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Personnel Management

Washington, DC 20415-2001

In Reply To:

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DATE: June 12, 2006

MEMORANDUM TO: MEMBERS
NETWORK ON EMPLOYEE & LABOR RELATIONS

FROM: ANA A. MAZZI
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Center for Workforce Relations & Accountability Policy

Subject: Case Listing Number 1094

FEDERAL LABOR RELATIONS AUTHORITY DECISIONS

61 FLRA No. 111;
61 FLRA 579
0-AR-3966
May 5, 2006

[AFGE, Local 1917 and U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, N.Y., N.Y.](#) The INS was abolished and separated into three separate units under DHS, one of which is the United States Citizenship and Immigration Services (CIS). Prior to the change, the parties entered into collective bargaining agreements, which are still in effect, that provide the Union with a block of official time amounting to 50 hours a week including 16 hours to the Second VP. The Union made a request to CIS for official time exceeding 50 hours (including 24 to the Second VP), claiming that each of the three units has established its own organizational administration but are restricted to the same 50 hours of official time. Because this request exceeded the Union's weekly 50-hour block of official time, the Agency modified the official time request such that the Second VP ended up with 2 hours. The Arbitrator, finding that CIS is not a self-standing agency, denied the Union's grievance alleging that the Agency's modification violated the parties' agreements. The FLRA denied the Union's exceptions, finding that the Arbitrator did not exceed his authority by determining that CIS was not a self-standing agency and that this determination did not establish that the award is based on a nonfact.

61 FLRA No. 112;
61 FLRA 582
0-AR-3759
May 10, 2006

[AFGE, Council 220 and SSA.](#) This case is before the FLRA on exceptions to the clarification of an arbitration award. In the original arbitration award, the Arbitrator found that the Agency violated the parties' collective bargaining agreement by failing to provide priority consideration when it failed to select several of the grievants. The Arbitrator also denied the Union's request for attorney fees and granted relocation expense reimbursement to one grievant. In [60 FLRA 1 \(2004\)](#), the FLRA remanded the award for the Arbitrator to clarify the reasons for the denial of attorney fees and to clarify the basis and rationale for the award of relocation expenses.

On remand, the Arbitrator determined that an award of attorney fees was not warranted in the interest of justice under the *Allen* factors and he ordered the Agency to reimburse the grievant for the relocation because he found that it was clear that the grievant's relocation expenses would have been paid by the Agency but for the violation of the parties' agreement. The FLRA denied the Union's exception regarding attorney fees, finding that the Union failed to establish that attorney fees are warranted in the interest of justice based upon fulfillment of the *Allen* factors. However, the FLRA granted the Agency's exception and set aside the portion of the award requiring the Agency to reimburse the grievant for her relocation expenses. In this regard, the FLRA found that the award conflicts with the Back Pay Act because the relocation expenses the grievant experienced are not expenses for which the grievant would have been reimbursed had the Agency not violated the parties' agreement.

61 FLRA No. 113;
61 FLRA 588
0-NG-2817
May 10, 2006

[NAGE, Local RI-109 and U.S. Department of Veterans Affairs, Connecticut Healthcare System.](#) The proposals in dispute concern the filling of supervisory and managerial positions. The FLRA found that the proposals are outside the duty to bargain and are negotiable only at the election of the Agency. In this regard, the FLRA stated that it has long held that matters concerning promotion procedures for supervisory positions do not involve the conditions of employment of bargaining unit employees and are, therefore, outside the duty to bargain. However, according to the FLRA, unless such proposals are contrary to law or government-wide regulation, or nonnegotiable on some other ground, which is not the situation in this case, they are negotiable at the election of the agency. In addition, the FLRA determined that the Union established no basis for the FLRA to reconsider its precedent regarding the permissive nature of proposals dealing with filling supervisory and managerial positions.

61FLRA No. 114;
61 FLRA 593
0-NG-2836
May 11, 2006

[NAGE, Local RI-109 and U.S. Department of Veterans Affairs, VA Connecticut Healthcare System, Newington, Connecticut.](#) The Agency has two Connecticut facilities: Newington and West Haven. NAGE represents Newington employees and AFGE represents West Haven employees. The NAGE proposals in dispute are in response to the Agency's decision to transfer the West Haven sterilization work to the Newington facility while the West Haven facility was being renovated. As a result of the transfer, a Newington employee's day shift was changed to an evening shift and a West Haven employee was detailed to the Newington facility to assist with the sterilization on the evening shift.

The FLRA made the following findings:

Proposals 4, 11, and 12 are not moot and are within the duty to bargain. The FLRA found that the Agency did not make any arguments that the proposals are outside the duty to bargain, apart from its mootness claim.

Proposal 1, which would require the Agency to buy a second set of surgical instruments for the West Haven facility so that surgical procedures in West Haven can continue while the original set of surgical instruments can be sterilized during the day at the Newington facility, is outside the duty to bargain. The FLRA noted that the Union does not dispute the Agency's claim that this proposal violates the agency's right to assign work and found that the Union's claim that the proposal constitutes a procedure or an appropriate arrangement is a bare assertion.

Proposals 2, 5, 6, 7, 8, and 9, which concern assignments, details and swapping of shifts, are outside the duty to bargain because they determine the conditions of employment for employees in another bargaining unit, namely AFGE bargaining unit employees.

Proposal 3 is outside the duty to bargain because it requires the Agency to contract out the work at issue without conducting a cost comparison in violation of Circular A-76, a government-wide regulation.

FEDERAL SERVICES IMPASSES PANEL DECISIONS

06 FSIP 51
May 8, 2006

[Department of Homeland Security, Customs and Border Protection, Los Angeles, California and Local 505, National Immigration and Naturalization Service Council, AFGE, AFL-CIO.](#) The impasse before the Panel concerned whether the Agency's decision to terminate a 4-10 compressed work schedule (CWS) for CBP Officers in Passport Operations at the Los Angeles International Airport (LAX) is supported by evidence that the schedule has caused an adverse agency impact. According to the Agency, the 4-10 CWS has substantially increased overtime costs, decreased productivity, and directly interfered with the Agency's efforts to develop a cohesive, unified workforce. To support its claims, the Agency conducted cost comparisons and analysis between the current schedule and the proposed 5-8 schedule. The Union claimed that the Agency's analysis contains misleading and incomplete information. The Panel ordered the termination of the 4-10 CWS in Passport Operations at LAX. In this regard, the Panel concluded that the Agency has demonstrated that the 4-10 CWS is causing an increase in the cost of Passport Operations at LAX. The Panel found that the Union was unable to "undercut" the essential methodology relied on by the Agency to support its contention that the 4-10 CWS has resulted in significant amounts of overtime, and that a 5-8 schedule would reduce overtime costs while enhancing the level of service provided to the public.

MERIT SYSTEMS PROTECTION BOARD DECISIONS

CB1214060009T1
2006 MSPB 92
April 19, 2006

[Special Counsel v. Department of Homeland Security & Knowles.](#) In response to an interlocutory appeal, the Board held that the ALJ properly granted an appellant's motion to intervene in a case involving a corrective action complaint against the appellant's employing agency. The Special Counsel argued that 5 U.S.C. § 1214 and the Board's implementing regulations make no provision for the permissive intervention of individuals, like the appellant, who allegedly benefited from the commission of a prohibited personnel practice. The Board found that the authority relied upon by the OSC did not prohibit such an individual from requesting intervention in a corrective action. In a separate analysis of the specific circumstances surrounding the motion, the Board determined that the motion met the criteria for permissive intervention.

DC0752040233I1
2006 MSPB 118
May 8, 2006

Batts v. Department of the Interior. Board overturns AJ who mitigated removal to 30-day suspension of an Alternative Dispute Resolution Coordinator for two incidents of misconduct directed toward a female coworker (kissing and hugging); placing offender in another position to minimize contact with coworkers was proper interim relief.

SF1221050218W1
2006 MSPB 123
May 10, 2006

Scalera v. Department of the Navy. Board reopens on its own motion and remands case to regional office for consideration of IRA (whistleblowing) appeal; AJ incorrectly ruled that the separated probationary employee made a valid election of forum by filing a grievance under an NGP; Board notes that probationary employees do not have NGP grievance rights and thus the NGP could not be a valid election of forum for a probationer seeking review of whistleblower issues.

NY0752040279I2
2006 MSPB 124
May 11, 2006

Dias v. Department of Veterans Affairs. Board upholds removal of employee for AWOL charged when the agency denied the employee's request for leave without pay under the Family and Medical Leave Act of 1993 for failure to provide supporting documentation; employee was AWOL several weeks and had a history of discipline for similar offenses.

DA0752050005I1
2006 MSPB 125
May 11, 2006

Wallendorf v. Department of the Treasury. Board overturns AJ and reopens case where appellant made a nonfrivolous allegation that her resignation was involuntary because she resigned based on the agency's misleading statements (agency told her she would lose her health insurance coverage if she didn't resign immediately).