

**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 AND ORDER**

This Arbitrator met with the Parties on June 2, 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, and Holly Salamido, Union Council President. Present for the Agency were: Tresa A. Rice, Esq., Javes Myung, Esq., Mercedeh Momeni, Esq., Michael Moran, Esq., Towanda Brooks, and Mary Beth Pavlik. This is the seventh Summary of Implementation Meeting (“Summary 7”), the first six having been issued on March 14, 2014 (“Summary 1”), May 17, 2014 (“Summary 2”), August 2, 2014 (“Summary 3”), January 10, 2015 (“Summary 4”), February 27, 2015 (“Summary 5”), and May 16, 2015 (“Summary 6”), respectively. The Agency filed Exceptions before the FLRA to the August 2, 2014, Summary of Implementation Meeting. Those Exceptions were dismissed on May 22, 2015.

The Union provided an Agenda for the Implementation Meeting (“IM”). The Agenda was not opposed by the Agency and the items described herein generally follow that Agenda.

As a preliminary matter, the Agency arranged for a court reporter at this IM, and requested that the entire meeting be on the record. The Union objected, noting that this was not the practice in prior IMs and that the Union had only requested a court reporter previously when there would be witness testimony. This Arbitrator ruled that to be on the record the entire time was not necessary and would chill the fluid exchange of information that the informal IMs were intended to encourage. This Arbitrator further ruled that discussions would be off the record and any decisions, or summaries of disputes, could be on the record. This ruling was made over the Agency's objection.

This IM Summary and Order contains a summary of the matters discussed at the Implementation Meeting, as well as rulings based upon those discussions and subsequent written communications.

#### **1. Union's Submission of Stipulation for PHRS & CIRS Class Members.**

In Summary 3, upheld by the FLRA on May 22, 2015, this Arbitrator noted that the Award covers all PHRS and CIRS bargaining unit employees employed during the relevant damages period, and that the Agency was to retroactively promote them all, with back pay and interest pursuant to the Back Pay Act. Pursuant to this Arbitrator's directives, the Union provided its list of PHRS and CIRS class members to the Agency in early 2014. On June 12, 2014, the Agency requested an additional thirty (30) days to provide a response to the Union's list of eligible employees who encumbered PHRS or CIRS positions. This Arbitrator permitted the Agency an additional opportunity to compile such list within thirty (30) days from the date of the June 2, 2014 Implementation Meeting. The Parties were to discuss their respective PHRS and CIRS lists if they differed. The Agency did not present a list within thirty (30) days of the June 2, 2014 meeting; as such, no discussion was had, as there were no differing lists.

The FLRA has upheld this Arbitrator's Award and subsequent August 2, 2014 Summary. In light of these rulings, the Agency, despite being provided the opportunity to do so, has not contested eligibility of the employees listed by the Union, pursuant to the methodology adopted by this Arbitrator in Summary 3 and clarified in later Summaries. The Union provided the Agency with a proposed Stipulation to sign, in compliance with Summary 3, but the Agency has declined to sign. Subsequent to the IM, the Union submitted a proposed Order in similar form to the Stipulation. This Arbitrator finds that the Proposed Order was a reasonable and appropriate method to accomplish what had been ordered in Summary 3, given the Agency's refusal to participate, and has taken the proposed Order under consideration.

## **2. Remaining GS-110a Class Members.**

In the Summary of Implementation Meeting dated August 2, 2014, upheld by the FLRA on May 22, 2015, this Arbitrator noted that the Award covers all GS-1101 bargaining unit employees employed during the relevant damages period. The Union provided its list of GS-1101 class members to the Agency in September 2014, included in a larger class list of 3,777 eligible class members. The FLRA has upheld this Arbitrator's Award and subsequent August 2, 2014 Summary. The Union has provided this Arbitrator with a proposed Order to sign, in compliance with Summary 3, directing the Agency to promote all GS-1101 BUEs on the Union's class list. This Arbitrator has taken the proposed Order under consideration.

## **3. Remaining Class Members.**

In Summary 6 this Arbitrator issued her methodology for remaining class members. The Union provided the list of 3,777 minimum class members in September 2014. The Agency has declined to discuss this matter, stating that it was planning on filing Exceptions to Summary 6 with the FLRA. Accordingly, this matter is stayed until Summary 6 is final and binding.

#### **4. Chilling Effect Email.**

The Union stated that it would submit any objections to the Agency's draft email, ordered by the Arbitrator in Summary 4, within two weeks of the IM.

#### **5. Status of Payments for Performance Bonus Differentials.**

The Parties discussed and arrived at a procedure for notification to the Union of payments to BUEs. The Parties are to memorialize the procedure and present it to the Arbitrator for approval.

#### **6. Contact with OPM; OPM Progress on Annuity Recalculations.**

The Union expressed concern over what it claims is a lack of transparency regarding the Agency's contacts with OPM over recalculated annuities for retired class members. After discussion, the Agency agreed to confirm the status of OPM's backlog and where the retirees who are class members stand in that process, and to work with the Union in the future on expanded communication. The Union has requested that the Arbitrator direct the Agency to request from OPM that the Agency arrange for a meeting or meetings between OPM, the Agency, the Union and the Arbitrator (if necessary) in order to impress upon OPM the urgency of this matter. The Agency claimed that the Arbitrator does not have jurisdiction to order OPM to attend a meeting. The Union responded that it is not requesting that the Arbitrator order OPM to attend a meeting – it is requesting that the Arbitrator require the Agency to request a meeting with OPM. The Union presented evidence that at least 41 GS-1101 class members have passed away during the pendency of this case. Given the urgency, the Agency is ordered to request an in-person meeting with OPM, to take place within thirty (30) days; the request shall include OPM OGC and OCHCO representatives.

## **7. Contact Information for Class Members.**

In Summary 3, this Arbitrator ordered the Agency to provide the Union with the last known contact information for all potential class members. The Summary was upheld by the FLRA. The Agency claims that compliance with the FLRA Decision will be contrary to law. The Union proposed, without waiving any rights, that the Parties work together to determine a reasonable and appropriate manner and method of obtaining the Union's requested information that would be in compliance with the Agency's legal obligations. The Parties are directed to work together to determine a reasonable and appropriate manner and method of obtaining the Union's requested information. This will be further discussed at the next IM.

## **8. TSP Information.**

The Union has requested certain data concerning TSP contributions from identified class members and potential class members, for use in implementation of the Back Pay Act remedy in this case. The Agency has informed the Union that TSP will not provide such data to the Union due to alleged legal restrictions in doing so. This Arbitrator has previously ordered that the Agency shall provide written proof from TSP which sets forth FRTIB's position in this regard and that the Parties are directed to work together to determine a reasonable and appropriate manner and method of obtaining the Union's requested information. This will be further discussed at the next IM.

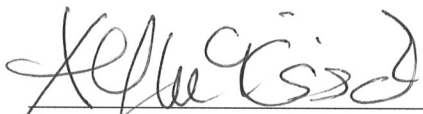
This Arbitrator ordered the Parties to schedule a weekly conference call to discuss all outstanding issues relating to implementation in this case. The Parties are to keep this Arbitrator apprised of progress and any impasses. This Arbitrator continues to expect the Parties to make substantial and continuous progress between themselves. As noted by this Arbitrator in Summary 6, the Agency and Union are furthermore directed to work together to continue to review the Agency's employee data to identify additional and those remaining Class members as defined above. This Arbitrator would like regular status updates on the implementation of the Award and

Summaries on a weekly basis, and a full briefing at the next IM, to be held in July or August 2015.

The goal is to have all GS-1101 Class members promoted and the remedy implemented this Fiscal Year. The Parties are directed to continue their weekly discussions on information exchange and implementation status.

The purpose of the June 2, 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. This Arbitrator shall continue to retain jurisdiction over any Union request for attorney fees, costs and expenses until the matter is completed.

The next IM will take place on August 26, 2015, beginning at 10:00 AM.

  
Dr. Andrée Y. McKissick, Esq.  
Arbitrator

June 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**  
**June 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

---

**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: June 2, 2015**

Per Diem: \$ 1,500.00

1 Day .....\$1,500.00

Monitoring communications.....\$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**