



that the witnesses who testified at the hearing were in two job series, GS-1101 and GS-236. Those job series are clearly within the scope of the Award, although they comprise a small portion of the job series covered by the Award, and therefore will serve as the basis for the next round of Grievants to be promoted with backpay and interest. A subset of the GS-1101 series is the PHRS (Public Housing Revitalization Specialist) job title. Although the Award covers all GS-1101 employees who were not promoted to the GS-13 level (among others), the PHRS group is discrete and therefore the Parties were directed to work through the GS-1101 series to identify all eligible class members in the PHRS position, and to work to have them retroactively promoted with backpay and interest, among other relief. The Parties were directed to then move on to the CIRIS (Contract Industrial Relation Specialist) employees in the GS-246 series, the other GS-1101 employees, and then others in other applicable job series, until implementation is complete.

Previously in that Summary, this Arbitrator noted that:

Coming up with a satisfactory methodology should not be difficult. Impasse in implementation should be unnecessary because the Award is clear in its definition of the class. The Class definition is data driven, not vacancy announcement driven, as is clear from my Award and the Adverse Inference drawn due to the Agency's failure to produce evidence, as I told the Agency previously last spring and summer and in my prior Summary. **The eligible class members are easily identified by listings of employees who encumbered positions in Job Series identified in the Exhibits as listed in the Award, during the relevant time frame of 2002 until 2012, and ongoing until the Agency ceases and desists from posting positions that are violative of my Award.**

In Summary 3, this Arbitrator noted:

As stated in prior Summaries, this Arbitrator has instructed the Parties to make substantial progress on identifying class members. The Parties were instructed that based upon this Arbitrator's Award, as an example, all GS-1101 employees at the GS-12 level from 2002 to present were to be promoted, per the Back Pay Act and CBA, with back pay and interest, as of their earliest date of eligibility.

At the June 2, 2015 IM, the Agency refused to discuss the issue of GS-1101 promotions, claiming that it was planning on filing a Request for Reconsideration with the FLRA over the FLRA's recent May 22, 2015 Decision upholding Summary 3, and alleging that a Motion for

Reconsideration would stay these proceedings and divest this Arbitrator of jurisdiction. The Union stated at the IM that it believed that, unless and until jurisdiction is actually divested, the process of implementation must go forward. This Arbitrator agrees with the Union.

The Union further stated, in a subsequent email dated June 4, 2015, noted that:

Further, as we discussed during the IM, neither the Agency's proposal to file, nor the actual filing of a Motion for Reconsideration, would stay the effectiveness of the FLRA's Decision upholding your IM #3. The FLRA's regulation is as follows:

**§ 2429.17 Reconsideration.**

After a final decision or order of the Authority has been issued, a party to the proceeding before the Authority who can establish in its moving papers extraordinary circumstances for so doing, may move for reconsideration of such final decision or order. The motion shall be filed within ten (10) days after service of the Authority's decision or order. A motion for reconsideration shall state with particularity the extraordinary circumstances claimed and shall be supported by appropriate citations. **The filing and pendency of a motion under this provision shall not operate to stay the effectiveness of the action of the Authority**, unless so ordered by the Authority. A motion for reconsideration need not be filed in order to exhaust administrative remedies.

(Emphasis added by the Union in its email). This Arbitrator finds that even if the Agency were to file a Motion for Reconsideration with the FLRA, that would still not operate as to stay the effectiveness of the action of the Authority. Therefore, this Arbitrator has jurisdiction and will continue to monitor and facilitate implementation of the Award and Summaries.

The Union provided the Agency with a list of 3,777 class members in September 2014. The Union previously explained how it arrived at this list, in compliance with the methodology described by this Arbitrator in Summaries 1, 2, 3 and 5. The Union showed that, if the Agency followed the methodology described and adopted by this Arbitrator, it would demonstrate that the resulting class list provided by the Union would be accurate. The Agency has not disputed that any of the employees claimed by the Union should be eligible class members, based on the methodology adopted by the Arbitrator therein.

The GS-1101 class list is easily discernable from the minimum class list, and comprises 1,908 employees. In addition, the Union provided a list of additional class members drawn from the Agency provided FY2014 list, which would add an additional 118 class members, including 52 GS-1101 employees – including PHRS/CIRS and already paid class members. The Union believes that these 1,908 GS-1101 class members, plus the newly added 52 GS-1101 employees from the FY2014 list, should be promoted with backpay and interest under the Back Pay Act, with emoluments. The Agency refused to discuss this matter, claiming that there was no jurisdiction since the Agency was planning on filing a Motion for Reconsideration.

Therefore, the Union's class list of GS-1101 employees is adopted. The Agency is directed to promote the employees listed in the GS-1101 Union list of class members to the earliest date of eligibility or January 18, 2002 (whichever is later), in accordance with the Award and subsequent Summaries. The Union noted that some of the pre-2014 1,908 employees have already been promoted and paid (the 17 witnesses/Agency identified class members), and that some of the pre-2014 1,908 are included in the PHRS/CIRS Stipulation (236 PHRS class members and 36 CIRS class members).

The Union proposed to discuss a date by which the Agency will process those promotions, the date by which Agency will give to Union calculations for backpay, interest and emoluments, a proposed procedure for ensuring that recalculated annuities are prioritized by OPM, and noted that at least 41 GS-1101 class members have passed away during the pendency of this case. The Agency refused to discuss this matter, claiming that there was no jurisdiction since the Agency was planning on filing a Motion for Reconsideration. The Agency did claim that there would be practical difficulties implementing the Award and Summaries, but those statements were vague and not credible. For instance, the Agency claimed that it would be

“impossible” to process retroactive promotions using the current back pay date of January 18, 2002 and to then re-process those promotions if and when a new, earlier, back pay date is adopted. Clearly this is not credible; it may be difficult, but it is not impossible. It is true that this case has been pending since 2002, much of which is attributable to time on appeal before the FLRA. As the Parties move towards complete compliance with the Award and Summaries, however, the path forward is becoming more clear.

The Agency shall promote all current GS-1101-12 employees who are contained on the Union’s class member list (provided to the Agency in September 2014) to the GS-13 level, in compliance with the Award and Summaries, within thirty days (30).

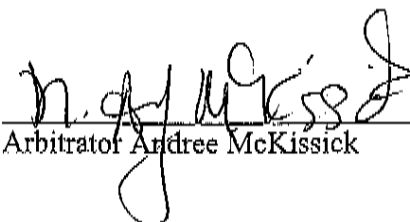
Within forty-five (45) days, the Agency shall provide the Union with a list of the retroactive date of promotion and estimated back pay with interest, emoluments. For retirees, the Agency shall provide estimated backpay, interest, emoluments and revised annuity calculations. Within thirty (30) days of receipt of the Agency’s estimates, the Union shall provide comments to the Agency. Within fourteen (14) days of receipt of the Union’s comments, the Agency shall process all undisputed payments. Any remaining disputes shall be submitted to this Arbitrator for resolution.

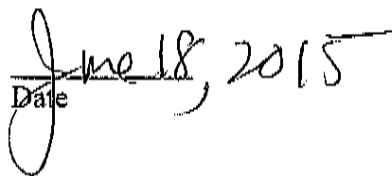
Estimated payments amounts shall be transmitted from the Agency to the Union no less than ten (10) days prior to the amounts being paid. As payments are made, or as soon thereafter is possible, the Agency shall notify the Union of the exact amounts paid, including the breakdown of taxes. Within one (1) week of the date of this IM Summary and Order, OPM shall be notified of and shall be provided a copy of this IM Summary and Order, along with a list of retired employees. The Agency shall request, in writing (with a copy of the request to be provided to this Arbitrator and the Union) that OPM expedite the processing of retirement

annuity recalculations. Copies of all correspondence between the Agency and OPM shall be provided in a timely manner to the Union and to this Arbitrator. The intent is that all annuities shall be recalculated by OPM in an expedited manner; if there is a delay in processing, the Agency shall work with OPM in order to expedite the processing.

It is further ORDERED that the Parties are to continue to work together to identify additional GS-1101 employees that may be eligible class members and bring those employees to this Arbitrator's attention for a determination.

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Arbitrator Andree McKissick

  
Date