

**CASE DIGEST:** *U.S. DHS, U.S. CBP, Seattle, Wash.*, 74 FLRA 129 (2024) (Member Kiko concurring in part and dissenting in part)

In this case, the Arbitrator awarded the Union attorney fees after finding in an initial award that the grievant was entitled to lost overtime pay as a result of the Agency's failure to properly issue a notice regarding revocation of the grievant's firearm. The Agency excepted, arguing that the Arbitrator exceeded their authority and that the award was contrary to the Back Pay Act for numerous reasons, including that the grievant was not the prevailing party, that an award of attorney fees was not warranted in the interest of justice, and that the amount of awarded fees was unreasonable. Reversing its decision in *AFGE, Local 1633*, 71 FLRA 211, (2019) (*Local 1633*) (Member Abbott concurring; then Member DuBester concurring in part, dissenting in part), the Authority partially denied and partially granted the exceptions, and remanded the case for the Arbitrator to reassess the amount of fees by taking into account the grievant's limited success.

Member Kiko concurred to the disposition of the exceptions, but dissented to the majority's reversal of *Local 1633*. Noting that the Authority had repeatedly announced before *Local 1633* the need to reexamine the way arbitrators assess attorney fees in the context of non-disciplinary grievances, she identified the benefits that *Local 1633*'s guidance provided to arbitrators and parties, and challenged the majority's assertions that *Local 1633* overturned any existing precedent or that it confused or restricted arbitrators.

This case digest is a summary of a decision issued by the Federal Labor Relations Authority, with a short description of the issues and facts of the case. Descriptions contained in this case digest are for informational purposes only, do not constitute legal precedent, and are not intended to be a substitute for the opinion of the Authority.