

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 OF IMPLEMENTATION MEETING

On February 4, 2014, this Arbitrator met with the Parties to discuss implementation of the January 10, 2012, Opinion and Award (the "Award") in the above captioned matter. Present for the Agency were: Tresa A. Rice, Esq., Javes Myung, Esq., Jim E. Fruge, and Kathryn Brantley. Present for the Union were Michael J. Snider, Esq., and Jacob Y. Statman, Esq. from Snider & Associates, LLC, and Carolyn Federoff, EVP, from AFGE Council of Locals, 222.

After this Award was issued, the Agency filed Exceptions, which were dismissed by the FLRA on August 8, 2012. The Award became final and binding on that date.

In the Award, this Arbitrator ordered:

That the Agency process retroactive permanent selections of all affected BUE's into currently existing career ladder positions with promotion potential to 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 the 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.

The Award further defined the class of Grievants subject to the Remedy as follows: All Bargaining Unit Employees in a position in a career ladder (including at the journeyman level), where the 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.

The purpose of the implementation meeting was to clarify the members of the class that was defined in this Arbitrator's January 10, 2012 Award. Nothing discussed or stated at the meeting should be construed as a new requirement or modification of the existing Award. Rather, the meeting and this summary were, to the extent necessary, intended solely to clarify with specificity which Bargaining Unit Employees are eligible class members.

The Agency has requested written clarification of this Award (including on August 7, 2013 and November 13, 2013). This Arbitrator indicated that no clarification was necessary as this Award was clear and unambiguous. More recently, however, the Agency has unilaterally determined, based on its own methodology, that there are a minimal number of class members which it was able to identify. The Union's methodology has identified thousands of potential class members through data provided by the Agency. Despite the clarity of this Award, the Agency has yet to timely implement the Award as ordered.

For example, in this Award, and as clarified in phone conferences with the Parties, all six Bargaining Unit Employees who testified at the hearing on behalf of the Union (also listed below) are eligible class members. The Agency was required to promote them with back pay and interest, which it failed to do. It was then ordered to promote them with back pay and interest by September 1, 2013, which it failed to do. As of today, the Agency "has reviewed the class of Grievants defined in the Opinion and Award and have determined that two [out of the six] employee witnesses are entitled to the back pay and interest payment." (Agency letter dated 12/18/13). The Agency has yet to implement the Award as ordered. This Arbitrator again reiterated at the implementation meeting what was clarified last summer: that based upon this Award as written, all six Union witnesses are eligible class members. This Arbitrator also notified the Agency that its methodology of determining the class members conflicts with the

specific findings in this Award, if the result of its own methodology revealed that only two out of six witnesses were eligible class members.

Moreover, the Parties are at an impasse regarding the appropriate methodology for identifying the class of employees eligible for back pay and promotions. Impasse in implementation is unnecessary because the Award is clear in its definition of the class. The Class definition is data driven, not announcement driven, as is clear from this Award and the Adverse Inference drawn due to the Agency's failure to produce data, as this Arbitrator explained to the Agency previously last spring and summer. 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 this Arbitrator's Award.

Pursuant to the Union's December 13, 2012 data request, the Agency provided data to the Union on January 18, 2013 which listed all of the Bargaining Unit Employees that encumbered, per the definition of the Class set forth in the Award, the Job Series referenced in Joint Exhibits 2, 3, 4, & 7G and Union Exhibits 1 and 9.

The six Bargaining Unit employees who testified at the hearing, specifically: (1) Lynna Schonert, (2) Victoria Reese-Brown, (3) Melanie Hertel, (4) Julia A. McGuire, (5) Bonnie Lovorn, and (6) Marcia Randolph-Brown similarly fall within the class definition. As such all six are eligible Class Members. The Agency shall process retroactive promotions with back pay and interest, as previously ordered, within thirty (30) days from the date of this Summary.

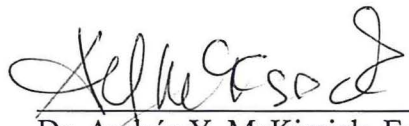
The Agency shall communicate with the Union concerning the implementation of the previously ordered Remedy No. 1, as clarified in this Clarification. Copies of all forms (including SF-52 and SF-50), back pay and interest calculations, payment forms, forms showing

adjusted retirement annuities, etc., shall be provided to the Union in a prompt and timely manner.

All forms and calculations for previous payments shall be provided to the Union as well.

The Union and Agency shall continue working to identify additional class members as set forth in this Arbitrator's Award and as stated in the meeting, and shall keep the Arbitrator informed of its progress. Another implementation meeting is scheduled to take place at the Agency on March 26, 2014, at 10:00 AM. This Arbitrator expects the Parties to meet in person and/or by phone to work on the identification of additional class members and to submit methodologies for doing so at our March 2014 meeting.

This Arbitrator continues to retain jurisdiction over this matter for all matters relating to implementation as well as an award of attorney fees, costs and expenses.


Dr. Andrée Y. McKissick, Esq.
Arbitrator

3-14-2014
Date