Federal Labor Relations Authority
Quarterly Digest Report: September 1, 2024 – December 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., Seagoville, Tex.*, 74 FLRA 40 (2024)

The Arbitrator issued an award finding the Union's grievance procedurally arbitrable and granting the grievance on the merits. The Agency filed exceptions to the Arbitrator's arbitrability determination on essence grounds, and to the merits determination on contrary-to-law grounds. Because the Agency could have, but did not, raise several of its arguments to the Arbitrator, the Authority partially dismissed the essence exceptions. The Authority denied the Agency's remaining essence exception because it did not demonstrate the award was deficient.

The Authority applied the test articulated in *Consumer Financial Protection Bureau*, 73 FLRA 670 (2023), to resolve the Agency's argument that the award was contrary to management's right to assign work under § 7106(a)(2)(B) of the Federal Service Labor-Management Relations Statute (the Statute). The Authority found the award affected management's right to assign work and the Union failed to demonstrate that any contract provisions interpreted and applied by the Arbitrator were enforceable under § 7106(b) of the Statute. Therefore, the Authority set aside the merits portion of the award.

CASE DIGEST: *U.S. DOD, U.S. Marine Corps, MAGTFTC/MCAGCC/MCCS, Twentynine Palms, Cal.*, 74 FLRA 46 (2024)

The Arbitrator found the Agency violated the parties' collective bargaining agreement, the Fair Labor Standards Act (FLSA), and § 510 of the California Labor Code (Cal. Code § 510) by failing to properly compensate certain employees for overtime. As remedies, the Arbitrator awarded the grievants backpay with interest for unpaid overtime under the agreement, the FLSA, and Cal. Code § 510. The Agency filed exceptions to the award on essence, exceeded-authority, and contrary-to-law grounds. The Authority denied the exceeded-authority exception. The

Authority found the Arbitrator's determination that Cal. Code § 510 was applicable to the employees was contrary to law. Consequently, the Authority granted the Agency's contrary-to-law exception. The Authority set aside the findings and remedies based on Cal. Code § 510, and also set aside the portion of the remedy awarding a third year of backpay and interest related to the FLSA violation. The Authority also found it unnecessary to resolve the Agency's essence exception.

CASE DIGEST: *AFGE, Nat'l VA Council #53*, 74 FLRA 52 (2024)

After an Agency's reorganization resulted in changes to employee performance awards, the Arbitrator issued an award finding the Agency violated §§ 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute by failing to bargain with the Union over the impact and implementation of the reorganization. As remedies, the Arbitrator issued a cease-and-desist order and directed prospective bargaining. In a contrary-to-law exception, the Union argued that the Arbitrator erroneously failed to award several requested remedies, including status-quo-ante relief, a notice posting, a retroactive bargaining order, and make-whole relief. Because the Union did not demonstrate that the Arbitrator's remedial determination was deficient, the Authority denied the Union's exception.

CASE DIGEST: *SPORT, Air Traffic Controllers Org.*, 74 FLRA 56 (2024)

The Union filed a motion for reconsideration of the Authority's decision, and clarification of the concurring opinion, in *SPORT Air Traffic Controllers Organization*, 73 FLRA 830 (2024) (*SPORT*). The Authority found the motion did not establish extraordinary circumstances warranting reconsideration, because it merely attempted to relitigate the Authority's conclusions in *SPORT* and raised arguments that did not have an effect on the outcome of the underlying decision. The Authority also rejected the Union's request for clarification of the concurring opinion. Therefore, the Authority denied the motion for reconsideration and clarification.

CASE DIGEST: *IFPTE, Loc. 4*, 74 FLRA 59 (2024)

The Authority found a proposal that required the Agency to designate a particular geographic location as the official duty station for a new position affected management's right to determine its organization, was not a negotiable procedure, and did not constitute an appropriate arrangement. Consequently, the Authority concluded the proposal was nonnegotiable.

CASE DIGEST: *Nat'l Guard Bureau, Pease Air Nat'l Guard Base, Newington, N.H.*, 74 FLRA 64 (2024)

This case concerned the Petitioner's application for review (application) of a Federal Labor Relations Authority Regional Director's (RD's) decision dismissing the Petitioner's election petition that would sever a group of Agency employees from an established bargaining unit represented by the Incumbent because the Petitioner did not establish unusual circumstances warranting severance. In its application, the Petitioner argued that the RD failed to apply established law and, alternatively, that established law or policy warranted reconsideration.

After granting review in an unpublished order, the Authority issued a decision and order on review, finding that the RD did not fail to apply established law and that the Petitioner did not demonstrate that established law or policy warranted reconsideration. Thus, the Authority dismissed the petition.

Member Kiko dissented, finding the RD failed to apply established law in denying the election petition. In her view, unusual circumstances warranted severing the employees from the bargaining unit because the Incumbent failed to adequately represent the petitioned-for employees during a crucial transitional period.

CASE DIGEST: *NTEU, Chapter 172*, 74 FLRA 80 (2024)

The Arbitrator found the Agency did not violate §§ 6130 and 6131 of the Federal Employees Flexible and Compressed Work Schedules Act, § 7116(a)(5) of the Federal Service Labor-Management Relations Statute, the parties' national collective-bargaining agreement, or a local memorandum of understanding by changing the availability of 4/10 compressed work schedules, without first notifying and bargaining with the Union. The Arbitrator determined that there was no obligation to notify or bargain with the Union because the Agency did not terminate 4/10 schedules completely. The Union filed exceeded-authority, contrary-to-law, and essence exceptions. The Authority denied the exceeded-authority exception because the Arbitrator addressed the stipulated issues. The Authority denied the contrary-to-law and essence exceptions primarily because the Union did not establish a basis to disturb the Arbitrator's findings that the Agency's obligation to bargain was limited to the establishment or termination of a schedule option, the parties already bargained over the matter, and the Agency did not establish or terminate a schedule.

CASE DIGEST: *U.S. Dep't of the Army, Nat'l Guard Bureau, Ky. Army Nat'l Guard*, 74 FLRA 89 (2024) (Member Kiko concurring)

The Arbitrator issued an award finding the Agency violated the parties' agreement when it denied the grievant the use of accrued military leave. The Agency argued on exceptions that the award was: (1) incomplete, ambiguous, or contradictory, as to make implementation of the award impossible; and (2) contrary to law. The Authority denied the Agency's first exception, but was unable to determine whether the award was contrary to law. Therefore, the Authority remanded the matter to the parties for resubmission to the Arbitrator, absent settlement, for additional findings addressing the pertinent legal standards.

Member Kiko concurred, highlighting the undisputed facts in the record that suggested the award was contrary to law, but agreeing that a remand was appropriate for the Arbitrator to further develop the factual record.

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., U.S. Penitentiary, Leavenworth, Kan., and AFGE, Loc. 919, Council of Prison Locs. #33*, 74 FLRA 93 (2024) (Member Kiko dissenting)

The Arbitrator determined the Agency violated the parties' agreements by temporarily reassigning certain staff to fill vacancies created for reasons other than mandatory training. The Agency filed essence and nonfact exceptions. The Authority found a critical ambiguity in the award because the Arbitrator failed to address relevant contractual language. Accordingly, the Authority remanded for further findings.

Member Kiko disagreed with finding a critical ambiguity, because the Arbitrator interpreted the relevant contract provisions and made sufficient findings for the Authority to consider, and grant, the Agency's essence exception. Because she would have set aside the portion of the award that conflicted with the plain wording of the parties' agreement, Member Kiko found a remand unnecessary. Accordingly, she dissented.

CASE DIGEST: *AFGE, Loc. 2338 & U.S. Dep't of VA, John J. Pershing VA Med. Ctr., Poplar Bluff, Mo.*, 74 FLRA 99 (2024)

The Arbitrator issued an award finding a Union grievance was not procedurally arbitrable. The Union filed exceptions to the award on essence and exceeded-authority grounds. The Authority denied the exceptions because the Union failed to demonstrate the award was deficient.

CASE DIGEST: *U.S. Dep't of VA, John J. Pershing VA Med. Ctr., Poplar Bluff, Mo.*, 74 FLRA 104 (2024)

The Authority's Office of Case Intake and Publication issued an order directing the Agency to show cause why its exceptions should not be dismissed for failure to properly effectuate service of its exceptions on the Union and for failure to timely respond to an Authority procedural-deficiency order. Because the Agency did not timely respond to the show-cause order, and did not establish extraordinary circumstances justifying a waiver of that order's expired time limit, the Authority dismissed the Agency's exceptions.

CASE DIGEST: *Andrew McFarland*, 74 FLRA 107 (2024) (Member Kiko concurring)

The Petitioner filed an application for review (application) of the decision and order of a Federal Labor Relations Authority Regional Director (the RD) dismissing an election petition seeking to sever a group of firefighters from an existing unit represented by the American Federation of Government Employees (AFGE), Local 1882, AFL-CIO. The RD found the Petitioner had not demonstrated unusual circumstances warranting severance because AFGE had not failed to adequately represent the firefighters. The Authority found the Petitioner did not demonstrate that the RD committed clear and prejudicial errors concerning substantial factual matters, and denied the application.

Member Kiko concurred, distinguishing this case from *National Guard Bureau, Pease Air National Guard Base, Newington, New Hampshire*, 74 FLRA 64 (2024) (Member Kiko dissenting).

CASE DIGEST: *AFGE, Council 220*, 74 FLRA 114 (2024)

This case concerned the negotiability of one proposal that guaranteed employees daily and weekly minimum amounts of adjudication time during hours when their offices were open to the public. The Authority rejected the Union's bare assertions that the proposal was negotiable under § 7106(b)(1) or (b)(2) of the Federal Service Labor-Management Relations Statute (the Statute). Further, the Authority found the proposal was not negotiable as an appropriate arrangement under § 7106(b)(3) of the Statute, because the proposal excessively interfered with management's right to assign work under § 7106(a)(2)(B) of the Statute. Accordingly, the Authority dismissed the petition.

CASE DIGEST: *U.S. Dep't of VA, W. Palm Beach VA Med. Ctr., W. Palm Beach, Fla.*, 74 FLRA 121 (2024) (Member Kiko concurring)

The Arbitrator found the Agency violated the parties' collective-bargaining agreement and an Agency handbook by failing to review the grievants for promotion from GS-9 to GS-11. She directed the Agency to move forward with compensating the grievants at the GS-11 rate, but also directed the parties to devise an appropriate remedy. Both parties filed exceptions. In one of its exceptions, the Agency argued the award was contrary to law because it involved classification. Without determining whether the exceptions were interlocutory, the Authority found that the award concerned classification under § 7121(c)(5) of the Federal Service Labor-Management Statute. The Authority set aside the award as contrary to § 7121(c)(5) because it involved a challenge to the grade level of the grievants' permanently assigned duties.

Member Kiko concurred, noting that she agreed with all of the decision except its reliance on *U.S. Marine Corps, Marine Corps Air Ground Combat Center, Twentynine Palms, California*, 73 FLRA 379 (2022) (Member Kiko dissenting in part).

CASE DIGEST: *U.S. Dep't of the Treasury, IRS*, 74 FLRA 126 (2024)

The Union filed a motion for reconsideration of the Authority's decision in *U.S. Department of the Treasury, IRS*, 73 FLRA 888 (2024) (*IRS*). The Union asserted a delivery problem prevented the Union from receiving an order issued by the Authority, which would have allowed it to address how the test set out in *Consumer Financial Protection Bureau,* 73 FLRA 670 (2023) for resolving management-rights exceptions should apply in *IRS.* The Authority found that, because the delivery problem arose within the Union's internal mail system, the Union did not establish extraordinary circumstances warranting reconsideration of *IRS*.

CASE DIGEST: *U.S. DHS, U.S. CBP, Seattle, Wash.*, 74 FLRA 129 (2024) (Member Kiko concurring in part and dissenting in part)

In this case, the Arbitrator awarded the Union attorney fees after finding in an initial award that the grievant was entitled to lost overtime pay as a result of the Agency's failure to properly issue a notice regarding revocation of the grievant's firearm. The Agency excepted, arguing that the Arbitrator exceeded their authority and that the award was contrary to the Back Pay Act for numerous reasons, including that the grievant was not the prevailing party, that an award of attorney fees was not warranted in the interest of justice, and that the amount of awarded fees was unreasonable. Reversing its decision in *AFGE, Local 1633*, 71 FLRA 211, (2019) (*Local 1633*) (Member Abbott concurring; then Member DuBester concurring in part, dissenting in part), the Authority partially denied and partially granted the exceptions, and remanded the case for the Arbitrator to reassess the amount of fees by taking into account the grievant's limited success.

Member Kiko concurred to the disposition of the exceptions, but dissented to the majority's reversal of *Local 1633*. Noting that the Authority had repeatedly announced before *Local 1633* the need to reexamine the way arbitrators assess attorney fees in the context of non-disciplinary grievances, she identified the benefits that *Local 1633*'s guidance provided to arbitrators and parties, and challenged the majority's assertions that *Local 1633* overturned any existing precedent or that it confused or restricted arbitrators.

CASE DIGEST: *AFGE, Loc. 0906*, 74 FLRA 146 (2024)

This case concerned the negotiability of one proposal that would require the Agency to either (1) install and maintain, in an employee break room, a new water-filtration system that includes a hands-free ice-dispensing component, or (2) supplement an existing water-filtration system with a machine that provides hands-free ice dispensing. The Agency argued the proposal was outside the duty to bargain for the following reasons: (1) it did not concern bargaining-unit employees' conditions of employment, (2) it was contrary to a government-wide regulation, (3) the Agency allegedly has not changed conditions of employment, (4) it was contrary to management's rights under § 7106 of the Federal Service Labor-Management Relations Statute (the Statute), and (5) it was contrary to an Agency-wide regulation for which there is a compelling need.

The Authority rejected the Agency's arguments. In doing so, the Authority: (1) reaffirmed the test, set forth in *Antilles Consolidated Education Ass'n*, 22 FLRA 235, 236-37 (1986), for assessing whether a matter concerns bargaining-unit employees' conditions of employment; and (2) reversed *United States DHS, U.S. CBP, El Paso, Texas*, 72 FLRA 7 (2021) (*El Paso*), and its progeny, to the extent those decisions conflict with the instant decision. The Authority ordered the Agency to bargain over the proposal.

Member Kiko dissented. Noting that she would have found the proposal concerned a condition of employment under *El Paso*, Member Kiko disagreed with the majority's decision to reverse that precedent, and highlighted an important distinction that *El Paso* clarified between two key terms in the Statute.

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Yazoo City, Miss.*, 74 FLRA 157 (2024) (Chairman Grundmann concurring; Member Kiko dissenting)

The Arbitrator issued an interim award finding the Union's grievance procedurally arbitrable. The Agency filed interlocutory exceptions on the ground that the interim award failed to draw its essence from the parties' agreement. The Authority found that the Agency failed to satisfy the standard for interlocutory review, and therefore dismissed the Agency's exceptions without prejudice.

Chairman Grundmann concurred.

Member Kiko dissented, reiterating her concerns with the majority's interlocutory-review standard. In her view, interlocutory review was warranted because the Arbitrator's procedural-arbitrability determination conflicted with the clear grievance-filing deadline in the parties' collective-bargaining agreement.