

Federal Labor Relations Authority
Quarterly Digest Report: April 1, 2023 – June 30, 2023



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

CASE DIGEST: *U.S. DOJ, Fed. BOP, Metro. Corr. Ctr., San Diego, Cal., 73 FLRA 495 (2023)*

The Union filed a grievance alleging the Agency's failure to provide a uniform allowance to non-custodial prison employees temporarily assigned custodial duties violated the parties' collective-bargaining agreement and an Agency program statement. The Arbitrator granted the grievance and awarded bargaining-unit employees partial uniform allowances and steel-toe shoes and/or boots. The Agency filed exceptions to the award on essence, contrary-to-law, and exceeded-authority grounds. Because the Arbitrator's findings were insufficient for the Authority to determine whether the award was deficient on the grounds raised by the Agency's exceptions, the Authority remanded the award.

CASE DIGEST: *U.S. Dep't of VA, John J. Pershing VA Med. Ctr., Poplar Bluff, Mo., 73 FLRA 498 (2023).*

The Arbitrator determined that the grievance was arbitrable and concluded that the Agency violated the parties' agreement and various laws and regulations by failing to provide the grievant with a reasonable accommodation and by obstructing the grievant's attempts to seek workers' compensation. The Agency argued that the award was contrary to law, failed to draw its essence from the agreement, was contrary to public policy, and was incomplete, ambiguous, or contradictory, making implementation of the award impossible. The Agency also argued that the Arbitrator was biased, exceeded her authority, and denied the Agency a fair hearing. The Authority partially dismissed and partially denied the exceptions.

CASE DIGEST: *U.S. Dep't of Energy, Off. of River Prot./Richland Operations Off., Handford, Wash., 73 FLRA 506 (2023)*

The Arbitrator sustained the Union's grievance, in part, and reduced the grievant's seven-day suspension to a written reprimand. The Agency filed exceptions on nonfact, essence, and exceeded-authority grounds. The Authority denied the Agency's exceptions because they did not establish any deficiencies in the award.

CASE DIGEST: *AFGE, Loc. 2338, 73 FLRA 510 (2023)*

In resolving a grievance concerning the Agency's decision not to select the grievant for a position, the Arbitrator found the Union untimely filed the grievance. Alternatively, the Arbitrator found that the Agency's actions did not violate the parties' collective-bargaining agreement. The Union excepted to the award's arbitrability and merits findings on several grounds, including fair-hearing, essence, fraud, and nonfact. After denying the exceptions to the award's separate and independent arbitrability finding, the Authority denied the exceptions to the merits finding.

CASE DIGEST: *AFGE, Loc. 3601, 73 FLRA 515 (2023)*

The Arbitrator found that the Agency's discontinuation of hazard-pay differential and environmental-differential pay for COVID-19 exposure complied with the parties' agreement and applicable law and regulation. The Authority denied the Union's impossible-to-implement, exceeded-authority, nonfact, essence, contrary-to-law, and contrary-to-regulation exceptions to the award.

CASE DIGEST: *AFGE, Loc. 2338, 73 FLRA 522 (2023)*

The Arbitrator found that the Agency properly denied the Union's request for information because disclosure of the requested information without the employees' express written consent would violate the Privacy Act of 1974, the parties' collective-bargaining agreement, and the U.S. Department of Veterans Affairs Handbook. The Union filed exceptions to the award on exceeded-authority, nonfact, essence, and fair-hearing grounds. The Authority found the Union's exceptions did not demonstrate the award was deficient.

CASE DIGEST: *U.S. Dep't of the Interior, Nat'l Park Serv., Blue Ridge Parkway, N.C., 73 FLRA 526 (2023) (Member Kiko concurring)*

The Authority found that § 7111(f)(4) of the Federal Service Labor-Management Relations Statute (the Statute) does not bar decertification petitions filed within twelve months of a consolidation certification under § 7112 of the Statute. However, the Authority held that § 2422.12(b) of the Authority's Regulations does bar decertification petitions filed less than twelve months after a consolidation certification. Because the Petitioner filed its decertification petition within twelve months of a consolidation certification, the Authority dismissed the petition under § 2422.12(b).

Member Kiko concurred, noting that the Authority's representation procedures require revisions to appropriately balance union interests with employees' right to self-determination.

CASE DIGEST: *Dep't of the Navy, Puget Sound Naval Shipyard, Intermediate Maint. Facility, Bremerton, Wash. & Dep't of the Navy, Trident Refit Facility, Bangor, Wash., 73 FLRA 538 (2023)*

The Agency filed an application for review (application) of the decision and order of a Federal Labor Relations Authority Regional Director (the RD) granting the Unions' petitions to consolidate bargaining units represented by each Union at different locations. The RD found the proposed consolidated units appropriate under § 7112(a) of the Federal Service Labor-Management Relations Statute. The Authority concluded the RD did not err in finding the units appropriate, and denied the application.

CASE DIGEST: *AFGE, Loc. 4012, 73 FLRA 560 (2023) (Chairman Grundmann concurring)*

The Union filed a motion for attorney fees after the Arbitrator reduced an employee's suspension. Finding that the Union had not satisfied the Back Pay Act's requirement that an award of attorney fees be warranted in the interest of justice, the Arbitrator denied the motion. The Union filed exceptions arguing that the Arbitrator misapplied Authority precedent and that the Authority's interest-of-justice precedent conflicts with public policy. The Union also argued, for the first time, that public policy required the Arbitrator to award attorney fees. Because the Union failed to establish that the Arbitrator erred, or to identify a public policy that conflicted with Authority precedent, the Authority denied these exceptions. And because the Union could have raised the argument that public policy required the Arbitrator to award attorney fees at arbitration, but did not, the Authority dismissed this exception. Chairman Grundmann concurred.

CASE DIGEST: *AFGE, Loc. 1858*, 73 FLRA 565 (2023)

The Arbitrator denied a grievance concerning the Agency's failure to select the grievant for two vacant positions. The Union argued that the award was contrary to law because the Arbitrator applied the wrong burden of proof. As the issue was purely contractual, and the Union did not assert the parties' agreement required any specific burden of proof, the exception did not demonstrate that the award was deficient. Accordingly, the Authority denied the exception.

CASE DIGEST: *AFGE, Council 222*, 73 FLRA 567 (2023)

This case concerned the negotiability of proposals concerning employees' official duty stations. The Authority found that Proposal 5 was contrary to government-wide regulation, and Proposal 8 was contrary to law because it would award backpay without statutory authorization. Further, Proposals 7 and 9 were inextricably intertwined with Proposals 5 and 8, respectively. Accordingly, the Authority dismissed the petition in full.

CASE DIGEST: *U.S. DOL, Off. of Labor Mgmt. Standards, Div. of Enf't, Tracy Shanker, Chief*, 73 FLRA 573 (2023)

The Department of Labor's Administrative Review Board found that the Union violated the Labor-Management Reporting and Disclosure Act by failing to comply with a Union member's reasonable request to distribute campaign literature in support of his candidacy for Union president. Since the Union's violation may have affected the outcome of the Union's presidential election, the Board ordered the Union to reconduct the election under Department of Labor supervision. As the Union did not reconduct the election within the Board-established timeframe, the Petitioner filed an enforcement petition with the Authority.

The Authority affirmed the Board's decision, finding that it was not arbitrary and capricious, or in manifest disregard of the law. However, the Authority found it was unable to enforce the Board's direction to hold an election by a particular date, because that date had passed. Accordingly, the Authority remanded to the Board for consideration of a remedy that accounts for the changed circumstances of the case.

CASE DIGEST: *AFGE, Loc. 547*, 73 FLRA 581 (2023)

The Arbitrator issued an award finding the grievance was barred by the earlier filing of an unfair-labor-practice (ULP) charge under § 7116(d) of the Federal Service Labor-Management Relations Statute. The Union filed exceptions to the award. The Authority set aside the award as contrary to § 7116(d) because the grievance was brought on behalf of a different aggrieved party than the earlier-filed ULP charge.

CASE DIGEST: *AFGE, Loc. 2382*, 73 FLRA 584 (2023) (Chairman Grundmann concurring)

The Arbitrator denied the grievance, finding the Agency did not violate the parties' agreement or a past practice in denying the grievant 100% official time. The Union filed exceptions to the award on contrary-to-law and essence grounds. The Authority denied the exceptions because they failed to demonstrate the award was deficient. Chairman Grundmann concurred.

CASE DIGEST: *AFGE, Loc. 4156*, 73 FLRA 588 (2023)

The Arbitrator denied a grievance challenging the grievant's five-day suspension. The Union filed exceptions to the award on contrary-to-law, fair-hearing, and nonfact grounds. The Authority denied the exceptions because the Union's exceptions did not demonstrate that the award was deficient.

CASE DIGEST: *LIUNA, Loc. 1776*, 73 FLRA 591 (2023) (Member Kiko concurring)

In a merits award, the Arbitrator found that the Agency did not violate the parties' collective-bargaining agreement or § 7116(a)(5) the Federal Service Labor-Management Relations Statute (the Statute) by prohibiting bargaining-unit employees from wearing jeans and athletic shoes in the workplace. In a subsequent award, the Arbitrator directed the Union to pay all of the costs of arbitration. The Union filed exceptions to the awards on essence, contrary-to-law, and exceeded-authority ("functus officio") grounds. The Authority denied the exceptions because the Union did not demonstrate the awards were deficient.

Member Kiko concurred, stating that she would no longer raise jurisdictional objections to cases involving units of the national guard, in light of the United States Supreme Court's recent decision on that issue.