IN THE MATTER OF ARBITRATION BETWEEN:

American Federation of Government, Employees (AFGE), Council of HUD Locals 222, UNION, v. US Department of Housing & Urban Development, AGENCY.	)	Issue: Fair and Equitable Case No. 03-07743 FLRA Docket No. 0-AR-4586 Arbitrator: Dr. Andree Y. McKissick, Esq.

CERTIFICATE OF SERVICE

I hereby certify that copies of the Union's Motion for Order to Show Cause in the above-captioned matter were served on this 12th day of September, 2014.

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Chief, Office of Case Intake and Publication
Federal Labor Relations Authority
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ONE ORIGINAL & FOUR COPIES SENT VIA CERTIFIED MAIL

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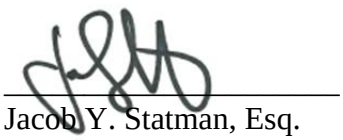

Jacob Y. Statman, Esq.

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UNION,	)	Case No. 03-07743
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US Department of Housing & Urban Development,	)	Arbitrator: Dr. Andree Y. McKissick, Esq.
AGENCY.	)	

UNION'S MOTION FOR ORDER TO SHOW CAUSE OR IN THE ALTERNATIVE FOR EXTENSION OF TIME TO FILE OPPOSITION TO AGENCY'S EXCEPTIONS

AFGE Council of Locals 222 (the "Union"), by and through its undersigned counsel, and pursuant to 5 C.F.R §2429.26, hereby files this Motion for Order to Show Cause as to why the Agency's Exceptions should not be dismissed as untimely, and in support thereof states as follows. In the alternative, the Union seeks an extension to file their Response in Opposition to the Agency's Exceptions until thirty (30) days after the Authority's Order on this Motion. The Union expressly reserves the right, if necessary, to file an Opposition to the Agency's Exceptions on the merits and the failure to address the merits in this filing should not be construed as any type of waiver.

Background

This being the fifth time the Agency has filed Exceptions in this case, the Authority is no stranger to this matter. On one occasion the Authority found the Agency's Exceptions were untimely and dismissed them. (Order Dismissing Exceptions, August 3, 2007, 0-AR-4206). On another occasion, the FLRA dismissed the Agency's Exceptions entirely because it failed to participate in the remedy process and did not raise any objections to the Union's damages

submission. (Order Dismissing Exceptions, August 8, 2012, 0-AR-4586). Similarly, the Agency's instant Exceptions are untimely and must be dismissed.

On September 4, 2014, the Agency filed its Exceptions to an alleged Modification of the Award in the above captioned matter. As set forth in the Exceptions, the Arbitrator retained jurisdiction over implementation of her Award. Moreover, the Parties have met regularly (both with and without the Arbitrator) to discuss and process implementation of the Award. Finally, as a result of the implementation meetings, the Arbitrator has issued three separate Summary of Implementation Meeting Orders. The Orders were dated March 14, 2014; May 17, 2014; and August 2, 2014. **Exceptions, Exhibits 16-17**.

The Exceptions alleged that the Arbitrator exceeded her authority by "issuing a Modification, dated August 2, 2014, to a final and binding Opinion and Award, dated August 8, 2012." **Exceptions, p. 1**. Specifically, the Agency alleged that the Arbitrator exceeded her authority, and modified her January 10, 2012, Opinion and Award[1] (the "Award"), when in her August 2, 2014, Implementation Summary, she ordered the Agency to (1) promote all employees in the GS-1101 series at the grade 12 to the grade 13; and (2) that any use of location, vacancies, or any other limiting factors to identify grievants would not comport with her Award. **Exceptions, p. 9**.

The Exceptions are untimely because the August 2, 2014, Order contained the same orders as the May 17, 2014, Order; an Order for which Exceptions were not filed.

Argument & Analysis

I. The Authority should issue an Order to Show Cause as to why the Exceptions should not be dismissed as untimely.

[1] The Award was upheld by the FLRA on August 8, 2012. *AFGE 222 v. U.S. DHUD*, 66 FLRA 867 (2012).

In the Arbitrator's second Summary of Implementation Meeting Order dated May 17, 2014, she ordered in part:

> 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**.

Exceptions, Exhibit 16 (emphasis added).

Based on the language of the May 17, 2014, Order, it is clear and undisputed that the Arbitrator intended, and ordered, that all employees that encumbered the entire GS-1101 series were eligible class members. If the Agency believed that such an Order modified the January 10, 2012, Award it would have had to file Exceptions no later than 30 days after service of the May 17, 2014 Order.[2] 5 U.S.C. § 7122(b). Because the Agency failed to file Exceptions to the May 17, 2014, Order, the Order became final and binding, and as determined by the Arbitrator, all employees that encumbered the GS-1101 Series during the relevant damages period are eligible class members.

The Agency relies on *U.S Dept. of HHS, SSA v. AFGE*, 23 FLRA 157 (1986) ("*HHS-SSA*"), in support of its argument that Exceptions to an alleged modification are appropriate.

[2] The Arbitrator specifically stated in all of her Implementation Summary Orders that they were for clarifications purposes only, and were not modifications of her existing Award. Moreover, a thorough review of the record plainly demonstrates that the award was not modified, and all of the Summary Orders are consistent with, and simply clarify the Award. If required, the Union will fully brief this issue, and all of the merits in its Opposition to the Agency's Exceptions. *Infra.*

Exceptions, p. 7. However, *HHS-SSA* also provides that the filing period for such Exceptions begins with the Arbitrator's response. *Id.* The Agency's Exceptions allege:

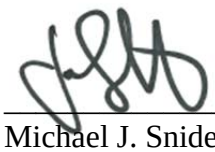
> Arbitrator McKissick's August 2, 2014, Implementation Summary exceeds her authority because she re-examined and modified the Opinion and Award's determination on the class of grievants. Specifically, by directing the Agency to promote all employees in the GS-1101 series from the grade 12 to the grade 13, the Arbitrator modified the class of grievants to include all employees at the grade 12 in the GS-1101 series, regardless of whether a higher target grade exists. See Exh. 17.
>
> **Exceptions, p. 9.**

Because the order that all GS-1101 employees were to be promoted was already final and binding (it was included in the initial Decision dated January 10, 2012, and subsequent Summary Orders, including the one dated May 17, 2014), and because the purportedly deficient August 2, 2014, Order, just contained a restatement of what was contained in the May 17, 2014, Order, the Agency's Exceptions were untimely and should be dismissed.

CONCLUSION

Based on the foregoing, the Union requests that the FLRA issue an Order to Show Cause. If this Motion is denied, the Union requests, pursuant to 5 C.F.R. § 2429.23, an extension of time to file its response in opposition to the Agency's Exceptions until thirty days after receipt of the FLRA's decision on the Motion.

Respectfully Submitted,



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