

Federal Labor Relations Authority
Quarterly Digest Report: January 1, 2025 – March 31, 2025



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 VA Med. Ctr., Poplar Bluff, Mo., 74 FLRA 163 (2025) (Member Kiko concurring)*

In a series of awards, the Arbitrator resolved an issue concerning which Union grievance contesting the grievant's non-selection for a certain position was before him; sustained that grievance; and awarded certain remedies. In resolving the merits of the grievance, the Arbitrator found the Agency violated the parties' collective-bargaining agreement and acted with union animus when it failed to select the grievant for the position. The Agency filed exceptions to the awards on essence, exceeded-authority, and nonfact grounds. The Authority dismissed the Agency's essence exception because the Agency could have, but failed to, raise its argument before the Arbitrator. The Authority denied the remaining exceptions because the Agency failed to demonstrate that the award was deficient.

Member Kiko concurred in the disposition of the exceptions, but wrote separately to underscore aspects of the case she found troubling, including errors made by the Arbitrator arising from his unfamiliarity with federal-sector personnel operations, and the position-management difficulties faced by agencies managing employees who are on 100%-official-time schedules.

CASE DIGEST: *U.S. Dep't of the Navy, Commander Navy Region Sw., San Diego, Cal., 74 FLRA 181 (2024) (Chairman Grundmann concurring; Member Kiko dissenting)*

The Union filed a grievance alleging that the Agency violated the parties' agreement in connection with the filling of a supervisory position. The Arbitrator found that the grievance was substantively arbitrable and that the Agency violated the agreement, and she directed the

Agency to rescind and repost the vacancy announcement. The Agency filed exceptions alleging that the Arbitrator's substantive-arbitrability conclusion was contrary to law and that the remedy failed to draw its essence from the agreement. The Authority found the Agency failed to demonstrate that the award was deficient on either ground, and denied the exceptions.

Chairman Grundmann concurred.

Member Kiko dissented, concluding that the Arbitrator's substantive-arbitrability determination conflicts with longstanding Authority precedent. In her view, the Arbitrator improperly expanded the scope of the parties' negotiated grievance procedure to cover the process for filling supervisory positions—a permissive subject of bargaining—despite no evidence the Agency elected to do so.

CASE DIGEST: *NLRB*, 74 FLRA 196 (2025)

The Arbitrator denied the Agency's motion to dismiss two related grievances, finding they were procedurally arbitrable. The Agency filed interlocutory exceptions challenging the denial on contrary-to-law, essence, ambiguity, and public-policy grounds. The Authority found the Agency failed to satisfy the standard for interlocutory review and, therefore, dismissed the Agency's exceptions without prejudice.

Member Kiko dissented, reiterating her concerns with the majority's interlocutory-review standard. She highlighted the inefficiency of dismissing the Agency's contrary-to-law exception—rather than denying it—after the Authority determined the exception lacked merit.

CASE DIGEST: *AFGE, Loc. 506*, 74 FLRA 201 (2025)

The Union filed a petition for attorney fees after receiving a merits award sustaining a grievance concerning overtime under the Fair Labor Standards Act. In a fee award, the Arbitrator awarded attorney fees in an amount lower than that requested by the Union. The Union filed a contrary-to-law exception to the fee award arguing that the Arbitrator should have calculated fees using the attorneys' current hourly rates. Because the Union did not demonstrate the Arbitrator erred by awarding fees using the attorneys' rates at the time they rendered legal services, the Authority denied the exception.

CASE DIGEST: *U.S. Dep't of Com., Nat'l Oceanic & Atmospheric Admin., Se. Fisheries Sci. Ctr.*, 74 FLRA 205 (2025)

The Arbitrator awarded two grievants backpay for their performance of certain duties. The Agency filed exceptions on contrary-to-law, essence, nonfact, and exceeded-authority grounds. Because the Arbitrator did not base the backpay award on a non-discretionary Agency policy set forth in an Agency regulation or a collective-bargaining agreement, the Authority set aside the award as contrary to the Back Pay Act. Therefore, the Authority found it unnecessary to resolve the Agency's remaining exceptions.

CASE DIGEST: *NLRB Union*, 74 FLRA 208 (2025)

The Arbitrator denied a Union grievance concerning private office allocations under the parties' collective-bargaining agreement. The Union filed exceptions to the award on the grounds that it was based on nonfact, fails to draw its essence from the parties' agreement, was so contradictory as to make implementation impossible, and was contrary to law. Because the Union did not demonstrate that the award was deficient on these grounds, the Authority denied the exceptions.

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 74 FLRA 213 (2025)

The Arbitrator issued an award sustaining a Union grievance alleging the Agency violated a past practice when it failed to offer an employee an overtime opportunity. As a remedy, the Arbitrator awarded the employee backpay with interest. The Agency filed an exception to the award on contrary-to-law grounds. The Authority denied the Agency's exception because the Agency failed to demonstrate that the award was deficient.

CASE DIGEST: *U.S. Dep't of the Army, Ky. Nat'l Guard, The Adjutant Gen., Commonwealth of Ky.*, 74 FLRA 215 (2025)

The Union filed a grievance alleging the Agency violated the Administrative Procedure Act (APA) by not using the grievant's promotion date as the effective date for paying the grievant a retention incentive. The Arbitrator sustained the grievance, finding the Agency acted arbitrarily and capriciously in violation of the APA by paying the retention incentive only after it was approved by the Adjutant General. Citing its reliance on government-wide regulations and related Office of Personnel Management guidance to justify its actions, the Agency argued that the award was contrary to law. The Authority concluded that the Arbitrator's finding that the Agency acted arbitrarily and capriciously was contrary to the APA. Therefore, the Authority granted the Agency's contrary-to-law exception and set aside the award.

CASE DIGEST: *U.S. DOD, Adjutant Gen. Nev., Nev. Army Nat'l Guard*, 74 FLRA 219 (2025)

The Arbitrator found that the Agency violated the parties' collective-bargaining agreement by refusing to temporarily promote the grievant when it appointed the grievant to perform the duties of a higher-graded position. The Agency filed exceptions on contrary-to-law and exceeded-authority grounds. The Authority denied the exceptions because the Agency failed to demonstrate that the award was deficient.

Chairman Kiko would have found that the grievance concerned classification within the meaning of § 7121(c)(5) of the Federal Service Labor-Management Relations Statute, because the grievance sought to reclassify the grievant's position and requested a permanent promotion. Because she would have granted the Agency's contrary-to-law exception and set aside the award on this basis, Chairman Kiko dissented.

CASE DIGEST: *U.S. Dep't of VA, E. Colo. Health Care Sys.*, 74 FLRA 226 (2025)
(Chairman Kiko concurring)

The Arbitrator issued an award finding the Agency violated the parties' collective-bargaining agreement and law when it failed to timely and equitably conduct a salary-review survey and increase the grievants' pay. As a remedy, the Arbitrator awarded the grievants backpay with interest. The Agency filed exceptions on nonfact and contrary-to-law grounds. The Authority granted the Agency's contrary-to-law exception arguing that the Arbitrator erred in finding that the grievants' position was covered by 38 U.S.C. § 7451. Therefore, the Authority set aside the award and found it unnecessary to resolve the Agency's remaining exceptions.

Chairman Kiko concurred merely to express her frustration that the Arbitrator's basic interpretative error made an appeal in this matter necessary.