

**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**

This Arbitrator met with the Parties on March 26, 2014 to discuss the progress of the Parties with the 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 (by phone), and Kathryn Brantley (by phone). Present for the Union were Michael J. Snider, Esq. from Snider & Associates, LLC, and Carolyn Federoff, EVP, from AFGE Council of Locals, 222 (by phone).

As set forth in this Arbitrator's Summary of the Implementation Meeting held February 4, the Agency was to accomplish the following:

1. Process retroactive promotions with back pay and interest for all six witnesses within thirty (30) days from the date of the Summary (March 14, 2014);
2. Communicate with the Union promptly concerning implementation of back pay and interest for all six witnesses, including providing copies of all forms, back pay and interest calculations, payment forms, forms showing adjusted retirement annuities, etc.
3. Meet with the Union to identify additional class members as set forth in the Award and to submit methodologies for doing so at the March 26, 2014 Implementation Meeting.

During our prior meeting, this Arbitrator noted that the Agency's methodology of identifying class members entitled to relief under the Award was inadequate. Thus, this

Arbitrator directed the Parties to meet and agree on a methodology, or to present alternative methodologies at our March 26, 2014 meeting.

During our prior meeting, this Arbitrator noted that the Agency had omitted to promote the six witnesses who testified at the hearing, with back pay and interest. Upon explaining that the Agency was incorrect with its interpretation, and once that was clarified, the Agency replied that it would promote those individuals with back pay and interest. As of our meeting on March 26, 2014, the Agency had not yet completed the process of retroactively promoting four out of the six witnesses, had not paid those four any back pay and had not paid any of the witnesses their full back pay and interest.

Although the Agency has not paid any of these six witnesses in full, it has consistently advised that it has a pending request for the authorization to transfer funds that is subject to OMB (Office of Management and Budget) approval. The Agency also advised that this position is based upon guidance received from officials in the Agency's Office of Chief Financial Officer (OCFO), who are responsible for ensuring the fiscal responsibility of the Agency and its individual program offices.

Specifically, the Agency's OCFO has identified deficiencies in prior year funds for the Office of Public and Indian Housing, which is the program office primarily responsible for effectuating back pay and retroactive promotion actions for the witnesses. The Agency has further advised that OCFO staff continue to engage with OMB on fulfilling the Department of Housing and Urban Development's (HUD) request to transfer the funds necessary to fully compensate the witnesses.

The Agency has since indicated that it had begun the process of initiating payment to the four remaining witnesses. The Agency has further indicated that its payroll and personnel staff have a review process consistent with all cases in which it must implement for back pay and retroactive actions. Consistent with its established office practice, payroll and personnel staff are

currently employing its standard protocols and procedures in fulfilling back pay and retroactive promotion actions for the witnesses.

Additionally, the Agency has not yet provided the Union with any of the forms, calculations, or other evidence of retroactive promotion or calculation and payment of back pay for the witnesses.

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 all fall within the class definition. As such all six are eligible Class Members. The Agency has not paid any of these six witnesses in full, nor has it stated that it intends to, short of OMB approval. This is not in compliance with this Arbitrator's Award, or the Summary of the February 4, 2014, Implementation Meeting.

The Agency has since indicated that it had begun the process of initiating payment to the four remaining witnesses, but that the process was complicated, protracted and that none of the six witnesses would be paid in full by April 14, 2014, due to alleged deficiencies in prior year funds.

The Agency is directed to provide to the Arbitrator and Union copies of all communications with OMB. If the Agency believes that any of its communications with OMB are privileged or otherwise not releasable to the Union, it shall provide them to the Arbitrator for *in camera* review, and the Arbitrator will decide whether they should be released. In either case, the Agency shall provide the Union with a summary of the general information contained in the communications. The Agency shall provide to the Union and Arbitrator copies of all policies, laws, rules and regulations relied upon to not pay the witnesses until OMB provides approval. All of the items in this paragraph shall be accomplished within two weeks of the date of this Summary.

In our prior Meeting and Summary, it was made clear that the Agency was to meet with the Union to identify additional class members as set forth in the Award and jointly to submit methodologies for doing so at the March 26, 2014 Implementation Meeting. The Parties informed this Arbitrator that they met on March 13, 2014, and that the Union asked the Agency if it agreed with the Union's list of class members; if not, the Union asked the Agency for suggestions of alternative methodologies to identify class members.

The Agency confirmed at the March 26, 2014, Implementation Meeting that it does not agree with the Union's list of class members, arguing that the scope of the data exceeds the claims period. The Agency agreed, however, that it is at fault for failing to provide the Union with data confined to the claims period. The Agency also confirmed that it has not yet developed or presented for the Union's consideration an alternative methodology for identifying class members.

In the prior Summary this Arbitrator noted that the Agency had unilaterally determined, based upon its own methodology, that there are a minimal number of class members which it was able to identify, including only two of the six witnesses. As set forth in the prior Summary, any methodology that failed to identify each of the six witnesses as class members is by definition flawed. The Agency insists that it is unclear of this Arbitrator's Award and thus prefers to interpret the Award narrowly. However, the Agency was informed that while it may disagree with this Award, it must nevertheless implement the Award as written – not as the Agency unilaterally interprets it. It was explained again that this Arbitrator intends for this Award to be interpreted broadly, so as to apply to the largest class of Grievants possible.

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 the Award and the Adverse Inference drawn due to the Agency's failure to produce evidence, as

previously mentioned last spring and summer and in the 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 this Arbitrator's Award.

As discussed at the March 26, 2014, meeting, the appropriate portion of the eligible class of Grievants would be the easiest to identify, so as to begin implementation of the Award with undisputed class members. It became apparent through discussion that the witnesses who testified at the hearing were in two job series, GS-1101 and GS-236. Employees encumbering 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 back pay 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 back pay and interest, among other relief. The Parties were directed to then move on to the CIRS (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.

The Union requested quarterly Bargaining Unit Lists in December 2012, to assist in implementation of the Award. The Agency represents that it cannot produce quarterly Bargaining Unit Lists but that it can and will produce annual Bargaining Unit lists on a Fiscal Year basis in electronic format. The Agency was and is directed to provide the Union with annual Bargaining Unit Lists in electronic format within two weeks of the date of this Summary,

as well as a current Bargaining Unit List, and shall appoint a Point of Contact in its IT department to work with a Union appointee to work on a method of providing the Union with the data that it requested in the form of quarterly Bargaining Unit Lists, in order to identify class members and their eligibility with particularity. The Point of Contact (POC) shall be identified within two weeks of the date of this Summary.

At the March 26, 2014 meeting, the Agency, for the first time, presented a statement that it believed that the retroactive promotions and back pay should only be processed retroactively from November 2002. This was not agreed to by the Union and this Arbitrator did not approve of this at any time. The Union proposed either August or September 2002 as a retroactive promotion/payment date. The Parties are directed to discuss the back pay/retroactive promotion date together and to either come to an agreement or to submit the matter to this Arbitrator for a decision.

As previously ordered, the Agency is required to 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.

In light of the failure to come up with any alternative methodology to that of the Union for identifying class members, despite this Arbitrator's instructions to do so, the Agency was instructed that the Award is to be construed broadly and to implement it in that manner. While the Award covers all GS-1101 employees who were not promoted to the GS-13 level in 2002 (among others), the PHRS group is discrete and should be easily identified. Therefore the Parties were directed to work through the GS-1101 series, beginning with the PHRS employees, to identify all employees and to work to have them retroactively promoted with back pay and

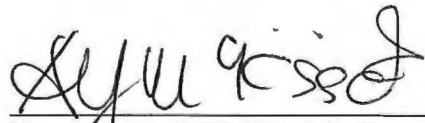
interest, among other relief. The Parties were directed to then move on to the other GS-1101 employees and the CIRS (Contract Industrial Relation Specialist) employees in the GS-246 series, and then others in that series, and then others in other applicable job series, until implementation is complete.

The Union and Agency shall continue working to identify additional class members as set forth in the Award and as stated in the meeting, and shall keep the Arbitrator informed of its progress.

The Parties are to meet in person or by phone no less than two times prior to our next meeting, which will be on June 12, 2014. The Parties are to keep this Arbitrator apprised of progress and any impasses. This Arbitrator expects the Parties to make substantial progress on their own; so that we see concrete progress by the time we meet again in July 2014.

The purpose of these meetings is to monitor implementation of the January 10, 2012 Award. Nothing discussed or stated at the meeting should be construed as a new requirement or modification of the existing Award.

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

May 17, 2014



Dr. A. Y. McKissick, Arbitrator  
2808 Navarre Drive  
Chevy Chase, Maryland 20815-3802  
Voice: (301) 587 - 3343  
Fax: (301) 587 - 3609  
E-Mail: [McKiss3343@aol.com](mailto:McKiss3343@aol.com)  
May 17, 2014

Michael Snider, Esquire  
Snider & Associates, LLC  
600 Reisterstown Road, 7<sup>th</sup> Floor  
Baltimore, MD 21208  
Voice: (410) 633 - 9060  
Fax: (410) 653 - 9061

Tresa A. Rice, Senior Attorney-Advisor  
Dept. of Housing & Urban Development  
Personnel Law Division  
Office of General Counsel  
451 - 7th Street, SW; Room 3170  
Washington, DC 20410  
Voice: (202) 402 - 2222  
Fax: (202) 708 - 1999

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**

Remanded from:  
59 FLRA 630  
65 FLRA 90

**SERVICES RENDERED:** Telephonic conferences and monitored progress of implementation of remedy.

**PROFESSIONAL FEES:**

**Implementation Meeting: March 26, 2014**

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

1 Day .....\$ 1,500.00  
Prior Services .....\$ 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