

Federal Labor Relations Authority
Quarterly Digest Report: January 1, 2023 – March 31, 2023



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: *Fraternal Ord. of Police, DC Lodge 1, 73 FLRA 408 (2023)*

In this case, the Union filed a grievance alleging that the Agency violated the Family and Medical Leave Act (FMLA) by preventing the grievant from returning to a paid, full-duty status after a period of FMLA leave. The Arbitrator denied the grievance because the Union based its allegations on FMLA provisions that do not apply to federal employees. The Arbitrator also found that the grievant failed to comply with the Agency's fitness-for-duty requirements. The Union filed exceptions to the award on contrary-to-law, public-policy, nonfact, exceeded-authority, and essence grounds. Because the Union failed to demonstrate that the award was deficient on any of those grounds, the Authority denied the Union's exceptions.

CASE DIGEST: *NTEU, Chapter 149, 73 FLRA 413 (2023)*

The Arbitrator found the Agency properly rescinded an agreement between the parties and no provision of that agreement remained in effect thereafter. The Union filed exceptions to the award on exceeded-authority, contrary-to-law, nonfact, and essence grounds. The Authority dismissed the essence exception, in part, and denied the remaining exceptions.

CASE DIGEST: *U.S. Dep't of Interior, Nat'l Park Serv., 73 FLRA 418 (2023)*

The Arbitrator found the Agency violated the parties' agreement when it changed employee duty stations without notifying the Union of a related personnel survey, providing the Union with the results of the survey, and giving the Union notice and an opportunity to bargain over certain aspects of the changes to duty stations. The Agency filed exceptions on nonfact and

contrary-to-law grounds. The Authority denied the exceptions because they failed to demonstrate how the award was deficient.

CASE DIGEST: *AFGE, Loc. 446*, 73 FLRA 421 (2023)

The Arbitrator found that the Agency did not violate the parties' collective-bargaining agreement by only considering certain employees for a temporary detail to a supervisory position on one of the Agency's shifts. The Union filed an exception challenging the award on essence grounds. The Authority denied the exception.

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Bastrop, Tex.*, 73 FLRA 423 (2023)

The Agency filed an interlocutory exception to the Arbitrator's finding that the Union's grievance was arbitrable. Because resolution of the Agency's exception would not obviate the need for further arbitration, the Authority dismissed the exception for failure to establish extraordinary circumstances warranting interlocutory review.

CASE DIGEST: *AFGE, Loc. 3197*, 73 FLRA 425 (2023)

In a fee award, the Arbitrator denied the Union's petition for attorney fees. The Union did not file exceptions to the fee award, but filed a motion for reconsideration with the Arbitrator. The Arbitrator issued an order (reconsideration order) denying the Union's motion. The Union then filed exceptions to the reconsideration order. The Authority found: the order did not modify the fee award; the exceptions challenged the fee award; and the deadline for filing exceptions to the fee award expired before the Union filed the exceptions. Therefore, the Authority dismissed the exceptions as untimely.

CASE DIGEST: *NTEU*, 73 FLRA 428 (2023)

The Petitioner proposed amending § 2427.2(a) of the Authority's Regulations. The Regulation allows "any lawful association not qualified as a labor organization" to request a policy statement from the Authority. The proposed amendment would restrict this right to only lawful associations "of federal employees." The Authority was not persuaded by the Petitioner's arguments that the amendment would better align the Regulation with the Federal Service Labor-Management Relations Statute or promote effective and efficient government. Therefore, the Authority denied the petition.

Chairman Grundmann concurred.

CASE DIGEST: *NTEU*, 73 FLRA 431 (2023)

The Arbitrator issued an award finding the Agency violated law and contract when it failed to give the Union appropriate notice of proposed changes, but did not violate law or contract when it failed to give the Union an opportunity to bargain in midterm bargaining, separate and apart from ongoing negotiations over a new term collective-bargaining agreement. The Union filed exceptions alleging the award failed to draw its essence from the parties' agreement and the Arbitrator exceeded her authority. The Authority denied the Union's exceptions.

CASE DIGEST: *U.S. Forest Serv., Collbran Job Corps Civilian Conservation Ctr., Collbran, Co.*, 73 FLRA 436 (2023)

The Regional Director found that § 7111(f)(3) of the Federal Service Labor-Management Relations Statute and § 2422.12(d) of the Authority's Regulations barred the Petitioner's petition for an election to represent a bargaining unit. The Petitioner filed an application for review of this decision, arguing that the Regional Director (RD) failed to apply established law and that the decision raised issues for which there is an absence of Authority precedent. Because the application for review raised arguments that the Petitioner did not raise to the RD, failed to demonstrate that the RD had erred in his application of established law, and failed to demonstrate a lack of relevant Authority precedent, the Authority partially dismissed and partially denied the application.

CASE DIGEST: *Dep't of the Navy, Supervisor of Shipbuilding, Pascagoula, Miss.*, 73 FLRA 443 (2023)

This case concerned whether the Agency violated § 7116(a)(1) and (2) of the Federal Service Labor-Management Relations Statute (the Statute) by terminating a probationary employee for filing a grievance. FLRA Chief Administrative Law Judge David L. Welch (the Judge) found that the Agency did not violate § 7116(a)(1) or (2) of the Statute. The Union filed exceptions to the Judge's decision on the basis that he erred in his credibility determinations and findings of fact, and in finding that the GC failed to establish a prima facie case of retaliation. The Authority found that a preponderance of the record evidence supported the Judge's credibility determinations and factual findings, and the Judge's legal analysis is consistent with applicable precedent. Therefore, the Authority adopted the Judge's findings, conclusions, and recommendations; and dismissed the complaint.

CASE DIGEST: *AFGE, Loc. 32*, 73 FLRA 464 (2023)

This case concerns the negotiability of one proposal related to maintaining the status quo of maximum telework schedules until the parties have completed bargaining over employees' return to the worksite. The Authority found that the Agency waived its arguments that the proposal was outside the duty to bargain because it failed to timely raise those arguments. Therefore, the Authority concluded the proposal was within the duty to bargain.

CASE DIGEST: *U.S. Dep't of VA, Robley Rex Med. Ctr.*, 73 FLRA 468 (2023)

The Arbitrator found the grievants were entitled to environmental-differential pay because they worked in close proximity to low-hazard microorganisms. The Agency filed exceptions. The Authority set aside the award as contrary to law, specifically, 5 C.F.R. Part 532, Subpart E, Appendix A.

CASE DIGEST: *AFGE, Loc. 3184*, 73 FLRA 471 (2023)

The Arbitrator sustained the Union's grievance and awarded limited attorney fees. The Union filed exceptions to the fee award on nonfact, contrary-to-law, fair hearing, and impossible-to-implement grounds. The Authority granted the nonfact and contrary-to-law exceptions and remanded the matter to the parties for resubmission to the Arbitrator.

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Corr. Inst. Mendota, Cal.*, 73 FLRA 474 (2023)

The Arbitrator found that the Agency violated the parties' collective-bargaining agreement, the Federal Service Labor-Management Relations Statute, and the Fair Labor Standards Act (FLSA) by disapproving an official time request, and thereby causing the grievant to work more than his scheduled hours. The Arbitrator awarded remedies under the Back Pay Act and the FLSA. The Agency filed exceptions challenging the Arbitrator's remedy determination on contrary-to-law and essence grounds. The Authority dismissed the Agency's essence exception and contrary-to-law exception concerning the FLSA, and denied the remaining exceptions.

CASE DIGEST: *AFGE, Loc. 3197*, 73 FLRA 477 (2023)

The Union filed a motion for reconsideration of the Authority's decision in *AFGE, Local 3197*, 73 FLRA 475 (2023) (*Local 3197*). Because the Union's motion was a mere attempt to relitigate the Authority's conclusions in *Local 3197*, the Authority found the motion did not establish extraordinary circumstances warranting reconsideration, and the Authority denied it.

CASE DIGEST: *NTEU, Chapter 116*, 73 FLRA 479 (2023)

The Arbitrator dismissed the Union's two grievances because they concerned a probationary employee's termination. The Union filed nonfact, contrary-to-law, and essence exceptions. The Authority found that the Union failed to establish the award was deficient on those grounds, and denied the exceptions.

CASE DIGEST: *IFPTE, Loc. 4, 73 FLRA 484 (2023)*

The Arbitrator found that the Union's grievance was untimely, and thus not procedurally arbitrable under the parties' collective-bargaining agreement. Because the Union could have, but did not raise the arguments on which its exceptions were based to the Arbitrator, the Authority found the exceptions barred by 5 C.F.R. §§ 2425.4(c) and 2429.5 and dismissed them.

CASE DIGEST: *NTEU, Chapter 338, 73 FLRA 487 (2023)*

Challenging the Agency's suspension of the grievant, the Union alleged to the Arbitrator that the suspension did not promote the efficiency of the service and that it violated the Whistleblower Protection Act. Upon finding that the suspension did not promote the efficiency of the service, the Arbitrator rescinded it. He then asserted that the Union could pursue its other claim in other forums. The Authority found that the Arbitrator's statement about remedial alternatives for the Union's other claim was dictum and, as such, did not provide a basis for setting aside the award. Therefore, the Authority denied the Union's exception.

CASE DIGEST: *AFGE, Nat'l Citizenship & Immigr. Serv., Council 119, 73 FLRA 490 (2023)*

The Union grieved the Agency's implementation of certain official-time limits set forth in an executive order that conflicted with the parties' existing collective-bargaining agreement. The Arbitrator denied the grievance. The Union filed exceptions on the ground that the award was contrary to the Federal Service Labor-Management Statute (the Statute) because the Agency unlawfully implemented the executive order during the extended term of the parties' agreement. Because § 7116(a)(7) of the Statute does not permit an agency to enforce a rule or regulation which is in conflict with a collective-bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed, the Authority found that the award was contrary to law.

CASE DIGEST: *U.S. Dep't of VA, VA Roseburg Healthcare Sys./White City-SORCC, 73 FLRA 493 (2023)*

The Arbitrator found the Agency violated the parties' agreement by requiring some employees to use personal leave under certain circumstances during the COVID-19 pandemic. The Agency filed contrary-to-law exceptions. The Authority found the record did not indicate that the Agency raised its arguments at arbitration, even though it could have done so. Thus, the Authority dismissed the exceptions under §§ 2425.4(c) and 2429.5 of the Authority's Regulations.