

Federal Labor Relations Authority
Quarterly Digest Report: April 1, 2024 – June 30, 2024



The following case digests are summaries of decisions/orders issued by the Federal Labor Relations Authority, with a short description of the issues and facts of each case. Descriptions contained in these case digests are for informational purposes only, do not constitute legal precedent, and are not intended to be a substitute for the opinion of the Authority.

CASE DIGEST: *U.S. Dep't of VA, John J. Pershing Veterans' Admin. Ctr., Poplar Bluff, Mo., 73 FLRA 842 (2024)*

The Arbitrator issued an award finding the Union did not violate the parties' agreement by filing its grievance at the third step of the grievance procedure. The Agency filed exceptions alleging the award failed to draw its essence from the parties' agreement, the Arbitrator exceeded his authority, and the award was incomplete, ambiguous, and contradictory, so as to make implementation of the award impossible. The Authority denied the exceptions because the Agency failed to demonstrate the award was deficient.

CASE DIGEST: *AFGE, Loc. 2338, 73 FLRA 845 (2024)*

The Union filed a grievance alleging the Agency retaliated against a Union steward by not selecting him for a job vacancy. The Arbitrator denied the grievance, finding the Union failed to demonstrate that the grievant's protected Union activity was a motivating or contributing factor in the Agency's selection decision. The Union filed exceptions in which it argued the award was contrary to several Agency regulations, as well as Authority precedent. The Union also contended that the award was based on a nonfact and that the Arbitrator exceeded his authority in various ways.

Since the Union did not raise its contrary-to-Agency-regulation arguments at arbitration, but could have, the Authority dismissed these exceptions. As the Arbitrator applied Authority precedent in evaluating the Union's claim of retaliation, the Authority denied the Union's

contrary-to-law exception. Because the Union failed to establish that the award was deficient on nonfact or exceeded-authority grounds, the Authority denied these exceptions.

Chairman Grundmann concurred.

CASE DIGEST: *U.S. Dep't of VA, Veterans Health Admin.*, 73 FLRA 855 (2024)

The Arbitrator found a grievance arbitrable and sustained it on the merits. The Agency filed exceptions to the award on essence, nonfact, and contrary-to-law grounds. Because the Agency did not raise several of its arguments to the Arbitrator, the Authority partially dismissed some of the exceptions. The Authority denied the essence and contrary-to-law exceptions challenging the Arbitrator's arbitrability determination, because the Agency did not challenge all of the findings on which that determination was based, and the unchallenged finding served as a separate and independent ground for the Arbitrator's determination. The Authority also denied the Agency's remaining nonfact exception because the Agency did not demonstrate that the award was deficient. Because the Authority could not determine whether the award was contrary to management's right to assign work, it remanded the award to the parties for resubmission to the Arbitrator, absent settlement.

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Lompoc, Cal.*, 73 FLRA 860 (2024)

The Arbitrator found the Agency violated the parties' collective-bargaining agreement (CBA) by suspending the grievant without just cause, and by temporarily reassigning him without first taking certain actions. The Agency filed exceptions challenging the award on several grounds, including arguing the award was contrary to law because it conflicts with management rights under § 7106 of the Federal Service Labor-Management Relations Statute (the Statute). The Authority: (1) dismissed the management-rights exceptions to the extent they concerned the grievant's suspension, because the Agency did not raise the relevant arguments at arbitration; (2) set aside the portion of the award concerning the reassignment because it conflicted with management's right to determine internal-security practices under § 7106(a)(1) of the Statute; and (3) found it unnecessary to resolve the remaining exceptions.

CASE DIGEST: *U.S. Dep't of the Army, Ky. Nat'l Guard*, 73 FLRA 869 (2024)
(Member Kiko concurring)

The Arbitrator issued an award finding the Agency violated the Fair Labor Standards Act and the parties' collective-bargaining agreement by failing to properly compensate certain employees for overtime. As remedies, the Arbitrator directed the Agency to make the grievants whole, and provide them with liquidated damages. The Agency filed exceptions arguing implementation of the award is impossible, the award is based on a nonfact, and the Arbitrator exceeded his authority. The Authority denied the exceptions because they failed to demonstrate the award was deficient.

Member Kiko concurred, writing separately to highlight how the distributed locus of responsibility for employees in national-guard units puts state entities at a disadvantage. In this case, a federal agency created the position description that categorized the grievant as

Fair-Labor-Standards-Act exempt, but when that categorization turned out to be incorrect, the state entity bore the cost for overtime backpay and liquidated damages.

CASE DIGEST: *AFGE, Loc. 4010, Council of Prison Locals #33*, 73 FLRA 873 (2024)

The Arbitrator issued an award denying a grievance alleging the Agency improperly denied the grievant opportunities to work overtime while he was on paid parental leave. The Union filed contrary-to-government-wide-regulation and essence exceptions to the award. The Authority denied the exceptions because the Union failed to support them.

CASE DIGEST: *AFGE, Loc. 2342*, 73 FLRA 876 (2024) (Chairman Grundmann concurring)

The Arbitrator issued an award finding the Union's grievance not arbitrable under the parties' collective-bargaining agreement. The Union filed exceptions to the award on bias, fair-hearing, essence, and exceeded-authority grounds. The Authority found the award related to a reduction in grade, and therefore it lacked jurisdiction to review the Union's exceptions. Consequently, the Authority dismissed the exceptions.

Chairman Grundmann concurred.

CASE DIGEST: *U.S. Dep't of VA, James A. Haley Veterans Hosp. & Clinics*, 73 FLRA 880 (2024) (Member Kiko concurring)

The Arbitrator found a grievance concerning the grievant's performance appraisal procedurally arbitrable and granted it on the merits. The Agency filed exceptions on the grounds that the award was based on nonfacts, failed to draw its essence from the parties' agreement, and was contrary to law – specifically, § 7106 of the Federal Service Labor-Management Relations Statute (the Statute). The Authority denied the exceptions because the Agency did not demonstrate that the award was deficient.

Member Kiko concurred, reiterating her belief that supervisors are best qualified to rate employee performance, and that in some performance-rating arbitration cases, the only appropriate remedy will be to remand the matter to the agency. However, in the unique circumstances of this case – where the rating remedy was supported by specific evidence of the grievant's performance – the remedy did not violate § 7106 of the Statute.

CASE DIGEST: *U.S. Dep't of the Treasury, IRS, 73 FLRA 888 (2024)*

The Arbitrator found the Agency violated the parties' collective-bargaining agreement by failing to provide required counseling and then lowering the grievant's performance rating. As a remedy, the Arbitrator directed the Agency to raise the grievant's rating. The Agency filed exceptions, arguing the award and remedy were contrary to management's rights to direct employees and assign work under § 7106(a)(2)(A) and (B) of the Federal Service Labor-Management Relations Statute (the Statute). Applying the test for resolving management-rights exceptions articulated in *Consumer Financial Protection Bureau, 73 FLRA 670 (2023)*, the Authority found the Arbitrator's interpretation and application of the parties' agreement affected the cited rights. Because neither the award nor the Union demonstrated the relevant provisions of the agreement were enforceable under § 7106(b) of the Statute, the Authority found the award contrary to law.

CASE DIGEST: *Ashley Kjarbo, 73 FLRA 892 (2024)*

The Petitioner filed a petition, under § 2429.28 of the Authority's Regulations, to amend §§ 2430.1-2430.11 of the Authority's Regulations. Those Regulations implement the Equal Access to Justice Act (EAJA), which provides for an award of fees and other expenses (EAJA fees) to eligible parties to adversary adjudications. Currently, the Regulations allow only labor organizations to seek EAJA fees from the Authority when they prevail over the Authority's General Counsel in unfair-labor-practice proceedings; they do not allow individuals to recover fees, or provide for recovery from federal agencies other than the Authority. The Petitioner asserted those limitations conflict with the EAJA. The Authority found to the contrary and denied the petition.

Member Kiko concurred, noting that the Petitioner's related unfair-labor-practice proceeding highlights the care the Authority must exercise to properly balance federal unions' institutional interests with individual employees' rights, including the right to revoke union-dues assignments under § 2429.19 of the Authority's Regulations.