

Federal Labor Relations Authority
Quarterly Digest Report: January 1, 2024 – March 31, 2024



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, Fed. Corr. Inst., Ashland, Ky., 73 FLRA 775 (2024)*

The Agency reassigned the grievant pending an investigation. After finding the Agency violated the Federal Service Labor-Management Relations Statute and the parties' collective-bargaining agreement, the Arbitrator directed the Agency to return the grievant to his original post and to make him whole for missed overtime opportunities caused by the reassignment. The Agency filed exceptions arguing that the award was contrary to law and based on a nonfact. The Authority dismissed the contrary-to-law exceptions for failure to raise them before the Arbitrator. Because the award did not contain sufficient findings for the Authority to assess the nonfact exception, the Authority remanded the matter to the parties to obtain clarification from the Arbitrator, absent settlement.

CASE DIGEST: *AFGE, Loc. 916, 73 FLRA 778 (2024)*

The Arbitrator issued an award finding the Agency did not violate the parties' collective-bargaining agreements when it denied the grievant weekend overtime. The Arbitrator found there was a past practice of denying weekend overtime to employees who missed work on the day immediately preceding the overtime shift. The Union filed exceptions to the award on contrary-to-Agency-regulation and essence grounds. The Authority denied the exceptions because they failed to demonstrate the award was deficient.

CASE DIGEST: *Consumer Fin. Prot. Bureau & NTEU, Chapter 335, 73 FLRA 781 (2024)*

The Arbitrator found the Agency violated the parties' collective-bargaining agreement (CBA) by issuing the grievant a letter of reprimand without first giving him notice and an opportunity to respond. The Agency filed exceptions to the award. In *Consumer Financial Protection Bureau (CFPB), 73 FLRA 670 (2023)*, the Authority denied the Agency's exceeded-authority, essence, and due-process exceptions; revised the test it will apply in assessing management-rights exceptions where arbitrators have found CBA violations; and gave the parties an opportunity to file supplemental briefs addressing how the revised test should apply in this case. After both parties filed supplemental briefs, the Authority denied the Agency's public-policy and contrary-to-law exceptions involving management rights.

CASE DIGEST: *U.S. DHS, U.S. CBP, U.S. Border Patrol, Rio Grande Valley Sector, Edinburg, Tex., 73 FLRA 784 (2024).*

The Arbitrator found the Agency violated the parties' collective-bargaining agreement by placing the grievant on an administrative detail for an unreasonable time period. Applying the test for resolving management-rights exceptions articulated in *Consumer Financial Protection Bureau, 73 FLRA 670 (2023)*, the Authority determined that the Arbitrator's interpretation and application of the parties' agreement affected management's right to assign work under § 7106(a)(2)(B) of the Federal Service Labor-Management Relations Statute (the Statute). Because neither the award nor the Union demonstrated that the relevant provisions of the agreement were enforceable under § 7106(b) of the Statute, the Authority found the award contrary to law.

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Mendota, Cal., 73 FLRA 788 (2024)*

The Union filed a grievance alleging the Agency failed to pay the grievants the proper overtime-premium rate under the Fair Labor Standards Act (FLSA). In framing the issues for resolution, the Arbitrator included only one of the Agency's proposed arbitrability arguments. In a brief award, the Arbitrator determined that the grievance was timely and sustained it on the merits. The Agency raised essence, contrary-to-law, and incomplete-or-contradictory exceptions. The Authority denied one of the Agency's essence exceptions, finding that the parties' collective-bargaining agreement did not require the Arbitrator to frame all suggested arbitrability issues for resolution. However, because the award did not provide sufficient findings to resolve two of the Agency's remaining exceptions, the Authority remanded it.

CASE DIGEST: *AFGE, Loc. 153*, 73 FLRA 792 (2024)

The Arbitrator issued an award finding the Agency did not violate the parties' master collective-bargaining agreement or § 7106(b) of the Federal Service Labor-Management Relations Statute when it (1) required the grievant to complete certain trainings, and (2) issued the grievant an oral admonishment for failing to complete one of the trainings. The Union filed exceptions to the award on contrary-to-law, contrary-to-public policy, exceeded-authority, and "other" grounds. Because the Union failed to raise one of its arguments to the Arbitrator, the Authority partially dismissed the exceptions. The Authority denied the remaining exceptions because the Union failed to support them.

CASE DIGEST: *U.S. Dep't of VA, Winston-Salem, N.C.*, 73 FLRA 794 (2024)

The Arbitrator issued an award finding the Agency violated the parties' agreement by failing to take certain actions before denying the grievant a career-ladder promotion. The Arbitrator awarded a make-whole remedy and retained jurisdiction to resolve any disputes regarding the remedy. The Union asked the Arbitrator to clarify whether the make-whole remedy included backpay for lost overtime opportunities. The Arbitrator then issued another award (the supplemental award), finding her retained jurisdiction included the overtime issue and that the make-whole remedy included backpay for any overtime opportunities the grievant missed due to the Agency's contract violations. The Agency excepted to the supplemental award on exceeded-authority, fair-hearing, nonfact, and contrary-to-law grounds. The Authority denied the Agency's exceptions because they did not demonstrate the supplemental award was deficient.

CASE DIGEST: *U.S. DHS, CBP*, 73 FLRA 799 (2024)

The Agency failed to pay nightwork premiums, authorized by the Customs Officer Pay Reform Act (COPRA), to customs officers taking eight or more hours of parental or COVID-19 emergency leave in a pay period. The Arbitrator determined that the Agency was erroneously applying a Federal Employees Pay Act (FEPA) limitation called the "eight-hour rule" to COPRA-covered nightwork.

The Authority requested an Office of Personnel Management (OPM) advisory opinion because several of the Agency's exceptions to the Arbitrator's award required an interpretation of OPM-issued regulations and guidance. In response, OPM provided an advisory opinion, in which it determined that FEPA's eight-hour rule does not apply to leave payments for employees receiving COPRA nightwork pay. Based on that opinion, the Authority denied the Agency's exceptions contending that the award was contrary to FEPA, the statutes that created parental and emergency leave, and related regulations and guidance. The Authority also denied in part, and dismissed in part, the Agency's remaining exceptions.

The Arbitrator further found that the Agency did not commit an unfair labor practice by failing to comply with an earlier arbitration award concerning the eight-hour rule or repudiating a related settlement agreement. The Authority denied the Union's exceptions to those findings.

Chairman Grundmann concurred.

CASE DIGEST: *U.S. Dep’t of the Army, Ariz. Dep’t of Emergency & Mil. Affs., Ariz. Army Nat’l Guard & Ass’n of Civilian Technicians, Chapter 61*, 73 FLRA 809 (2024)

The Union filed a motion for reconsideration of the Authority’s decision in *U.S. Department of the Army, Arizona Department of Emergency and Military Affairs, Arizona Army National Guard*, 73 FLRA 617 (2023) (*Arizona Army National Guard*). The Authority found the motion did not establish extraordinary circumstances warranting reconsideration, because it merely attempted to relitigate the Authority’s conclusions in *Arizona Army National Guard* and raised arguments that the Union could have made, but did not make, in the underlying case. Therefore, the Authority denied the motion.

CASE DIGEST: *Ass’n of Civilian Technicians, Ky. Long Rifle Chapter 83*, 73 FLRA 812 (2024)

The Arbitrator issued an award finding that the Agency did not violate the parties’ collective-bargaining agreement; 5 U.S.C. § 706(2)(A); or § 7116(a)(7) of the Federal Service Labor-Management Relations Statute¹ (the Statute) when it implemented revised regulations and promptly separated a technician with a pending disability-retirement claim. The Union filed an exception on contrary-to-law grounds. The Authority denied the Union’s contrary-to-law exception because it did not establish any deficiencies in the award.

CASE DIGEST: *NTEU*, 73 FLRA 816

The Union grieved an Agency memorandum directing all employees, including “home-based” employees, to report to their official duty stations once per pay period. The Arbitrator denied the grievance, rejecting the Union’s interpretation of telework provisions in the parties’ agreement and, alternatively, concluding the Union’s interpretation conflicted with management rights under the Federal Service Labor-Management Relations Statute.

The Union filed exceptions alleging the award was based on several nonfacts and conflicted with Authority precedent concerning repudiation and management rights. Because the Union failed to demonstrate that the award was based on nonfacts, the Authority denied these exceptions. And because the Union did not prove the Agency violated the agreement, the Authority denied its repudiation exception. As the Arbitrator relied on separate and independent bases to deny the Union’s grievance, and the Union did not establish that the first basis was deficient, the Authority declined to consider the Union’s management-rights exception challenging the second basis.

Chairman Grundmann concurred.

¹ 5 U.S.C. § 7116(a)(7).

CASE DIGEST: *USDA, Food & Nutrition Serv.*, 73 FLRA 822 (2024)

The Arbitrator issued an award finding the Agency violated the parties' agreement and § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) in connection with the Agency's extension of several employees' details. The Agency filed exceptions alleging the award failed to draw its essence from the agreement, was based on a nonfact, and was contrary to law, specifically: the Details Act, 5 U.S.C. § 3341; the Office of Personnel Management's Guide to Processing Personnel Actions; and management's right to assign employees under § 7106(a)(2)(A) of the Statute. The Authority dismissed the Details Act exception and denied the remaining exceptions.

CASE DIGEST: *U.S. Dep't of the Army, U.S. Army Garrison, Picatinny Arsenal, N.J.*,
73 FLRA 827 (2024)

The Agency filed a motion for reconsideration of the Authority's decision in *U.S. Department of the Army, U.S. Army Garrison, Picatinny Arsenal, New Jersey*, 73 FLRA 700 (2023) (*Picatinny*). The motion did not demonstrate that the Authority erred, and attempted to relitigate the Authority's conclusions, in *Picatinny*. Therefore, the Authority found the motion did not establish extraordinary circumstances warranting reconsideration and denied it.

CASE DIGEST: *SPORT Air Traffic Controllers Org.*, 73 FLRA 830 (2024)
(Chairman Grundmann concurring)

The Arbitrator issued an award finding a Union grievance was not arbitrable. The Union excepted, arguing the award is contrary to law, fails to draw its essence from the parties' 1994 collective-bargaining agreement, and is incomplete, ambiguous, and contradictory, so as to make implementation of the award impossible. The Agency filed an opposition, in which it requested the Authority grant certain remedies. The Authority denied the Union's exceptions and the Agency's remedial request.

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Victorville, Cal.*,
73 FLRA 835 (2024)

The Arbitrator issued an award finding the Agency denied overtime opportunities to a correctional officer on a continuous and ongoing basis. The Agency filed exceptions to the award on nonfact and exceeded-authority grounds. Because the Agency did not demonstrate that the award was deficient on either ground, the Authority denied the exceptions.

CASE DIGEST: *AFGE, Loc. 480, Council of Prison Locs. #33 and U.S. DOJ, Fed. BOP, Fed. Corr. Inst. McDowell, Welch, W. Va., 73 FLRA 839 (2024)*

The Union grieved an Agency decision to temporarily assign four employees to cover the duties of a vacant position without first bargaining over the assignments with the Union. The Arbitrator denied the grievance, finding the Agency had no obligation to bargain because the assignments were only temporary increases to the employees' regular duties. The Union filed a contrary-to-law exception. Because the Union did not explain this exception, the Authority denied it as unsupported under 5 C.F.R. § 2425.6(e)(1). Chairman Grundmann concurred.