

Federal Labor Relations Authority
Quarterly Digest Report: July 1, 2022 – September 30, 2022



The following case digests are summaries of decisions/orders issued by the Federal Labor Relations Authority, with a short description of the issues and facts of each case. Descriptions contained in these case digests are for informational purposes only, do not constitute legal precedent, and are not intended to be a substitute for the opinion of the Authority.

CASE DIGEST: *NFFE, Loc. 1998*, 73 FLRA 111 (2022)

The Union filed exceptions to the Arbitrator’s award denying the grievance and sustaining the Agency’s removal of the grievant for unacceptable performance in a critical work element. Because the claims before the Arbitrator were inextricably intertwined with a removal, the award related to a matter described in § 7121(f). Accordingly, the Authority found that it lacked jurisdiction and dismissed the Union’s exceptions.

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Yazoo City, Miss.*, 73 FLRA 114 (2022)

The Arbitrator found that the Agency committed an unfair labor practice by failing to bargain over implementation of an alleged change to non-custody employees’ attire and violated the parties’ collective-bargaining agreement by failing to provide them with a uniform allowance. The Agency filed exceptions on contrary-to-law and essence grounds. Because the Agency had not made a change that would trigger a bargaining obligation, and the Agency was not obligated to pay a uniform allowance under the parties’ agreement, the Authority granted these exceptions and set aside the affected portions of the award.

CASE DIGEST: *IAMAW, Franklin Lodge No. 2135*, 73 FLRA 118 (2022)

The Arbitrator found that the Agency did not violate the parties’ collective-bargaining agreement or shop policies by requiring employees to use part of their weather-and-safety leave for personal cleanup time at the ends of their shifts. The Union filed an exception contending that the award required employees to perform work during periods that the Administrative Leave

Act of 2016 designated as leave, but the Authority denied that exception because the Arbitrator did not find that cleanup time was work.

CASE DIGEST: *U.S. Dep't of the Interior, Nat'l Park Service, Blue Ridge Parkway, N.C., 73 FLRA 120 (2022)*

The Regional Director found that § 7111(f)(4) of the Federal Service Labor-Management Relations Statute (the Statute) and § 2422.12(b) of the Authority's Regulations barred the Petitioner's petition to decertify the Union as exclusive representative of a consolidated bargaining unit. The Authority held that there was an absence of precedent as to whether § 7111(f)(4) of the Statute or § 2422.12(b) of the Authority's Regulations apply to bar decertification petitions filed within twelve months of a certification, without an election, of a consolidated bargaining unit under § 7112 of the Statute. Accordingly, the Authority granted the application for review, directed the parties to file briefs, and invited other interested persons to submit briefs.

CASE DIGEST: *AFGE, Loc. 15, 73 FLRA 125 (2022)*

This negotiability case involved proposals related to the Agency's implementation of several Executive Orders. The Authority found that the proposals were outside the duty to bargain. Accordingly, the Authority dismissed the Union's petition for review.

CASE DIGEST: *NTEU, Chapter 149, 73 FLRA 133 (2022)*

This case involves the Agency's rescission of the parties' Six Lane Commitment Agreement (SLCA) concerning border patrol officers' rotational schedules and commitment assignments and its unilateral implementation of new schedules and assignments. The Arbitrator found that the Agency properly withdrew from the SLCA, but violated the parties' national collective-bargaining agreement when it failed to bargain with the Union over the withdrawal and subsequent implementation of new schedules and assignments. Before the Authority, the Union filed exceptions on exceeded-authority, nonfact, and essence grounds. Because the Union did not establish that the award was deficient on these grounds, the Authority denied the exceptions.

CASE DIGEST: *U.S. Dep't of the Navy, Naval Med. Ctr. Camp Lejeune, Jacksonville, N.C., 73 FLRA 137 (2022)*

In this case, the Union filed a grievance alleging that the Agency failed to bargain in good faith. The Arbitrator issued an award finding that the Agency violated § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute and directing a status-quo-ante remedy. The Agency filed exceptions to the award on essence, contrary-to-law, and exceeded-authority grounds. Because the Agency failed to demonstrate that the award was deficient on any of these grounds, and made arguments to the Authority that it did not raise before the Arbitrator, the Authority denied the Agency's exceptions in part, and dismissed them, in part.

CASE DIGEST: *NFFE, Loc. 1998*, 73 FLRA 143 (2022)

The Arbitrator found that the Agency did not violate the parties' collective-bargaining agreement or the Federal Service Labor-Management Relations Statute when the Agency designated employees as mission critical and required them to report to the workplace during the COVID-19 pandemic. As such, the Arbitrator did not award a remedy. The Union filed exceptions on exceeded-authority, contrary-to-law, contrary-to-public policy, and nonfact grounds. The Authority denied the exceptions because the Union failed to demonstrate the award was deficient on any of these grounds.

CASE DIGEST: *AFGE, Loc. 3627*, 73 FLRA 147 (2022)

On essence grounds, the Union challenged an award finding the Union's grievance untimely and, thus, not procedurally arbitrable under the parties' collective-bargaining agreement. The Authority denied the Union's exception because the Union failed to demonstrate the Arbitrator's procedural-arbitrability determination was an irrational, unfounded, or implausible interpretation of the parties' agreement.

CASE DIGEST: *U.S. DOD, Domestic Dependent Elementary & Secondary Schls.*,
73 FLRA 149 (2022)

The Union requested that the Authority reconsider its decision in *U.S. DOD, Domestic Dependent Elementary & Secondary Schools*, 72 FLRA 601 (2021) (Chairman DuBester concurring). Because the Union's motion did not establish extraordinary circumstances warranting reconsideration, the Authority denied it.

Chairman DuBester concurred, noting that unions may challenge matters pertaining to a Federal Service Impasses Panel decision by bringing unfair labor practice charges concerning agency actions related to the Panel proceeding.

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Miami, Fla.*, 73 FLRA 154 (2022)

After the Authority dismissed the Agency's exceptions based on the Agency's failure to respond to an Authority order, the Agency filed a motion for reconsideration. The Authority granted the motion because the Postal Service had misdelivered the Agency's properly filed response to the order. However, the Authority denied the essence exceptions because the Agency failed to establish that the award was deficient.

CASE DIGEST: *AFGE Loc. 038, Nat'l Citizenship & Immigr. Serv. Council*, 73 FLRA 159
(2022)

The Arbitrator denied a Union grievance concerning the Agency's issuance of the grievant's performance appraisal. The Union filed exceptions on contrary-to-law and essence grounds. The Authority denied the exceptions because the Union failed to demonstrate the award was deficient on either ground.

CASE DIGEST: *U.S. Agency for Glob. Media*, 73 FLRA 162 (2022) (Chairman DuBester dissenting)

The Union requested that the Authority reconsider its decision in *U.S. Agency for Global Media*, 72 FLRA 447 (2021) (Chairman DuBester dissenting) (*Global Media*). Because the Union's motion was a mere attempt to relitigate the Authority's conclusions in *Global Media*, the Authority found the motion did not establish extraordinary circumstances warranting reconsideration, and the Authority denied it.

Chairman DuBester dissented, noting his continued belief that that the Authority erred in concluding that agencies are afforded unfettered, and unreviewable, discretion over debt-waiver claims.

CASE DIGEST: *U.S. Dep't of Educ., Wash., D.C.*, 73 FLRA 165 (2022)

After the Agency failed to answer a complaint consolidating fourteen unfair labor practice (ULP) charges, the Administrative Law Judge granted motions for summary judgment, filed by the General Council and the Union, and ordered remedies for each ULP. Both the Agency and the Union filed exceptions to specific remedies. The Authority found that the parties failed to establish that the remedies were deficient.

CASE DIGEST: *U.S. Dep't of State, Passport Serv.*, 73 FLRA 201 (2022)

The Arbitrator found that the Agency violated the parties' collective-bargaining agreement by denying the grievant a career-ladder promotion from General Schedule, Grade 9 to Grade 11. The Agency filed an essence exception, which the Authority dismissed, in part, and denied, in part.

CASE DIGEST: *AFGE, Loc. 3732*, 73 FLRA 204 (2022) (Member Kiko dissenting)

The Arbitrator found that the Agency violated the parties' collective-bargaining agreement and Agency instructions by failing to approve the grievant's tuition-assistance requests. The Agency filed exceptions to the award on essence and contrary-to-law grounds. The Authority dismissed the Agency's contrary-to-law exception and some of its essence arguments because they were not raised to the Arbitrator. And because the Agency did not demonstrate that the award failed to draw its essence from the parties' agreement, the Authority denied the remaining essence exception.

Member Kiko dissented. She would set aside the award as failing to draw its essence from the parties' agreement because the award unreasonably converted the *maximum* tuition-reimbursement allowed into the *minimum* reimbursement required in the grievant's case.

CASE DIGEST: *U.S. Dep't of the Army, U.S. Army Garrison Redstone Arsenal, Huntsville, Ala., 73 FLRA 210 (2022)*

The Arbitrator found that the Agency erred by refusing to compensate the grievant for the performance of extra duties. The Authority found that the award was contrary to § 7121(c)(5) of the Federal Service Labor-Management Relations Statute because the grievance requested a permanent promotion to a higher classification. Therefore, the Authority vacated the award.

CASE DIGEST: *Bremerton Metal Trades Council, 73 FLRA 212 (2022)*

The Arbitrator found that the Agency did not violate the parties' collective-bargaining agreement or an abeyance agreement between the parties when it suspended the grievant for one day. The Union filed exceptions on contrary-to-law, nonfact, and essence grounds. The Authority dismissed the contrary-to-law exception, and denied the nonfact and essence exceptions.

CASE DIGEST: *LIUNA, 73 FLRA 215 (2022) (Member Kiko dissenting)*

The Arbitrator found that because the Agency implemented a change in order to comply with law, the Agency did not violate the parties' collective-bargaining agreement or § 7116 of the Federal Service Labor-Management Relations Statute. The Authority denied the Union's contrary-to-law, nonfact, essence, and exceeded-authority exceptions because they did not establish any deficiencies in the award.

Member Kiko dissented on the basis that the Authority lacks jurisdiction over state national guard units, and she would dismiss the case accordingly.

CASE DIGEST: *U.S. Dep't of the Interior, Nat'l Park Serv., 73 FLRA 220 (2022)*

The Arbitrator found that the Agency retaliated against the grievant in violation of Title VII of the Civil Rights Act of 1964 when it failed to renew the grievant's employment for a second year. The Arbitrator directed the Agency to make the grievant whole. The Agency filed exceptions challenging the remedy on contrary-to-law and exceeded-authority grounds. The Authority denied the exceptions because the Agency failed to demonstrate the award was deficient on any of these grounds.

CASE DIGEST: *NLRB, 73 FLRA 223 (2022) (Member Kiko dissenting)*

The Union filed a grievance after the Agency failed to credit time that the grievants worked as law clerk trainees toward their probationary periods. The Arbitrator found that the Agency violated the parties' agreement, government-wide regulations, and Agency policy by improperly calculating the grievants' tenure. The Agency filed exceptions to the award on nonfact, contrary-to-law, essence, and exceeded-authority grounds. Because the Agency did not establish that the award is deficient on any of those grounds, the Authority denied the exceptions.

Member Kiko dissented. She would set aside the award under § 7121(c)(4) of the Federal Service Labor-Management Relations Statute because it resolved a grievance that challenged the nature of the grievants' initial appointments into federal service.

CASE DIGEST: *AFGE, Loc. 2338, 73 FLRA 229 (2022)*

The Arbitrator dismissed a Union grievance when the parties did not schedule a hearing within the time frame required by the parties' agreement. The Union filed exceptions arguing that the award was deficient because the Arbitrator did not conduct a hearing on the merits of the grievance. Because the Union did not establish that the Arbitrator's procedural-arbitrability determination was deficient, the Authority denied the Union's exceptions.

CASE DIGEST: *AFGE, Loc. 1748, Nat'l Council of Field Lab. Locs., 73 FLRA 233 (2022)*

In this case, the Union filed a petition for review of two proposals that required the Agency to assign workers' compensation claims to employees based on geographical considerations. Because the Union failed to establish that Proposal 1 was within the duty to bargain, and Proposal 2 was inextricably intertwined with Proposal 1, the Authority dismissed the petition.

CASE DIGEST: *Dep't of Com., NOAA, Nat'l Marine Fisheries Svc., Se Fisheries Sci. Ctr., 73 FLRA 238 (2022)*

National Association of Independent Labor (NAIL) filed an application for review (application) of the decision and order of a Federal Labor Relations Authority Regional Director (the RD). The RD found that NAIL's pre-existing units were not appropriate under § 7112(a) of the Federal Service Labor-Management Relations Statute after an Agency reorganization but that units represented by the American Federation of Government Employees, Local 2875 (AFGE) were appropriate and, because of the reorganization, included bargaining-unit employees that had been under NAIL's certifications. The Authority found that NAIL failed to demonstrate that the RD erred in finding the AFGE unit appropriate, and denied the application.

CASE DIGEST: *Bremerton Metal Trades Council, 73 FLRA 259 (2022)*

The Authority's Office of Case Intake and Publication issued an order directing the Union to cure procedural deficiencies in the filing of its exceptions and to respond to the order by a specific date. Because the Union failed to timely respond to the order, the Authority dismissed the exceptions.

CASE DIGEST: *Fed. Educ. Ass'n, 73 FLRA 262 (2022) (Member Kiko concurring in part, dissenting in part)*

In this case, the Authority considered the negotiability of five proposals concerning teaching-preparation activities, travel procedures, the length of the school year, and the assignment of additional duties. The Authority denied the petition as to two proposals on the grounds that they impermissibly affected management rights under § 7106(a)(2)(A) and (B) of

the Federal Service Labor-Management Relations Statute (the Statute) or were contrary to the Federal Travel Regulation. The Authority granted the petition as to the remaining three proposals, finding that two proposals were within the duty to bargain as exceptions to management rights under § 7106(b)(2) and (3), and that the proposal to establish length of the school year was within the duty to bargain because it was a matter over which the Agency had discretion subject to bargaining and was not contrary to the pay provisions of the Department of Defense Overseas Pay and Personnel Practices Act.

Member Kiko concurred as to the school-year-length proposal, noting that, although the proposal appeared to interfere with the Agency's right to determine its mission, the Agency did not raise that argument. She dissented as to the negotiability of a proposal requiring the Agency to provide employees a specified amount of preparation time, believing that it excessively interfered with the Agency's right to assign work and direct employees. Member Kiko also disagreed with the majority's finding that a proposal that required the Agency to provide at least 120 days of notice in order to assign work before or after the school year was negotiable as a procedure under § 7106(b)(2). She also would have found that proposal was not an appropriate arrangement under § 7106(b)(3) because of the burdens it placed on management's rights to assign work.

CASE DIGEST: *U.S. Dep't of the Interior, U.S. Park Police*, 73 FLRA 276 (2022)

In this case, the Arbitrator found that any liquidated damages owed to the grievants—for work on regular time—should be based on their regular rate of pay. The Authority found that because the Fair Labor Standards Act does not provide for a claim of non-overtime wages that are above the statutory minimum wage, a claimant also cannot recover non-overtime wages at their regular rate of pay as liquidated damages. Therefore, the Authority granted the Agency's exception and modified the award to state that the grievants are owed liquidated damages for non-overtime work only in the amount of any wages recovered at the FLSA's relevant statutory minimum wage rate.

CASE DIGEST: *Indep. Union of Pension Emps. for Democracy & Just.*, 73 FLRA 280 (2022)

The Union filed a motion for reconsideration of the Authority's decision in *Independent Union of Pension Employees for Democracy & Justice*, 73 FLRA 65 (2022). Because the Union's motion did not establish extraordinary circumstances warranting reconsideration, the Authority denied it.

CASE DIGEST: *Antilles Consol. Educ. Activity*, 73 FLRA 282 (2022)

This negotiability case involved three proposals concerning preparation time and teacher compensation. The Authority found that the Agency failed to demonstrate that the proposals were outside the duty to bargain.

CASE DIGEST: *U.S. Dep't of HUD, 73 FLRA 287 (2022)*

The Arbitrator issued an award finding that the Agency violated the parties' agreement by refusing to approve the grievant's request for compensatory time off for travel to engage in midterm negotiations as a Union representative. The Authority found that the award was contrary to 5 C.F.R. § 550.1403, granted the Agency's contrary-to-law exception, and set aside the award.

Member Grundmann concurred. She expressed concerns about the equities of the case but agreed that § 550.1403 did not permit the payment at issue, and she noted that the Authority may not invalidate an Office of Personnel Management regulation.

Chairman DuBester dissented. In his view, the Arbitrator's finding that the parties' agreement permitted the Agency to designate the time spent in negotiations as duty time supported the conclusion that the Agency could approve the compensatory time at issue.

CASE DIGEST: *U.S. DHS, U.S. CBP, Progreso, Tex., 73 FLRA 293 (2022)* (Member Kiko dissenting in part)

The Arbitrator granted a grievance challenging the grievant's suspension and directed the Agency to remove the suspension from the grievant's record in favor of a letter of reprimand. The Agency filed exceptions on the grounds that the award was based on a nonfact and was ambiguous or contradictory. The Authority found that the Agency failed to establish that the award was deficient on either ground, and denied the exceptions.

Because the Arbitrator gave contradictory directions to the Agency, Member Kiko would have found the award impossible to implement. Accordingly, she dissented in part.