

IN THE MATTER OF ARBITRATION BETWEEN:

American Federation of Government, Employees (AFGE), Council of HUD Locals 222, UNION,	]	Issue: Fair and Equitable Grievance
	]	Case No. 03-07743
v.	]	
U.S. Department of Housing & Urban Development, AGENCY.	]	Arbitrator: Dr. Andrée Y. McKissick, Esq.
	]	

**SUMMARY OF IMPLEMENTATION MEETING**

This Arbitrator met with the Parties on February 4, 2015, 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. and Jacob Y. Statman, Esq., from Snider & Associates, LLC, Holly Salamido, Union Council President. Present for the Agency were: Tresa A. Rice, Esq., Javes Myung, Esq., Mercedeh Momeni, Esq., Craig T. Clemmensen, and Mary Beth Pavlik. This is the fifth Summary of Implementation Meeting ("Summary 5"), the first four having been issued on March 14, 2014 ("Summary 1"), May 17, 2014 ("Summary 2"), August 2, 2014 ("Summary 3"), and January 10, 2015 ("Summary 4"), respectively. The Agency filed Exceptions before the FLRA to the August 2, 2014, Summary of Implementation Meeting, and those Exceptions are currently pending. This Summary only relates to the Award and Summaries 1, 2 and 4. This Summary does not relate to the August 2, 2014 Summary (Summary 3).

At the onset of the February 4, 2015 Implementation Meeting ("IM"), the Agency noted that it was not waiving any rights it may have by being present at the IM. The Agency further noted that it intended to invoke its right to call its own witnesses at a future date. The Union had

previously provided notice of the possibility of its intention to elicit sworn testimony, but elected not to do so at this IM.

Also at the IM, the Union requested the Agency's position as to whether the Arbitrator had continuing jurisdiction to conduct the IM. The Agency responded that it was reviewing its options in this regard but it did not raise any objection.

At the IM, the Union provided this Arbitrator and the Agency with a presentation concerning non-compliance and implementation for the remaining Bargaining Unit Employees (BUEs). Specifically, the Union noted that: (1) none of the 17 class members had received their performance bonus differential; (2) only one out of the seven employees from the 17 class members who are retired received her revised annuity; and (3) the Union had not received sufficient information as to the Thrift Savings Plan (TSP) contributions for the ten employees from the 17 class members who were or are enrolled in FERS. This Arbitrator ordered the Agency to provide a detailed update as to the status of the recalculated annuities and the TSP contributions no later than February 16, 2015.

On February 18, 2015, the Agency complied with a submission which contained contact information for HUD's touch point at the Office of Personnel Management (OPM) regarding retirement annuity calculations and an update on the TSP information requested for the seventeen (17) claimants. However, the sufficiency of this submission has yet to be examined by the Union or this Arbitrator. This Arbitrator further ordered the Agency to provide a detailed update as to the status of the performance bonus differential at the next IM.

The Union's presentation stated that even though the Award has been final and binding since August 2012, the Agency has still failed to complete its approach as to its position on the class composition. The Agency has repeatedly failed to comply with this Arbitrator's prior Order(s) to submit its final approach. In spite of these failures, HUD stated that it was not prepared to present any list of class members at this IM. At the IM, HUD once again requested an

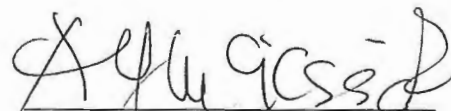
opportunity to present its approach to identification of the class members. This Arbitrator will allow one last opportunity to the Agency, this time until March 26, 2015, for submission of its approach to identification of class members, which the Agency is warned must comply with this Arbitrator's Award and prior Summaries. This Arbitrator further warned that if the Agency fails to submit its completed approach by the next IM (now scheduled for March 26, 2015), this Arbitrator would entertain sanctions against the Agency, including but not limited to the withholding of management officials' salaries. This Arbitrator is willing to entertain sanctions due to the Agency's failure to comply with the Award and Summaries to date. However, the Agency has recently informed the Arbitrator that a formal response regarding the appropriate sanctions shall be forthcoming. Moreover, the Agency is now also challenging the Arbitrator's jurisdiction to evoke these aforementioned sanctions.

The Union's presentation continued by restating its approach to the class composition based upon this Arbitrator's Award and subsequent Summaries. As noted by this Arbitrator in Summary 1, "[T]he 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." The Union's presentation revealed that the Job Series identified in the Exhibits as listed in the Award include 42 applicable Job Series, and at a minimum, the Union stated that the applicable class consists of at least all GS-12 employees who encumbered a position in any of those 42 Job Series at any time during the relevant damages period, so long as the requirements concerning performance and time-in-grade were met. This presentation and interpretation comports with previous statements by this Arbitrator reiterating that the class is easily identifiable and includes any employee who encumbered any position in any of the Job Series identified in the Exhibits as noted in the Award and presented by the Union, at any time during the relevant damages period so long as that employee met the required time-in-grade and performance requirements.

At the conclusion of the Union's presentation, the Parties and this Arbitrator informally questioned Mr. Brad Huther, Chief Financial Officer (CFO) for the Agency. Mr. Huther remarked that to date HUD has not recorded this matter as either a Contingent Liability or as an Obligation. He stated that this omission was in part due to the fact that the entire value of the case was not known. He also stated that to his knowledge no specific request to fund the judgment in this matter had been made. However, CFO Huther also stated that he was relatively new to the Agency at this juncture.

The purpose of the February 4, 2015, IM was to monitor and oversee implementation 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.

Even with the pendency of the Agency's Exceptions, this Arbitrator continues to maintain jurisdiction over the Award and Summaries 1, 2 and 4. The next IM will take place on March 26, 2015, beginning at 10:00 AM.



Dr. Andrée Y. McKissick, Esq.,  
Arbitrator

February 27, 2015



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)  
February 27, 2015

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

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

**IMPLEMENTATION  
MEETING**

**and**

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

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

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**SERVICES RENDERED:** Telephone conferences and monitoring and reviewing progress of implementation of remedy.

**PROFESSIONAL FEES:**

**Implementation Meeting: February 4, 2015**

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

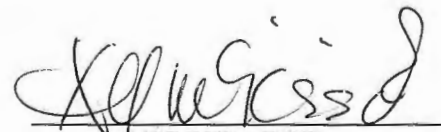
1 Day .....\$ 1,500.00  
Prior Services .....\$ 500.00  
Subtotal for Professional Fees .....\$2,000.00

**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.

  
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**ARBITRATOR**