedy.

the Board with directions to find the facts." (*Id.* at 953). In this case, the Arbitrator, in his final and binding 2014 Award, fixed the amount of back pay due by identifying the affected employees and specifying the times and dates for which back pay is due. The Arbitrator's award leaves no facts in question. All that is left to be done to achieve compliance is purely computational. Therefore, *NY Merchandise* is readily distinguishable and presents no impediment to enforcement of the final and binding award.

Instead of establishing the labor-management committee and proceeding to implement the clear monetary remedies outlined in the 2014 Award, the Respondent once again insisted that the entire matter of remedy had to be negotiated. It then submitted proposals that directly conflicted with the award by maintaining that back overtime payments should be calculated under the OPM pay tables and not according to the time and one-half formula specifically ordered by the Arbitrator, by insisting that employees hired after the date of the original award were not covered, and by continuing to take the position that employees who worked a double shift within FCC Tucson were only entitled to one 20-minute or 30-minute payment despite the Arbitrator's order that back pay be recalculated and paid for "all double shifts worked within the premises of FCC Tucson." (G.C. Ex. 5 at 20). It also continued its efforts to interject ambiguity into the award by raising extraneous issues related to travel time for shifts worked outside of FCC Tucson even after the Union, consistent with the plain language of the 2014 Award, stated in writing that "[a] shift worked at a downtown hospital, or away from the immediate confines of FCC Tucson, will not be considered a shift worked at FCC Tucson for portal purposes regardless of the length of time actually worked at a hospital outside the immediate confines of FCC Tucson." (G.C. Ex. 9 at 1). Additionally, the Respondent unilaterally established a precondition to compliance when it informed the Union that *all* payments that had previously been made, whether for back pay or liquidated damages, would have to be "reversed" and the monies "recouped" from the employees before it could comply with the Arbitrator's order that it recalculate the liquidated damages payments and reimburse employees for monies improperly withheld as taxes. The Arbitrator ordered the Respondent to simply reimburse affected employees for monies improperly withheld from their liquidated damages payments. The Respondent did not raise recoupment before the Arbitrator, it did not file exceptions to the 2014 Award ordering it to reimburse employees for improper withholdings, and it cannot unilaterally impose additional conditions for compliance that are inconsistent with the final and binding award. *See U.S. DOJ & DOJ, BOP, (Wash., D.C.)*, 20 FLRA 39, 43 (1985) (requiring employees to sign certifications that they actually performed work during a 30-minute lunch period as a predicate to payment of back pay constituted non-compliance with an arbitration award that determined the lunch period was compensable work time because it was not duty free).

The Respondent nonetheless attempts to avoid a finding of noncompliance by arguing that it met with Local President Shannon pursuant to the Arbitrator's order in the 2012 Award that the parties negotiate the back pay remedy, reached an agreement on compliance with Mr. Shannon and then proceeded with back pay calculations in accordance with the Shannon-Ludwick agreement "until the Arbitrator purported in the Second Compliance

Award to find such agreement invalid." (R. Br. at 6).[12] There are two fatal flaws to this argument. One, it collaterally attacks and attempts to relitigate the Arbitrator's determination in his 2014 Award that the brief Shannon-Ludwick meeting did not result in a negotiated resolution satisfying the requirements of the 2012 Award. Since the Respondent did not file exceptions to the 2014 Award, it is now final and binding, and it cannot be revisited in a ULP enforcement proceeding.[13] The second flaw is that it is undisputed that the Respondent, which stipulated that no payments have been made since February of 2014, has not paid all employees entitled to back pay even under the Respondent's own interpretation of the awards. Therefore, even assuming, as the Respondent argues, that the 2014 Award is *ultra vires* or otherwise unenforceable and that it complied with the requirements of the 2012 Award by meeting with Mr. Shannon and then proceeding to perform back pay calculations and make payments, its unilateral decision to suspend payments in February 2014 can be viewed as nothing other than blatant noncompliance.

In sum, the Respondent conditioned compliance with the monetary requirements of the February 25, 2014, award on reaching a negotiated agreement on remedy with the Union, unilaterally imposed conditions on compliance that are inconsistent with the award, submitted proposals which would alter the clear requirements of the Arbitrator's order and then suspended all efforts at compliance when no agreement was reached with the Union after two meetings. On these facts, I find that the Respondent's conduct is indicative of bad faith, and that its actions are clearly inconsistent with any reasonable construction of the 2014 Award. Consequently, I conclude that the Respondent has not complied with the Arbitrator's

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[12] While the specific basis of the Arbitrator's rejection of the putative Shannon-Ludwick agreement is not determinative of the compliance issue, it is noted that the Respondent mischaracterizes the Arbitrator's 2014 compliance award as finding the agreement "invalid." Rather, the Arbitrator found that there was *no agreement*, and he rejected the Respondent's position that the meeting between Mr. Ludwick and Mr. Shannon complied with the requirements of 2012 compliance award: "To characterize this brief encounter as full participation in the calculations and, by implication, an agreement to the methodology used by the Agency, is incorrect and beyond reason." (G.C. Ex. 5 at 13).

[13] The Respondent cites *U.S. Dep't of Energy, W. Area Power Admin., Golden, Colo.*, 56 FLRA 9 (2000) (*WAPA*) in support of its position that the Arbitrator's findings in the 2014 compliance award are not entitled to preclusive effect and can be relitigated in the instant ULP proceeding. (R. Br. at 7). However, *WAPA* did not involve an alleged refusal to comply with a final and binding arbitration award which is insulated from collateral attack in a ULP enforcement proceeding. That case arose from an agency's refusal to bargain where the agency asserted that a prior arbitration award interpreting a provision in the parties' CBA was binding on the ALJ in the subsequent ULP proceeding. While the Authority in a footnote questioned the applicability of collateral estoppel in light of Authority precedent that arbitration awards are not "precedential, it determined that the issue decided by the arbitrator was different from the issue raised before the ALJ in the ULP case and, thus, did not have to address the applicability of issue preclusion. (*Id.* at 11 n.4). The instant case is distinguishable because an arbitrator's findings in a final and binding arbitration award, whether precedential or not, cannot be collaterally attacked or relitigated in a ULP proceeding brought to enforce compliance with the award. Consequently, I find that the Respondent's reliance on *WAPA* is misplaced.

final and binding 2014 Award. Specifically, I find that the Respondent failed to comply with the final and binding awards by: (1) refusing to implement the remedial provisions of the 2014 Award until a negotiated agreement on remedy is reached with the Union; (2) persisting in applying the OPM Salary Tables which establish overtime rates for some affected employees that are less than 150 percent of their regular rates; (3) conditioning compliance with the Arbitrator's order that it reimburse employees for improper withholdings from liquidated damages payments recoupment of all of monies previously paid to employees; (4) refusing to pay all employees who worked in covered departments between May 3, 2005, and September 30, 2013, by unilaterally excluding employees hired after November 16, 2011; and (5) refusing to pay employees for all shifts worked within FCC Tucson.

There are no statutory bars to the Arbitrator's jurisdiction to issue the February 25, 2014. award

The Respondent raises two "statutory" jurisdictional defenses: (1) that the 2014 Award violates the Anti-Deficiency and Purpose Acts; and (2) that the 2014 Award violated FMCS regulations.[14] As set forth below, neither of the Respondent's jurisdictional challenges has any merit.

Anti-deficiency and purpose acts

The Respondent claims that the Arbitrator lacked statutory jurisdiction to order reimbursement for income tax withholdings from the liquidated damages payments, asserting that liquidated damages are taxable income and that the reimbursement order contravenes the Anti-Deficiency Act, 31 U.S.C. § 1341 and the Purpose Act, 31 U.S.C. § 1301, because the Congress has not appropriated funds for the ordered reimbursements. The General Counsel responds that this claim represents an impermissible collateral attack on the Arbitrator's remedy and, further, that the Authority has declined to consider Anti-Deficiency Act defenses when not raised in exceptions to the award. The General Counsel is correct. In *Dep't of the Treasury, U.S. Customs Serv., New York Region, N.Y.*, N.Y., 21 FLRA 999, 1002 (1986) (*Customs Service*) where an agency argued that an arbitrator's order that it pay certain travel expenses conflicted with the Anti-Deficiency Act, the Authority reiterated that contentions that an arbitrator's award is deficient because it is contrary to any law, rule, or regulation must be made in exceptions to the award and will not be considered in a ULP proceeding brought to enforce compliance. Thus, the Authority held,

> The Respondent, having filed no exceptions pertaining to the Back Pay Act or the Anti-Deficiency Act in its exceptions to the Arbitrator's award and its other exceptions having been denied by the Authority, was required to take the actions required by the arbitrator's award, and its failure to do so violated section 7116(a)(1) and (8) of the Statute.

[14] The other "jurisdictional" claim asserted by the Respondent, that the 2014 compliance award is incapable of enforcement because it orders the Respondent to accomplish the impossible by requiring endless negotiation and perpetual conflict, has already been addressed and rejected as an unreasonable and incorrect reading of the award.

> (*Id.* at 1002). The Respondent's arguments in the instant case that the Arbitrator's order that it reimburse employees for monies that it improperly withheld from liquidated damages payments conflicts with the Anti-Deficiency and Purpose Acts are no different from those rejected by the Authority in *Customs Service*, and they are rejected here as well.[15]

FMCS Regulations/Code of Professional Responsibility

The Respondent concedes that it faces an uphill battle in arguing that the Arbitrator lacked jurisdiction to clarify or alter the remedies previously ordered without the consent of both parties in conflict with the Code of Responsibility which is incorporated into the FMCS regulations governing the arbitration proceeding. Indeed, the Respondent acknowledges that the Authority has even refused to consider exceptions to arbitrator's awards based on allegations that the arbitrator violated the FMCS regulations and the Code of Professional responsibility. In the more recent of the cases cited by the Respondent, the Authority stated,

> The FMCS, however, has no authority to regulate arbitrators' actions. *See* 29 C.F.R. § 1404.4(d). Its regulations only set standards for arbitrators who want to be included on the roster. As relevant here, the only consequence for an arbitrator of not following the FMCS's regulations or the Code of Professional Responsibility is possible removal from the FMCS roster. Therefore, the cited FMCS regulations do not constitute a general restriction on arbitrators' authority and discretion with respect to arbitration proceedings. Consequently, that the Arbitrator may not have adhered to § 1404.4 and the Code of Professional Responsibility is not a basis for finding that the award is contrary to law. *Cf. Veterans Admin., Leavenworth, Kan.*, 34 FLRA 898, 902 (1990) (holding that Code of Professional Responsibility "is a privately developed set of standards for professional behavior and . . . is not a law, rule, or regulation . . . on which exceptions to an arbitration award can be predicated" (citations omitted)). Accordingly, we deny the Agency's contrary to law exception.

U.S. Dep't of Transp., FAA, 65 FLRA 806, 807 (2011). Undeterred by the Authority's clear statement that it won't consider exceptions to an award based on claims that an arbitrator violated FMCS regulations and the Code of Professional Responsibility, the Respondent

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[15] The cases cited by the Respondent to bolster its Anti-Deficiency Act challenge, *Naval Undersea Warfare Div., Newport, R.I*, 665 F.3d 1339 (D.C. Cir. 2012) and *ACT, Puerto Rico Army Chapter*, 58 FLRA 318 (2003), are inapposite as the former involved exceptions to an arbitrator's award filed under § 7122(a) of the Statute, while the latter case arose in the context of a negotiability appeal brought by a union under § 7105(a)(2)(E) of the Statute seeking Authority review of contract provisions disapproved by the Agency head as contrary to law under § 7114(c) of the Statute. Thus, neither case supports the Respondent's attempt to defend its noncompliance in a ULP proceeding on the basis that the Arbitrator's remedy is contrary to law.

submits that its challenge should nevertheless be permitted because it has presented "substantial evidence of material violations" by the Arbitrator. (R. Br. at 9). Authority case law recognizes no such "material violation" exception, and it certainly is not cognizable in a ULP proceeding.[16]

CONCLUSION

I find that the Respondent violated § 7116(a)(1) and (8) of the Statute by failing to comply with and properly implement the Arbitrator's final and binding 2014 award, specifically by: (1) refusing to implement the remedial provisions of the 2014 Award until a negotiated agreement on remedy is reached with the Union; (2) persisting in applying the OPM Salary Tables which establish overtime rates for some affected employees that are less than 150 percent of their regular rates; (3) conditioning compliance with the Arbitrator's order that it reimburse employees for improper withholdings from liquidated damages payments recoupment of all of monies previously paid to employees; (4) refusing to pay all employees who worked in covered departments between May 3, 2005 and September 30, 2013, by unilaterally excluding employees hired after November 16, 2011; and (5) refusing to pay employees for all shifts worked within FCC Tucson.

REMEDY

As requested by the General Counsel, I will order the Respondent to fully comply with and implement the terms of the final and binding 2014 Award, and I will order the Respondent to post a Notice signed by the Warden of FCC Tucson in all locations within the Respondent's FCC Tucson facility and to disseminate a copy of the notice electronically to all FCC Tucson employees. *See U.S. DOJ, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221, 226 (2014). As for the request that interest be added to the non-liquidated damages portion of the Arbitrator's award, the General Counsel submits that this additional remedy is appropriate in light of the Respondent's noncompliance with the awards, though it adds that the "Authority does not appear to have addressed whether interest is warranted in this circumstance." (G.C. Br. at 38 n.177; citing *U.S. Dep't of the Interior, U.S. Park Police*, 67 FLRA 345 (2014) (*Park Police*)). While it may be true that the Authority has not addressed the availability of interest as a remedy for an unfair labor practice in the particular circumstances presented herein, Authority precedent does not authorize the requested interest remedy. In *Park Police*, an agency filed exceptions to an arbitrator's award that required it to

[16] *Jones v. St. Louis-San Francisco Ry. Co.*, 728 F.2d 257 (6th Cir. 1984), cited by the Respondent, does not suggest a different result. In *Jones*, the Court relied in part on the FMCS regulations to set aside the decision of an arbitration board in part because the decision was not issued within time limits established by the CBA. However, *Jones* is procedurally distinguishable in that it involved a complaint to set aside an award pursuant to § 153(q) of the Railway Labor Act, 45 U.S.C. § 153(q), which is the equivalent of the exception procedure established by § 7122(a) of the Statute. Therefore, *Jones* does not support the Respondent's attempt to challenge the Arbitrator's jurisdiction in a ULP compliance proceeding on grounds that he violated FMCS regulations.

pay interest on back pay due employees under a prior award of back pay for violations of the FLSA which, the agency argued, provides for liquidated damages but not interest. The Authority carefully considered the interplay between the remedial provisions of the FLSA which do not include interest and the Back Pay Act (BPA), 5 U.S.C. § 5596, which mandates interest. Based on a review of the pertinent case law, the Authority concluded that interest under the BPA may be added to an award of back pay under the FLSA in cases where liquidated damages are *not* awarded under the FLSA. (*Id.* at 348-49). In particular, the Authority relied on decisions of the Claims Court holding that while interest under the BPA and liquidated damages under the FLSA cannot both be awarded, BPA interest may be added to an FLSA back pay award in cases where no liquidated damages have been awarded. (*Id.* at 348; discussing *Angelo v. United States*, 57 Fed. Cl. 100 (2003) and *Astor v. United States*, 79 Fed. Cl. 303 (2007)). Since the arbitrator in *Park Police* had not awarded liquidated damages as part of his FLSA remedy, the Authority found that his subsequent award of interest under the BPA as a remedy for the agency's noncompliance with the FLSA award was not contrary to law. *Id.* In this case, however, the Arbitrator did award liquidated damages which, as discussed above, precludes an award of interest under the BPA. *See also U.S. Dep't of Transp., FAA*, 66 FLRA 441, 447 (2012) ("an employee may not recover *both* liquidated damages under the FLSA *and* interest under the BPA."). Therefore I conclude that the General Counsel has not established that an award of interest is appropriate.

Accordingly, I recommend that the Authority adopt the following Order:

ORDER

Pursuant to § 2423.41(c) of the Authority's Rules and Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), the United States Department of Justice, Federal Bureau of Prisons, Federal Correctional Complex, Tucson, Arizona, shall:

1. Cease and desist from:

(a) Failing to comply with the final and binding awards of Arbitrator Douglas P. Hammond in FMCS Case No. 08-56902.

(b) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of the rights assured them by the Statute.

2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

(a) Fully comply with the final and binding awards of Arbitrator Douglas P. Hammond in FMCS Case No. 08-56902.

(b) Within seventy-five (75) days, complete and submit the calculations set forth below for processing and payment:

(1) For those employees already paid who were paid at a rate below one and one-half times their actual rate of pay, recalculate the amounts owed using the rate of one and one-half times the employees' actual rate of pay and reimburse the employees for the difference between that amount and what was paid.

(2) Reimburse each employee already paid for the amount of money withheld as tax withholding or deductions from the liquidated damages portion of the payments. The appropriate IRS forms will be issued to each employee indicating the amount paid. Such action will not involve recoupment of funds already paid to employees.

(3) For those employees already paid, recalculate, apply and pay the overtime penalty, as described in items 3 and 4 of the Award in Decision #1, for all shifts worked in the premises of FCC Tucson, including: (i) double shifts within FCC Tucson; (ii) single shifts in the premises of FCC Tucson worked in conjunction with a shift outside of FCC Tucson; and (iii) shifts worked in the premises of FCC Tucson that included payment for overtime. Pay one (1) overtime payment in the appropriate amount at the appropriate rate for each of these shifts. Such action will not involve recoupment of funds already paid to employees.

(4) Pay all eligible employees all required amounts, including overtime penalties and liquidated damages as set forth in the Awards of the three decisions, up to and including September 30, 2013. Such action shall include all eligible employees assigned to covered Departments between May 3, 2005 and September 30, 3013 regardless of their date of hire and will include:

   (i) Calculate, apply and pay the appropriate overtime rate of one and one-half times an employee's regular rate of pay. This rate will be applied for all covered employees at all pay levels.

   (ii) Calculate, apply and pay the overtime penalty as described in items 3 and 4 of the Award in Decision #1, for all shifts worked in the premises of FCC Tucson, including: (i) double shifts within FCC Tucson; (ii) single shifts in the premises of FCC Tucson worked in conjunction with a shift outside of FCC Tucson; and (iii) shifts worked in the premises of FCC Tucson that included payment for overtime. Pay one (1) overtime payment in the appropriate amount at the appropriate rate for each of these shifts. Such action will not involve recoupment of funds already paid to employees.

   (iii) Calculate, apply and pay all eligible employees liquidated damages without withholding income taxes or other deductions.

(5) Permit designated Union representatives to review all the calculations on official time before they are forwarded for processing.

(c) Post at its facilities, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Warden, FCC Tucson, and shall be posted and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(d) Disseminate a copy of the Notice signed by the Warden through the Respondent's e-mail system to all bargaining unit employees, on the same day, as the physical posting of the Notice.

(e) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Chicago Region, Federal Labor Relations Authority, in writing, within thirty (30) days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, D.C., October 28, 2015

Susan E. Jelen

SUSAN E. JELEN
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of Justice, Federal Bureau of Prisons, Federal Correctional Complex, Tucson, Arizona, violated the Federal Service Labor-Management Relations Statute (Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to abide by and implement the final and binding Arbitration Awards issued by Arbitrator Douglas P. Hammond in the Portal-to-Portal case.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce bargaining unit employees in the exercise of the rights assured them by the Statute.

WE WILL promptly comply with the final and binding Arbitration Awards issued by Arbitrator Douglas P. Hammond by fully compensating all employees consistently with the terms of the Awards.

_____

(Agency/Respondent)

Dated: _____ By: _____

(Signature) (Title)

This Notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Chicago Region, Federal Labor Relations Authority, whose address is: 224 S. Michigan Avenue, Suite 445, Chicago, IL 60604, and whose telephone number is: (312) 886-3465.