74 FLRA No. 75

UNITED STATES
RAILROAD RETIREMENT BOARD
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 375
(Union)

0-AR-5999

DECISION

August 6, 2026

Before the Authority: Colleen Duffy Kiko, Chairman, and Anne Wagner and Charles O. Arrington, Members (Chairman Kiko concurring; Member Arrington concurring)[1]

I. Statement of the Case

Arbitrator Doyle O'Connor issued an award finding that the Agency violated the parties' collective-bargaining agreement and a memorandum of understanding related to career-ladder promotions (the MOU) by denying an employee (the grievant) a career-ladder promotion from General Schedule (GS)-11 to GS-12. The Agency filed exceptions alleging the award is based on nonfacts and is contrary to law, and that the Arbitrator exceeded his authority. For the reasons discussed below, we find that the Arbitrator exceeded his authority by resolving an issue that was not before him, and we set aside the relevant portion of the award. We deny the Agency's nonfact exceptions and find it unnecessary to reach the Agency's contrary-to-law exception.

II. Background and Arbitrator's Award

The grievant works in Houston, Texas. After the grievant was sworn in as the Union president, the Agency proposed reducing the Union president's official time to carry out Union duties from 100% to 60%. On April 27, 2022, the Union filed an unfair-labor-practice (ULP) charge alleging that this proposed change constituted bad-faith negotiation.

On October 8, 2022 – while the ULP charge was pending – the grievant began working in a GS-11 Policy and Systems Analyst (analyst) position. This is a career-ladder position with a target grade of GS-12. Although the duty location of the analyst position is in Chicago, Illinois, the grievant has continued working from Houston.

The grievant joined ten other bargaining-unit members hired for analyst positions in a training program scheduled to end in June 2023. On April 24, 2023, the parties settled the ULP charge through a settlement agreement allotting 100% official time to the Union president. The settlement went into effect in May 2023, and remained in effect throughout the events at issue in this matter.

Prior to May 15, 2023, the grievant regularly attended classes for the training program – he had attended fifty sessions – and also completed additional one-on-one training meetings with his supervisor. However, on May 15, 2023, the grievant learned from a coworker that the trainings were continuing and that he had not been invited – despite having only eight trainings remaining to complete the program. He then emailed the trainer asking her to "continue to add [him] in the training sessions" and informing her that he was not invited to that day's training.[2] The Agency responded to the grievant's request, stating "that since [the grievant is] on 100% [official] time" as Union president, he could "no longer attend [the] training."[3] The grievant was not informed he would not be permitted to attend the training classes based on his role as Union president, nor was he told it would have any impact on his career-ladder promotion.

On October 13, 2023, the grievant received his year-end performance appraisal. He was rated "exceeds fully successful" for the period October 8, 2022, through April 30, 2023, and received no rating for the period beginning May 1, 2023, through the end of the fiscal year.[4] He did not receive his career-ladder promotion at that time and, over the next few weeks, he repeatedly asked his supervisor – both orally and via email – for updates on the status of his promotion.

On November 16, 2023, the grievant was again informed that "no decision has been made yet" regarding his promotion.[5] The next day, the Union filed a Step-1 grievance challenging the Agency's refusal to timely grant the grievant's career-ladder promotion, despite the

[1] Member Wagner notes that she does not share the views expressed in her colleagues' concurring opinions.
[2] Award at 4.
[3] *Id.*
[4] *Id.*
[5] *Id.*

grievant meeting the requirements of the GS-12 posting, his "exceeds[-]fully[-]successful" performance rating, and the lack of prior notice that he would not be promoted.[6] On November 30, 2023, the Agency denied the Step-1 grievance, stating that the grievant's promotion was "postpone[d]" due to his alleged failure to attend the eight remaining training sessions.[7]

The Union then filed a Step-2 grievance, asserting that the Agency's denial violated the MOU and was intended to punish the grievant for his involvement with the Union. The Agency denied the Step-2 grievance and the Union filed a Step-3 grievance. The Agency denied the Step-3 grievance, stating that the grievant was not eligible for the career-ladder promotion because he "was no longer working as a[n] . . . [a]nalyst for the [Agency]."[8] Following receipt of the Agency's Step-3 response, the Union invoked arbitration.

At arbitration, the parties stipulated to the following issue: "Did the Agency violate the . . . MOU and/or the [parties' a]greement when it failed to promote [the grievant] to his career[-]ladder position of GS-12 in October of 2023? If so, what shall be the remedy?"[9]

The MOU provides in relevant part:

> [(1) a]ny employee serving in a career-ladder position (not at the target grade level)[; (2)] who has met minimum qualification standards[; (3)] and who, in the judgment of his/her supervisor, has demonstrated the capacity to perform at the next higher level in a satisfactory manner[; (4)] shall be promoted to the next grade level on the earliest effective date when these requirements have been met[; (5)] unless the employee has been notified in writing of his/her unacceptable performance prior to the effective date of the promotion.[10]

The Arbitrator analyzed this five-part framework to determine whether the grievant was qualified for the career-ladder promotion.

First, the Arbitrator determined it was undisputed that the Agency selected the grievant for placement in the GS-11-to-GS-12 analyst career-ladder track and that he was not at the GS-12 target grade level when the grievance was filed.

Second, the Arbitrator found that the grievant met the minimum qualifications for the GS-12 level based on his year-end evaluation rating of "exceeds fully successful," his receipt of the highest numerical score among his cohort, and his supervisor's testimony describing his work as "exceptional."[11] The Arbitrator found that there was no legitimate factual dispute that the grievant met the minimum qualifications for the GS-12 level. Although the Agency asserted that the reason for not processing the promotion was that the grievant had completed only fifty of fifty-eight training sessions, the Arbitrator found the Agency "cannot reasonably . . . require attendance at such trainings and then withhold advancement from an employee who has been unilaterally prohibited by the [Agency] from attending those . . . trainings."[12]

Third, the Arbitrator found that, based on the grievant's year-end rating and his supervisor's testimony, he had demonstrated the capacity to perform at the GS-12 level in a satisfactory manner in the supervisor's judgment. The Arbitrator further stated that "[t]he evidence is clear that it was not [the grievant's supervisor] who decided" that he should not receive a promotion; the supervisor testified that, due to the ULP settlement, she "knew she couldn't decide" whether he would get the promotion and that it was a decision made "at a pay grade well above hers."[13]

Fourth, the Arbitrator found that the MOU term "shall be promoted" required the Agency to promote the grievant on the earliest effective date after the grievant met the preceding requirements; having met those requirements, the grievant was required to be promoted under the MOU's plain language.[14]

Lastly, the Arbitrator found that the grievant did not have disqualifying unacceptable-performance issues, and he concluded that the grievant "met and exceeded" each of the requirements to receive his career-ladder promotion.[15]

The Arbitrator also determined that, "[b]ut for his Union activity," the grievant would have received the promotion.[16] In this regard, the Arbitrator found the only reason the grievant did not complete the eight remaining training classes was because the Agency unilaterally prohibited him from attending them after he transitioned to 100% official time as Union president. The Arbitrator found that nothing in the settlement agreement prevented the Agency from allowing the grievant to continue

[6] *Id.*
[7] *Id.*
[8] *Id.* at 5.
[9] *Id.* at 2.
[10] *Id.* at 7.
[11] *Id.* at 11.
[12] *Id.* at 13.
[13] *Id.* at 13-14 (emphasis omitted).
[14] *Id.* at 14.
[15] *Id.* at 15.
[16] *Id.*

attending the training classes after he was placed on 100% official time. The Arbitrator concluded that the Agency's denial of the promotion violated the parties' agreement and the MOU, and was contrary to the settlement agreement.

Accordingly, the Arbitrator granted the grievance and directed the Agency to take the necessary steps to process the grievant's promotion and make it retroactive to October 2023, including backpay. As an additional remedy, the Arbitrator held that if the grievant "returns to being actively assigned to the duties of a GS-12 [a]nalyst, such assignment should be with the same logistical arrangements as before, that is, [teleworking] from Houston, should he so choose, and for so long as any other analysts are afforded the teleworking option" (the remote-work remedy).[17]

On December 12, 2024, the Agency filed exceptions to the Arbitrator's award. The case was placed in abeyance on January 10, 2025, while the Authority's Collaboration and Alternative Dispute Resolution Office attempted to help the parties resolve the dispute. The parties were unable to do so, and the Authority took the case out of abeyance on July 17, 2025, and directed the Union to file an opposition by August 18, 2025. The Union timely filed an opposition to the Agency's exceptions.

III. Preliminary Matter: The Agency's exceptions are timely.

In the Agency's exceptions, filed December 12, 2024,[18] the Agency states that the Arbitrator served the award on the parties by email on November 12.[19] However, the award is dated November 11,[20] and, in its opposition, the Union states that the Arbitrator issued the award on November 11.[21] The time limit for filing exceptions to an arbitration award is thirty days "after the date of service of the award."[22] The date of service is the date that the arbitration award is postmarked, delivered in person, deposited with a commercial delivery service or, in the case of email or fax transmissions, the date transmitted.[23] Therefore, the Authority's Office of Case Intake and Publication issued an order directing the Agency to show cause why the exceptions should not be dismissed as untimely.[24]

In response to the show-cause order, the Agency submitted the Arbitrator's November 12 email serving the award.[25] The Agency demonstrates that its exceptions, filed on December 12, were filed within thirty days of the award's date of service, November 12. Therefore, we find that the Agency's exceptions are timely.[26]

IV. Analysis and Conclusions

A. The award is not based on nonfacts.

The Agency claims that the award is deficient because it is based on nonfacts.[27] The Authority will find that an award is based on a nonfact if the excepting party establishes that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result.[28] However, the Authority has held that a party's disagreement with an arbitrator's evaluation of evidence, including the determination of the weight to be given such evidence, provides no basis for finding an award deficient on nonfact grounds.[29] In addition, the Authority will not find an award deficient on a nonfact basis where the parties disputed the alleged nonfact before the arbitrator.[30]

The Agency asserts that "the record unambiguously shows" that the grievant's supervisor believed the grievant "had not demonstrated the capacity to work at" the GS-12 level, and that any finding to the contrary is a nonfact.[31] As support, the Agency argues that the grievant's "[e]xceeds[-f]ully[-s]uccessful" performance evaluation does not establish that he could successfully perform at the GS-12 level, and the Agency relies on *its interpretation* of the supervisor's testimony to claim she determined the grievant did not qualify for the promotion.[32]

These arguments challenge the Arbitrator's resolution of disputed testimony and his weighing of the evidence. The Arbitrator expressly addressed the supervisor's testimony, credited her statements describing the grievant's work as "[e]xceptional," noted the grievant's "[e]xceeds[-f]ully[-s]uccessful" rating, and concluded that the Agency's proffered rationale for denying the promotion lacked factual support in light of

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[17] *Id.* at 20.
[18] All subsequent dates occurred in 2024 unless otherwise noted.
[19] Exceptions Br. at 1.
[20] Award at 21.
[21] Opp'n at 3.
[22] 5 C.F.R. § 2425.2(b).
[23] *Id.* § 2425.2(c).
[24] Order to Show Cause at 1-3.
[25] Agency's Resp. to Order to Show Cause, Attach. 1 at 1.
[26] *See* 5 C.F.R. § 2425.2(b).
[27] Exceptions Br. at 3-8.
[28] *NTEU, Chapter 46*, 73 FLRA 654, 655-56 (2023) (*Chapter 46*) (citing *AFGE, Loc. 4156*, 73 FLRA 588, 590 (2023)).
[29] *Id. at 656 (citing AFGE, Loc. 12, 70 FLRA 582, 583 (2018)).*
[30] *U.S. Dep't of HHS*, 73 FLRA 95, 96-97 (2022) (citing *U.S. DOD, Def. Logistics Agency, Disposition Servs., Battle Creek, Mich.*, 70 FLRA 949, 950 (2018) (Member Abbott concurring; Member DuBester concurring)).
[31] Exceptions Br. at 6 (emphasis omitted).
[32] *Id.* at 3, 5-6.

the full record.[33] The Arbitrator also considered competing testimony and arguments regarding the grievant's incomplete training and found, based on the evidence presented, that it was the Agency's actions – not the grievant's – that prevented him from attending the remaining sessions.[34] As the Agency's arguments merely challenge the Arbitrator's evaluation of the evidence, they provide no basis for finding the award is based on a nonfact.[35]

In addition, the Agency contends[36] that this case is similar to *U.S. DOJ, BOP, Federal Correctional Institution, Loretta, Pennsylvania* (*Loretta*).[37] In *Loretta*, the Authority set aside an award where an arbitrator granted a temporary promotion to a GS-8 position, but it was undisputed that the GS-8 position did not exist, and there was no evidence that the parties disputed its existence at arbitration.[38] Here, by contrast, there is no dispute that the GS-12 position at issue exists.[39] Thus, *Loretta* is inapposite.

The Agency also claims the Arbitrator erred by finding that it was "clear that it was not [the supervisor] who decided that [the grievant] should not receive the" grade increase, arguing that her Step-1 grievance response and testimony show that she made the eligibility determination herself.[40] To the extent the Agency challenges the Arbitrator's findings regarding whether the grievant's supervisor had the authority to make the promotion decision, that issue was similarly resolved through credibility assessments and interpretation of the record evidence.[41] However, to the extent the Agency is again challenging the Arbitrator's evaluation of the evidence regarding the grievant's ability to perform at the GS-12 level, the Agency's disagreement does not establish the Arbitrator made a clearly erroneous factual finding.[42]

Additionally, the record shows that, before the Arbitrator, the parties disputed the meaning of the supervisor's testimony, the grievant's qualifications, and the supervisor's authority to grant the promotion.[43] As the Authority will not find an award deficient on the basis of an arbitrator's determination of any factual matter that the parties had disputed before the arbitrator, the Agency's challenges to the Arbitrator's findings regarding these matters are unavailing.[44]

Accordingly, we deny the Agency's nonfact exceptions.

B. The Arbitrator exceeded his authority by resolving an issue not submitted to arbitration.

The Agency argues that the Arbitrator exceeded his authority by issuing the remote-work remedy.[45] As relevant here, arbitrators exceed their authority when they resolve an issue not submitted to arbitration.[46] However, arbitrators do not exceed their authority by addressing any issue that is necessary to decide a stipulated issue or by addressing any issue that necessarily arises from issues specifically included in a stipulation.[47] Although arbitrators have broad discretion to fashion remedies that they consider appropriate,[48] an arbitrator's authority to fashion a remedy does not extend to issues that are not submitted to arbitration.[49]

The stipulated issue before the Arbitrator was whether the Agency violated the parties' agreement or the MOU by not promoting the grievant and, if so, what remedy was appropriate.[50] The Arbitrator answered precisely that issue by concluding that the Agency's denial of the grievant's promotion violated the parties' agreement and the MOU and directing a retroactive promotion with backpay.[51] However, the Arbitrator went further and directed the remote-work remedy. The stipulated issues did not include an issue regarding remote work. Further, the Arbitrator did not find, and there is no claim, that it was

[33] Award at 13-14.
[34] *Id.* at 15.
[35] *See, e.g.*, *Int'l Bhd. of Boilermakers, Loc. 290*, 72 FLRA 586, 588 (2021) (denying nonfact exception because it merely challenged arbitrator's evaluation of the evidence); *U.S. Dep't of VA, VA Puget Sound Health Care Sys., Seattle, Wash.*, 72 FLRA 441, 443 (2021) (Chairman DuBester concurring) (same); *AFGE, Loc. 3369*, 72 FLRA 158, 159 (2021) (same).
[36] Exceptions Br. at 4-7.
[37] 55 FLRA 339 (1999) (Member Wasserman concurring in part and dissenting in part).
[38] *Id.* at 343.
[39] Award at 11.
[40] Exceptions Br. at 6-7 (internal quotation mark omitted).
[41] Award at 13-24; Exceptions, Attach. 1, Tr. (Tr.) at 166-67, 177-78.
[42] *Chapter 46*, 73 FLRA at 656 (holding that disagreement with arbitrator's evaluation of the evidence does not establish arbitrator made a clearly erroneous factual finding).
[43] Award at 11-14; Exceptions, Attach. 23, Agency's Post-Hr'g Br. (Agency's PHB) at 13; Exceptions, Attach. 24, Union's Post-Hr'g Br. (Union's PHB) at 11-12.
[44] *U.S. DHS, U.S. CBP*, 74 FLRA 403, 408-09 (2026) (denying nonfact argument that challenged resolution of a matter disputed at arbitration).
[45] Exceptions Br. at 11-13.
[46] *AFGE, Loc. 987*, 65 FLRA 411, 412 (2010) (citing *AFGE, Loc. 1617*, 51 FLRA 1645, 1647 (1996)).
[47] *Ass'n of Admin. L. Judges, IFPTE*, 72 FLRA 302, 304 (2021) (Member Abbott concurring on other grounds).
[48] *NTEU*, 73 FLRA 431, 433 (2023).
[49] *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Coleman, Fla.*, 66 FLRA 300, 303 (2011).
[50] Award at 2.
[51] *Id.* at 19.

necessary to address a remote-work issue in order to resolve the stipulated issues.[52] The Arbitrator also did not find that a remote-work issue necessarily arose from the stipulated issues, and he did not interpret the stipulation to encompass such an issue.[53]

The Union argues that the Arbitrator properly resolved a remote-work issue because the Agency introduced such an issue through its opening statement and questioning of witnesses at arbitration.[54] It is true that the Agency mentioned the grievant's location during its opening statement,[55] and elicited witness testimony about the grievant's work location.[56] However, those isolated statements and questions during the hearing did not make clear that the Agency was intending to raise a remote-work issue for the Arbitrator to resolve. Further, the parties did not address such an issue in their post-hearing briefs,[57] and there is no other record evidence indicating that they submitted such an issue to the Arbitrator. Nor is there any basis for finding that the remote-work remedy was necessary to remedy the denial of the grievant's promotion.

Therefore, the Arbitrator exceeded his authority by issuing the remote-work remedy.[58] Accordingly, we modify the award to strike that remedy. The Agency also argues that the remote-work remedy is contrary to law.[59] Because we set aside that remedy on exceeded-authority grounds, we find it unnecessary to address the contrary-to-law exception.[60]

V. Decision

We deny the Agency's nonfact exceptions. We grant the Agency's exceeded-authority exception as to the Arbitrator's remote-work remedy and set aside that remedy.

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[52] *See, e.g.*, *U.S. Dep't of Transp., FAA*, 64 FLRA 612, 614 (2010) (*FAA*).
[53] *Id.*
[54] Opp'n Br. at 19-20.
[55] *See* Tr. at 13-14 (Agency representative stated that the grievant "lives in Texas[,] and before his promotion to [a]nalyst" he worked in "the Agency's Houston field office"; that he "accepted th[at] promotion in September 2022, even though it was listed as a local Chicago job that was not fully remote"; and "[a]s of today, [the grievant] has not relocated to Chicago and still lives in Texas").
[56] *See id.* at 107-08 (Agency representative asked the grievant whether the job posting for analyst said that "the location of the job is Chicago" and whether it said "it is not a remote job"; whether the grievant was told at the time he received the job offer that he would "be required to relocate to Chicago"; and whether he "never relocated to Chicago" and "still live[d] in Texas"); *id.* at 145-46 (Agency representative asked the grievant whether he "believe[d] that [he] would be expected to relocate to Chicago" if he "decided not to be Union [p]resident after the upcoming elections"); *id.* at 182-85 (Agency representative asked the grievant's supervisor where the work location of the grievant's position was, whether that was communicated to the grievant, whether she expected the grievant to move to Chicago if he took the position, whether the position was offered remotely, whether there were any remote analyst positions, how often analysts are allowed to work at home, the difference between remote work and working from home five days a week, and the types of duties that employees have to perform in person).
[57] *See generally* Agency's PHB; Union's PHB.
[58] *FAA*, 64 FLRA at 613-14 (finding that the arbitrator exceeded his authority by deciding and awarding a remedy concerning an issue that was not submitted to arbitration).
[59] Exceptions Br. at 8-11.
[60] *See NLRB Pro. Ass'n*, 73 FLRA 50, 53 n.44 (2022) (finding it unnecessary to address additional arguments after setting aside award based on other argument); *FAA*, 64 FLRA at 614 & n.* (after setting aside a remedy as exceeding the arbitrator's authority, finding it unnecessary to address additional exception challenging the same remedy).

Chairman Kiko, concurring:

I join in today's decision to grant the Agency's exceeded-authority exception and deny the Agency's nonfact exception. I write separately to note that this is neither the first nor last time an agency will face the unique quandary of how to manage employees who do not actually perform the duties of their positions because they are on 100% official time (taxpayer-funded union time) yet apply for positions with career-ladder promotions or other promotional opportunities.[1] These management challenges are one of the many reasons President Trump instructed agencies to ensure that official time is used efficiently and that employees spend the majority of their duty hours performing the duties of their positions.[2]

Here, the Agency was forced to balance the uniform administration of career-ladder promotions for a "cohort" of similarly situated employees[3] with compliance with a negotiated settlement agreement (the settlement) excusing one employee from Agency-assigned duties, including training. Although the grievant was rated as "exceeds fully successful" for the portion of the year he worked as a GS-11 Policy and Systems Analyst (analyst), his supervisor understandably gave him "no rating" for the portion of the performance year during which he did not perform analyst duties.[4] The Agency determined the grievant ceased performing the job of analyst when he began devoting 100% of his duty time to serving as a union representative. Therefore, the Agency concluded he was no longer eligible to be promoted to the GS-12 level of the position, despite likely being qualified, because he would not be performing those duties. I agree with the Arbitrator that the Agency could not reasonably "require attendance at . . . trainings and then withhold advancement from an employee who has been unilaterally prohibited by the [Agency] from attending those supposedly necessary trainings."[5] But this case highlights the difficulties agencies face administering systems that are not designed to govern the promotion of employees who are exclusively performing duties for which their performance cannot be appraised. As I have noted before, agencies should not be penalized "merely [for] showing awareness and recognition" that an employee on a 100%-official-time schedule is "unlikely to perform the duties of any position that he occupies."[6]

OPM or Congress might want to consider how to address this conundrum. Perhaps OPM could issue guidance to help agencies navigate the challenges and legal risks associated with promotions and career advancement for employees seeking career-ladder promotions or other opportunities for advancement despite the fact that they are not actually performing the GS-classified duties of their positions.

[1] *See, e.g.*, *U.S. Dep't of VA, John J. Pershing VA Med. Ctr., Poplar Bluff, Mo.*, 74 FLRA 163, 168-70 (2025) (*Pershing*) (Concurring Opinion of then-Member Kiko).

[2] *See* Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use, Exec. Order No. 13837, 83 Fed. Reg. 25335 (May 25, 2018).

[3] Award at 3 (grievant "joined ten of his fellow bargaining unit members who had also been hired for the Policy and Systems Analyst role in a training cohort").

[4] *Id.* at 4.

[5] *Id.* at 13.

[6] *Pershing*, 74 FLRA at 169.

Member Arrington, concurring:

I write separately to join Chairman Kiko in stressing that agencies must rigorously ensure official time is used responsibly, and that employees devote the clear majority of their duty hours to performing the work of their positions – especially in the context of receiving promotions, career-ladder advancements, or other benefits tied to that work. Federal employees serve the public, and taxpayers rightly expect accountability from their government and its public servants.

This case illustrates the significant challenges that arise when an employee, serving 100% official time, seeks promotion to a higher-grade level of a position even though he is not performing the duties of that position nor being evaluated on them. The difficulty is compounded by the fact that allowing the grievant to complete the training necessary for advancement would have required the Agency to pull him off 100% official time – directly violating the settlement agreement that excused him from agency-assigned duties in the first place.[1] It is clear to me the grievant wants to "eat his cake and have it too." That is, the grievant wants to be promoted for performing the duties of a "Policy and Systems Analyst" without actually performing those duties because he is on 100% official time.[2]

Although the Taft-Hartley Act's prohibition on "featherbedding"[3] does not apply in the federal sector, Congress's longstanding concern with scenarios that resemble paying employees for work they are not performing is well known.[4] I do not suggest this case presents featherbedding, but the old saying about "birds of a feather" does come to mind. Agencies should not be penalized for confronting the practical and legal dilemmas that arise when employees on full-time official-time schedules pursue promotions to duties they are not required to perform based on the amount of official time allotted under the collective-bargaining agreement.

[1] Award at 3 (stating that the settlement agreement "allott[ed] 100% official time to the offices of Local President and Vice President/Treasurer").

[2] *Id.* at 3-4.

[3] *See Am. Newspaper Publishers Ass'n v. NLRB*, 345 U.S. 100, 109-10 (1953) (finding that featherbedding under the Taft-Hartley Act as situations where labor organizations or their agents "exact pay from an employer in return for services not performed or not to be performed"); *see also* 29 U.S.C. § 158(b)(6) ("It shall be an unfair labor practice for a labor organization or its agents . . . to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.").

[4] *See* H.R. Comm. on Oversight & Accountability, 118th Cong., Letter to 23 Federal Government Agencies (June 6, 2024), https://oversight.house.gov/wp-content/uploads/2024/06/23-Letters-to-Agencies-on-Official-Time.pdf ("A 2018 investigation by the House [. . .] and the Senate [. . .] found 'nearly one thousand [federal] employees . . . spend at least half their working hours as union representatives,' meaning many *employees 'are being paid for work they were not hired to do without doing work they were hired to do*.'" (alterations in original) (emphasis added) (quoting H.R. Comm. on Oversight & Gov't Reform, 115th Cong., Majority Staff Memorandum to Chairman Meadows, at 4 (May 24, 2018), https://docs.house.gov/meetings/GO/GO24/20180524/108379/HHRG-115-GO24-20180524-SD001.pdf#page=4)).