

**FEDERAL MEDIATION AND CONCILIATION SERVICE**

**In the Matter of Arbitration:**

**U.S. DEPARTMENT of HOUSING  
and URBAN DEVELOPMENT**

**and**

**AMERICAN FEDERATION of GOVERNMENT  
EMPLOYEES, AFL-CIO**

**Re: Fair and Equitable Remedy**

**FMCS No: 03-07743**

**Remanded from: 59 FLRA 630  
65 FLRA 90**

**Remanded for Remedy: Dr. Andrée Y. McKissick, ARBITRATOR**

**APPEARANCES:**

**For Management:**

Norman Mesewicz, Deputy Director, LER  
James Reynolds, Deputy Director  
U.S. Dept. of Housing & Urban Development  
451 7<sup>th</sup> Street, SW  
Washington, D.C. 20410

**For Union:**

Michael Snider, Esquire  
Jason I. Weisbrot, Esquire  
Jacob Y. Statman, Esquire  
Snider & Associates  
104 Church Lane, Suite 100  
Baltimore, MD 21208

Carolyn Federoff, Esquire, Former President  
AFGE Council 222  
108 Ashlaud Street  
Melrose, MA 02176

**DATE OF REMEDY ORDERED:**

**January 10, 2012**

**RE: Article 23, Section 11 of the Agreement between U.S. Department of Housing and Urban Development and American Federation of Government Employees AFL-CIO, effective 1998-present. Exceptions: Where exception is taken to an arbitration award and the Federal Labor Relations Authority (FLRA) sets aside all or a portion of the award, the arbitrator shall have the jurisdiction to provide alternative relief, consistent with the FLRA decision. The arbitrator shall specifically retain jurisdiction where exceptions are taken and shall retain such jurisdiction until the exception is disposed.**

## **PREFACE**

Since a settlement was not reached by the parties, this Arbitrator is now formulating an alternative remedy as directed by 65 FLRA, No. 90, dated January 26, 2011.

## **ORDER**

Having read and reviewed all prior submissions of the parties, and FLRA rulings, in light of this Arbitrator's prior findings and rulings, including that the Agency violated Article 4, Sections 4.01 and 4.06. These Grievants were unfairly treated and were unjustly discriminated against, that the Agency violated Article 9, Section 9.01, as classification standards were not fairly and equitably applied. The Agency also violated Article 13, Section 13.01, as it sought to hire external applicants, instead of promoting and facilitating the career development of internal employees, and that but for these violations. The Grievants would have been selected for currently existing career ladder positions with promotion potential to the GS-13 level (See Merits Award (MA) at 15). This Arbitrator finds that all of the below are appropriate remedies and that, if the FLRA finds that any are not appropriate, the next numbered remedy shall apply, and therefore this Arbitrator hereby ORDERS:

1. That the Agency process retroactive permanent selections of all affected BUE's into currently existing career ladder positions with promotion potential to the GS-13 level. Affected BUE's shall be processed into positions at the grade level which they held at the time of the violations noted in my prior findings, and (if they met

time-in-grade requirements and had satisfactory performance evaluations), shall be promoted to next career ladder grade(s) until the journeyman level. The Agency shall process such promotions within thirty (30) days, and calculate and pay affected employees all back pay and interest due since 2002.

2. In the alternative, and only in the event the FLRA vacates ORDER No. 1 above, and pursuant to my finding that “but for” the Agency’s violations, the Grievants would have been selected for the subject vacancy for which they applied, this Arbitrator ORDERS that the Agency retroactively select the affected GS-12 employees into the subject vacant career ladder positions with retroactive grade increases. The Agency shall process such selections within thirty (30) days, and calculate and pay affected employees all back pay and interest due since 2002.

3. In the alternative, and only in the event the FLRA vacates ORDER No. 1 and 2 above, this Arbitrator hereby ORDERS that the violative Agency selections from 2002 to present be set aside, that the Agency provide each Grievant with one priority consideration and that the Agency must re-run all of the vacancies which were found to have been in violation of the CBA between 2002 and the present. The Agency should process such selections within sixty

(60) days, and calculate and pay affected employees all back pay and interest due since 2002.

4. In the alternative, and only in the event the FLRA vacates ORDER No. 1, 2 and 3 above, that the Agency retroactively place all affected BUE's into an unclassified position description identical to those of the newly hired current GS-13 employees, which accurately reflects their duties from 2002 to present, and then this Arbitrator ORDERS the Agency to classify and grade those PD's, retroactively placing the Grievants in them effective 2002, with back pay and interest.

The Agency is hereby ORDERED to stop advertising positions in a way that requires current employees to take downgrades in order to secure greater promotion potential. Such action was termed constructive demotion (See MA at 13 and 14). This portion of the Order does not apply to non-status vacancy announcements.

The Class of Grievants subject to the Remedy addressed herein is defined as  
follows: All Bargaining unit employees in a position in a career ladder (including at the journeyman level), where that career ladder lead to a lower journeyman grade than the journeyman (target) grade of a career ladder of a position with the same job series, which was posted between 2002 and present. These include BUE's in positions referenced in Joint Exhibits 2, 3, 4, 7G and Union Exhibits 1 and 9. Pursuant to Article 23, Section 11

of the Agreement, this Arbitrator hereby retains jurisdiction to provide alternative relief, in the event that any relief provided is found to be inconsistent with law or otherwise not available, and if this decision is set aside or in whole or in part on that basis.

This Arbitrator retains jurisdiction over an award of Attorney Fees upon petition by the Union, which shall be entertained within a reasonable time following receipt of this Award. The Agency shall have a reasonable opportunity to respond.

IT IS SO ORDERED

**Date: January 10, 2012**

  
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**ARBITRATOR**

Cc: Michael J. Snider, Esq.  
Jason I. Weisbrot, Esq.  
Jacob Y. Statman, Esq.  
Snider & Associates, LLC  
Counsel for the Union

Norman Mesewicz, Deputy Director, LER  
Counsel for the Agency

Carolyn Federoff, EVP  
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January 10, 2012

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**In the Matter of the Arbitration between:**

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**SERVICES RENDERED:** Analysis of applicable case law: Panama Canal Commission and Marine Engineers Beneficial NO.1, 56 FLRA 67, dated June 22, 2000; Social Security Administration Chicago North District Office and American Federation of Government Employees, Local 1346, 56 FLRA No. 37. Remanded for alternative remedy and Order

**PROFESSIONAL FEES:**

**Per Diem Charge: \$ 1,500.00**

2 ½ Study Days .....\$3,750.00

**TOTAL.....\$3,750.00**

**Payable by Management\* .....\$3,750.00**

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**Payable by Union .....\$ 0.00**

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.

\*Pursuant to Section 23.04 of the Agreement, the Agency is fully liable based on the loser pays all provision.

  
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**ARBITRATOR**