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March 26, 2016

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In the Matter of the Arbitration between:
U.S. Department of Housing
and Urban Development
(HUD)

and

American Federation of Government
Employees, AFL-CIO
(AFGE)

IMPLEMENTATION
MEETING, No :9

Remanded from:
59 FLRA 630
65 FLRA 90
66 FLRA 867
68 FLRA 631
69 FLRA 60
69 FLRA 30

SERVICES RENDERED: Oversees IM and monitors progress of implementation of remedy.

PROFESSIONAL FEES:

Implementation Meeting: February 25, 2016

Per Diem: \$ 1,500.00

1 Day\$1,500.00

Monitoring communications.....\$500.00

Subtotal for Professional Fees\$2,000.00

TOTAL.....\$2,000.00

Payable by Management.....\$1,000.00

Payable by the Union.....\$1,000.00

This bill is due in thirty (30) days. If this invoice is unpaid by sixty (60) days from the initial bill date, a ten percent (10%) charge on the remaining balance will ensue. If this invoice is unpaid by ninety (90) days from the initial bill date, a twenty percent (20%) charge on the remaining balance will then be assessed.


ARBITRATOR

IN THE MATTER OF ARBITRATION BETWEEN:

American Federation of Government,
Employees (AFGE), Council of HUD
Locals 222,
UNION,

v.

U.S. Department of Housing & Urban
Development,
AGENCY.

Issue: Fair and Equitable Grievance

Case No. 03-07743

Arbitrator:
Dr. Andrée Y. McKissick, Esq.

SUMMARY NO. 9 OF IMPLEMENTATION MEETING AND ORDER

This Arbitrator met with the Parties on February 25, 2016 to discuss the progress of the Parties with implementation of the January 10, 2012, Opinion and Award (the "Award") in the above captioned matter. Present for the Union were: Michael J. Snider, Esq., Jacob Y. Statman, Esq., and Yehuda Goldberg, Esq. from Snider & Associates, LLC, and Holly Salamido, Union Council President. Present for the Agency were: Javes Myung, Esq. and David M. Ganz, Esq. This is the ninth Summary of Implementation Meeting ("Summary No. 9"), the first eight (8) having been issued on March 14, 2014 ("Summary No. 1"), May 17, 2014 ("Summary No. 2"), August 2, 2014 ("Summary No. 3"), January 10, 2015 ("Summary No. 4"), February 27, 2015 ("Summary No. 5"), May 16, 2015 ("Summary No. 6"), June 27, 2015 ("Summary No. 7"), and February 27, 2016 ("Summary No. 8") respectively.

I. Introduction

The Union provided an Agenda for the Implementation Meeting ("IM"). The items described herein generally follow that Agenda. As a preliminary matter, the Union arranged for a court reporter at this Implementation Meeting, and requested that, as has been the practice in prior

Implementation Meetings, the court reporter would be used when the Arbitrator deemed necessary. This proposal was not objected to by the Agency.

At the onset of the IM the Agency raised its continued objection to these Implementation Meetings pending the current Federal Labor Relations Authority (FLRA). As was the case during the eighth Implementation Meeting, the Union stated that it only intended to raise specific matters not currently on appeal before the FLRA. This Arbitrator agreed with the Union that the then pending exceptions did not preclude the IM from taking place as there were items to be discussed that were not then on appeal. This Implementation Meeting Summary and Order contains a summary of the matters discussed at the Implementation Meeting, as well as rulings based upon those discussions, the subsequent FLRA decision, *infra*, and subsequent written communications.

II. Current Case/Appeal Status

The Agency filed Exceptions before the FLRA to Summary No. 3; those Exceptions were dismissed by the FLRA on May 22, 2015. **68 FLRA 631**. The Agency filed a Motion for Stay and Request for Reconsideration to the FLRA's May 22, 2015 Decision on June 8, 2015; both were denied by the FLRA on November 4, 2015. **69 FLRA 60**. The Agency also filed Exceptions to Summary No. 6, as well as two (2) Orders subsequently issued by this Arbitrator regarding promotions of certain GS-1101 and Public Housing Revitalization Specialist (PHRS)/Contract Industrial Relations Specialist (CIRS) employees. The Agency relied upon those pending Exceptions in support of its contention that the Implementation Meeting was improper. On February 25, 2016, subsequent to the IM, but prior to the issuance of this Summary, the FLRA issued its consolidated decision denying or dismissing in their entirety all of the Agency's pending Exceptions. **69 FLRA 213**.

III. Agency Funding Request

The Union raised the allegation that the Agency had failed to report this matter as a contingent liability or obligation to the United States Department of Housing and Urban

Development (HUD) Office of Inspector General (OIG) or Office of Management and Budget (OMB), and had failed to request an appropriation or supplemental appropriation from Congress in order to fulfill its obligations to make class members whole in this case. The Agency responded to a question from Mr. Snider as to whether there was a supplemental Fiscal Year (FY) 2016 budget request to fund the award. Agency counsel instructed the Union that they could file a request for information regarding this information. In response to requests that the Agency provide officials to help them interpret the published FY 2016 budget, Agency counsel informed them that the documents speak for themselves and the existence and contents of any pending FY 2016 supplemental budget, if it exists, is pre-decisional and deliberative. The Union pointed out that the Secretary of the Agency had, in fact, publicly released information about the budget request prior to its official release, in an interview with a news organization. The Union further stated that its review of the FY 2016 and FY 2017 budgets revealed that the Agency has continuously, to date, appeared to have failed to request funding for this case. The Agency was unable and/or refused to answer whether funding had been requested and maintained its position in this regard.

The Union orally presented numerous specific and pointed data requests as it pertains to whether the Agency has requested funding for this matter. The Agency is directed to respond to those requests within fourteen (14) days of the date of this Summary and Order. This Arbitrator is greatly concerned if it is indeed true that the Agency failed to properly report this matter and request funding, since the Agency has been aware of its potential liability for many years and has stated on the record that it has insufficient funding to pay the damages.

IV. Action on Non-disputed GS-1101 Employees

The Union requested the status of the Agency's taking action to promote and pay back pay and emoluments to certain non-disputed class members. The Agency responded that it was not willing to discuss any promotions or relief for any employees due to the then-pendency of its Exceptions, nor would it engage in piecemeal implementation. The Agency's objection to

proceeding with implementation is now moot. As stated *supra*, the FLRA has denied or dismissed all of the pending Exceptions. **69 FLRA 213 (February 25, 2016)**. At this juncture, Summary No. 6 as well as this Arbitrator's PHRS/CIRS and GS-1101 Orders are now final and binding. The Agency has filed a Motion for Reconsideration of the FLRA's most recent decision (**Agency's Motion for Reconsideration, March 9, 2016**). The FLRA's regulations, however, clearly state that such a filing does not operate to stay the effectiveness of the February 25, 2016 Decision of the Authority, unless so ordered by the Authority:

§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.

The Agency is instructed to fully comply with the Orders which are now final and should expect to discuss that implementation at the next IM. The Agency cannot unilaterally determine the course of implementation or the timing of it, but rather shall work cooperatively with the Union and with the oversight of this Arbitrator.

V. Future Implementation Meetings

The Union stated that while the Parties were currently operating under an agreement to conduct implementation meetings, nothing precluded it from requesting a more formal hearing to proceed with resolving this matter. This Arbitrator noted that jurisdiction has been retained over all outstanding matters and agreed to conduct a formal hearing on the record, with testimony, if necessary. The Union indicated its intention to timely serve a witness list and subpoena for the

next meeting between the Parties. This Arbitrator stated that she would sign subpoenas served by the Union so long as the Agency and witnesses are provided sufficient notice.

VI. Revisiting Back Pay Date for Original Seventeen (17) Class Members

This Arbitrator previously ordered the Agency to retroactively promote and pay back pay and emoluments to seventeen (17) employees. In Summary No. 4, this Arbitrator ruled that the start of the damages period is January 18, 2002. However, Summary No. 4 also contained a footnote that that ruling does not yet apply to the employees already promoted by the Agency while the Parties work together to resolve their back-pay date. **Summary No. 2, p. 2.** The Union stated that the Parties had been unable to resolve the back-pay date and requested that the Agency be ordered to retroactively promote and provide back pay to those seventeen (17) employees utilizing the January 18, 2002, damages date.

The Agency did not object to discussing this matter generally, but stated that it was not prepared to discuss specifics and indicated that it would look into the matter. This Arbitrator ordered the Agency to provide a response to the Union no later than March 21, 2016.

VII. Attorney Fees

The Union noted this Arbitrator's prior Awards and statements confirm that the Union is the prevailing party and is entitled to recover attorney fees, costs and expenses pursuant to the Back Pay Act. The Union then stated that it intended to file a partial petition for attorney fees addressing certain aspects of a fee request.

VIII. Other Outstanding Matters

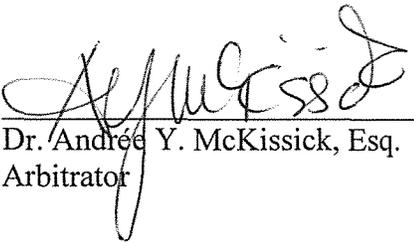
The Union noted that the Agency was still not in compliance with this Arbitrator's Orders concerning certain outstanding matters. Specifically, the Union stated that the Agency had still not sent out the chilling effect blast email to the Bargaining Unit. The Agency stated that Ms. Rice and Mr. Statman had resolved that issue; however, Mr. Statman denied that assertion and stated that he had not received any response to his June 8, 2015 email to Ms. Rice. The Agency agreed

to resolve this issue. This Arbitrator ordered the Agency to respond to the email no later than March 10, 2016.

IX. Conclusion

The purpose of the February 25, 2016 Implementation Meeting was to monitor and oversee implementation in and compliance of the Award. Nothing discussed or stated at the meeting or in this Summary should be construed as a new requirement or modification of the existing Award. This Arbitrator continues to maintain jurisdiction over the Award and all subsequent Summaries as well as the Union's request for attorney fees, costs and expenses until the matter is completed. This jurisdiction extends to all outstanding items in this matter.

The next Implementation Meeting will take place on April 12, 2016 at a location to be determined.



Dr. Andrée Y. McKissick, Esq.
Arbitrator

March 26, 2016