

74 FLRA No. 65

UNITED STATES
DEPARTMENT OF HEALTH
AND HUMAN SERVICES
INDIAN HEALTH SERVICE
(Agency)

and

LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA
LOCAL 5251
(Union)

0-AR-6095

DECISION

May 22, 2026

Before the Authority: Colleen Duffy Kiko, Chairman,
and Anne Wagner and Charles O. Arrington, Members

I. Statement of the Case

Arbitrator David S. Paull issued an award finding the Agency violated the parties' collective-bargaining agreement by failing to compensate an employee (the grievant) for performing the duties of a higher-graded position. The Agency filed exceptions to the award on contrary-to-law and nonfact grounds. For the following reasons, we find that the award is contrary to law because it concerns classification within the meaning of § 7121(c)(5) of the Federal Service Labor-Management Relations Statute (the Statute).¹ Therefore, we set aside the award on that basis and do not address the remaining exceptions.

II. Background and Arbitrator's Award

In October 2023, the Agency promoted the grievant to a General Schedule (GS)-6 pharmacy technician (technician) position at its Cass Lake, Minnesota facility.² The Agency's Red Lake and White Earth facilities each have a GS-7 position that encompasses the duties of the GS-6 technician position

plus additional duties (point-of-sale technician position). The duties in the Red Lake and White Earth point-of-sale technician position descriptions are "essentially" the same.³ There is no GS-7 point-of-sale technician position at the Cass Lake facility where the grievant works.

In summer 2024, the grievant contacted her supervisors, asserting that she was being underpaid at the GS-6 grade level because she was performing the higher-graded duties of the GS-7 point-of-sale technician position. In October 2024, the Union filed a step-one grievance alleging that the Agency violated Articles 17 and 18 of the parties' agreement (Article 17 and Article 18, respectively) because the grievant "has been performing grade[-]controlling duties of a higher grade on a regular and recurrent basis that continues to the present time," and her position description "was never updated to reflect the accurate job series, duties[,] and/or responsibilities performed."⁴ The grievance also asserted that Article 18, Section 3 entitles employees to a temporary promotion if they are "assigned to the grade-controlling duties of a higher-graded position for more than [thirty] days."⁵ As remedies, the grievance requested that the Agency promote the grievant to GS-7 "immediately"; compensate her with backpay "for performing higher[-]graded duties without fair compensation per" the parties' agreement; and update her position description to "include accurate duties and responsibilities performed in the position."⁶

After the Agency denied the step-one grievance, the Union filed a step-two grievance. In the step-two grievance, the Union reiterated the relevant portions of the step-one grievance and added "[s]upport" by stating that: (1) the grievant "actively performs duties as the [point-of-sale] [t]echnician which has been classified as [job series] 661[, grade] GS[-]6/7"; (2) "management failed to properly assign [the grievant] to the correct position[,] and therefore her current 661 GS[-]6 [technician position description] does not accurately reflect the duties she performs on a regular and recurrent basis"; (3) the grievant's "duties and request to update her [position description] are agreed upon by Pharmacy management, who have requested to promote her to the GS[-]7 position"; and (4) updating the grievant's position description "would qualify her for the GS[-]7 position."⁷ The step-two grievance again requested the remedies that the step-one grievance had requested, and also stated that the Union's "request [was] to update [the grievant's position description] to accurately reflect the duties she performs, which . . . warrants an upgrade to the GS[-]7 level."⁸

¹ 5 U.S.C. § 7121(c)(5).

² All of the facilities discussed in this case are in Minnesota.

³ Award at 7.

⁴ Exceptions, Union Ex. 2, Grievance Documents (Grievance Documents) at 3 (step-one grievance).

⁵ *Id.*; see also Award at 11.

⁶ Grievance Documents at 3 (step-one grievance), see also Award at 11.

⁷ Grievance Documents at 9-10 (step-two grievance).

⁸ *Id.*

The Union later filed a step-three grievance that largely repeated the allegations in the step-one grievance,⁹ but the grievance was unresolved and proceeded to arbitration. Before the Arbitrator, the parties stipulated the issues as: (1) “[w]as the grievance filed timely”; (2) “[i]s the grievance arbitrable”; and (3) “[w]as the [g]rievant temporarily promoted to the already classified pharmacy technician, GS[-]661-7 position description, without proper compensation, in violation of Article 17 and 18 . . . and if so, what should be the appropriate remedy?”¹⁰

First, the Arbitrator determined that the grievance was timely filed. Next, he addressed whether the grievance was inarbitrable because it concerned classification within the meaning of § 7121(c)(5) of the Statute. The Arbitrator stated that “it does not appear that the grievance challenges, in any way, the propriety of the duties of the [point-of-sale technician] position or how they are classified.”¹¹ “Rather,” he stated, “the question presented [was] whether or not it [was] appropriate for the [g]rievant to be assigned [to], and to perform these duties at[,] the GS[-]6 pay level.”¹² He found that the grievance challenged the Agency’s “failure . . . to pay the [g]rievant at the GS[-]7 level for previously classified duties,” and that “[t]here [was] no contention on the part of the Union that these duties have been improperly classified.”¹³ Further, the Arbitrator stated that “[t]he remedy sought by the Union . . . is a temporary promotion, not a reclassification of either position.”¹⁴ Accordingly, he concluded that the grievance did not concern classification. He also found that the Agency violated the parties’ agreement by failing to temporarily promote the grievant, and he directed the Agency to “immediately temporarily promote” her to the GS-7 level and provide her with backpay starting from the date when the grievance was filed.¹⁵

The Agency filed exceptions to the award on January 15, 2026, and the Union filed an opposition on February 11, 2026.

III. Analysis and Conclusion: The award is contrary to § 7121(c)(5) of the Statute.

The Agency argues that the award is contrary to law because the Arbitrator erred in finding that the grievance did not concern classification.¹⁶ In support of its argument, the Agency asserts that the grievance expressly requested a permanent promotion to GS-7 and an update of the grievant’s position description to incorporate the GS-7 classification of the duties assigned to her in her permanent position.¹⁷

When an exception involves an award’s consistency with law, the Authority reviews any question of law raised by the exception and the award de novo.¹⁸ In applying the standard of de novo review, the Authority assesses whether an arbitrator’s legal conclusions are consistent with the applicable standard of law.¹⁹ In making that assessment, the Authority defers to the arbitrator’s underlying factual findings unless the excepting party establishes that they are nonfacts.²⁰

Section 7121(c)(5) of the Statute excludes from parties’ negotiated grievance procedures “any grievance concerning . . . the classification of any position which does not result in the reduction in grade or pay of an employee.”²¹ Under Authority precedent, if the substance of a grievance concerns the grade level of the duties permanently assigned to, and performed by, an employee, then the grievance concerns the classification of a position within the meaning of § 7121(c)(5).²²

The Arbitrator found that the grievance sought only a temporary promotion.²³ However, the grievance: (1) did not use the term “temporary” in conjunction with the request to immediately promote the grievant; (2) cited not only Article 18, which concerns selections, details, and temporary promotions, but also Article 17, which concerns classification; and (3) did not limit the requested relief to payment for the temporary performance of higher-graded duties.²⁴ Rather, the Union expressly requested that the Agency update the grievant’s position description to “include accurate duties and responsibilities performed in the position”²⁵ and elaborated that its “request [was] to

⁹ Grievance Documents at 13 (step-three grievance).

¹⁰ Award at 3.

¹¹ *Id.* at 26.

¹² *Id.*

¹³ *Id.* at 26-27.

¹⁴ *Id.* at 27.

¹⁵ *Id.* at 32.

¹⁶ Exceptions Form at 5; Exceptions Br. at 6.

¹⁷ Exceptions Br. at 7; Exceptions Form at 5-7.

¹⁸ *U.S. Dep’t of Com., Nat’l Oceanic & Atmospheric Admin., Se. Fisheries Sci. Ctr.*, 74 FLRA 205, 206 (2025) (citing *U.S. Dep’t of the Army, U.S. Army Garrison Redstone Arsenal, Huntsville, Ala.*, 73 FLRA 210, 211 (2022) (*Army*)).

¹⁹ *Id.*

²⁰ *Id.* (citing *AFGE, Loc. 953*, 68 FLRA 644, 646-47 (2015)).

²¹ 5 U.S.C. § 7121(c)(5).

²² *U.S. Dep’t of VA, W. Palm Beach VA Med. Ctr., W. Palm Beach, Fla.*, 74 FLRA 121, 123 (2024) (*VA Palm Beach*) (then-Member Kiko concurring on other grounds).

²³ See Award at 17 (stating that the Union was asking the Arbitrator to “[o]rder the Agency to temporarily promote” the grievant into the point-of-sale technician position), 27 (finding “remedy sought by the Union in this case is a temporary promotion”).

²⁴ Grievance Documents at 3 (step-one grievance), 9 (step-two grievance).

²⁵ *Id.* at 3 (step-one grievance).

update [the grievant's position description] to accurately reflect the duties she performs, which . . . warrants an upgrade to the GS[-]7 level."²⁶ Considering these factors together, we find that the grievance concerned the grade level of the duties *permanently* assigned to the grievant, and that the Union sought to have her permanent position upgraded based on those duties.²⁷

Moreover, as the Agency asserts, this case is analogous to *U.S. Department of VA, West Palm Beach VA Medical Center, West Palm Beach, Florida*.²⁸ In that decision, the Authority found that a grievance concerned classification where the only way the agency could promote the grievants was to either (1) create new positions at a higher grade at the grievants' location, or (2) reclassify the grievants' existing positions.²⁹ Here, the Arbitrator acknowledged that there are no GS-7 point-of-sale technician positions at the grievant's duty station,³⁰ and, to find that the grievant performed GS-7 duties, the Arbitrator compared her duties with those for point-of-sale technicians at the Red Lake and White Earth facilities.³¹ Thus, in order to effectuate the Arbitrator's direction to "immediately temporarily promote the [g]rievant . . . to the position of [p]harmacy [t]echnician GS-661-7,"³² the Agency would need to create a new GS-7 point-of-sale technician position at Cass Lake to which it could promote the grievant, or reclassify her position.³³

In sum, we find the grievance concerned the grade level of the duties *permanently* assigned to, and performed by, the grievant – in other words, classification.³⁴ Consequently, the award resolving that grievance is contrary to § 7121(c)(5) of the Statute.³⁵ Therefore, we set aside the award on this basis and do not address the Agency's remaining exceptions.³⁶

IV. Decision

We set aside the award.

²⁶ *Id.* at 10 (step-two grievance).

²⁷ *See, e.g., NAGE Loc. R4-17*, 67 FLRA 4, 6 (2012) (grievance seeking to "align" grievants' positions under a different and higher-graded position description applicable to employees in different facilities concerned classification); *Veterans Admin. Med. Ctr., Tampa, Fla.*, 19 FLRA 1177, 1179 (1985) (grievance concerning position description not accurately reflecting higher-graded duties concerned classification).

²⁸ *VA Palm Beach*, 74 FLRA 121; *see* Exceptions Br. at 8.

²⁹ *VA Palm Beach*, 74 FLRA at 123; *see* Exceptions Br. at 8.

³⁰ *See* Award at 9 (discussing the grievant performing GS-7 duties at the Agency's Cass Lake facility by comparing the duties with GS-7 position descriptions at the Red Lake and White Earth facilities).

³¹ *See id.*

³² *Id.* at 32.

³³ *See VA Palm Beach*, 74 FLRA at 123.

³⁴ *Id.* at 123-24 (finding grievance involved classification because it concerned "the grade level of the duties permanently assigned to, and performed by, the grievants" (emphasis omitted)); *Army*, 73 FLRA at 211 (finding grievance involved classification because it concerned "whether the grievant was entitled to a permanent promotion").

³⁵ *See Army*, 73 FLRA at 211.

³⁶ Exceptions Br. at 8-10 (arguing award is based on nonfacts), 10-11 (arguing award is contrary to law because the Arbitrator applied the wrong standard for evaluating a temporary-promotion claim); *see Army*, 73 FLRA at 211 n.23 (after setting aside award based on one exception, Authority found it unnecessary to address remaining exceptions) (citing *NLRB Prof'l Ass'n*, 73 FLRA 50, 53 n.44 (2022)).