



United States  
Office of  
Personnel Management

Washington, DC 20415-2001

In Reply To:

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DATE: July 13, 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 1095

**FEDERAL LABOR RELATIONS AUTHORITY DECISIONS**

61 FLRA No. 115;  
61 FLRA 599  
0-AR-3961  
May 16, 2006

[U.S. Department of the Army, Corps of Engineers, Portland District and United Power Trades Organization](#). The parties went to arbitration over the issue of whether the Agency can consider candidates in the Student Career Experience Program (SCEP) to fill vacancies in the training program set forth in an MOU. The Arbitrator found that under the MOU, applicants are required to pass a certain OPM exam in order to qualify for the training program, but that under OPM regulation 5 C.F.R. § 213.3202(b)(15), SCEP participants are not required to pass such an exam. In addressing this inconsistency, the Arbitrator found that the Agency could select trainees from an ‘appropriate source’ other than the SCEP or it could choose an SCEP participant only if no other appropriate source applicants were available. The FLRA set aside the award, finding that it directly conflicts with 5 C.F.R. § 213.3202(b)(15) by dictating that the Agency must hire from any appropriate source before considering SCEP candidates even though the regulation places SCEP candidates on an “equal footing” with other appropriate source candidates by waiving the OPM test requirement.

61 FLRA No. 116;  
61 FLRA 603  
WA-CA-04-0061  
May 25, 2006

[U.S. Department of Labor, Washington, D.C. and AFGE, Local 12](#). The background of this ULP case is as follows: An arbitrator found that the Agency’s unilateral implementation of an automated timekeeping system violated the parties’ collective bargaining agreement and directed the Agency to restore the previously-used manual timekeeping system. The Agency refused to comply with the arbitrator’s order and the Union filed a ULP. During the pendency of the instant proceeding, the parties negotiated to impasse over a new agreement, which included provisions about the timekeeping system. The Federal Service Impasses Panel (Panel) asserted jurisdiction and directed the parties to adopt the Agency’s final offer on automated timekeeping. Subsequently, the Judge in the instant case found that the Agency’s refusal to comply with the arbitration award violated the Statute. The Judge directed the

Agency to restore the *status quo ante* manual timekeeping system. The Judge also directed the Agency to post a notice, signed by the Secretary.

The FLRA, in granting the agency's exception to the Judge's direction that it return to a manual timekeeping system, concluded that a *status quo ante* remedy is not appropriate. The FLRA reiterated previous case law that such a remedy is inappropriate where, during the pendency of a ULP charge: (1) the parties negotiated to impasse over the change at issue; (2) the union filed a request for assistance with the Panel; (3) during the Panel proceedings, the union did not request a return to the *status quo ante*; and (4) the Panel issued a final decision resolving the impasse. Here, the parties negotiated and reached impasse over a new timekeeping article; the matter was submitted to the Panel; and the Panel issued a final decision resolving the impasse. Thus, according to the FLRA, intervening events -- not the Agency's failure to comply with the arbitration award -- resulted in the parties' new agreement, which implements the automated system.

Still affirming the finding of a ULP, the FLRA ordered the highest official of the Department's Office of Employee and Labor-Management Relations to sign a posting, because that official refused to implement the arbitration award.

61 FLRA No. 117;  
61 FLRA 614  
0-AR-4086  
June 16, 2006

[AFGE, Local 3911, AFL-CIO and U.S. Environmental Protection Agency, Region 2](#). The FLRA denied the Union's essence exception to an arbitration award, not otherwise described.

61 FLRA No. 118;  
61 FLRA 615  
0-NG-2794  
June 16, 2006

[AFGE, Locals 1698 and 1156 and U.S. Department of the Navy, Naval Inventory Control Point, Philadelphia & Mechanicsburg, PA](#). This case was before the FLRA on a negotiability appeal filed by the Union under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute (the Statute), and concerns the negotiability of one proposal regarding holiday closings. The proposal contains multiple sections and, as relevant here, one section requires the Agency to provide work to employees who choose to work during the period of closure. The FLRA found the entire proposal outside the duty to bargain because it requires the Agency to make work assignments to those employees, thereby improperly affecting management's right to assign work under § 7106(a)(2)(B). The FLRA noted that the Union did not request that any part of the proposal be severed and, therefore, if one part of the proposal is outside the duty to bargain, the entire proposal is outside the duty to bargain.

## FEDERAL SERVICE IMPASSES PANEL DECISIONS

06 FSIP 63  
May 31, 2006

[Department of the Army, Army Dental Activity, Fort Knox, Kentucky and Local 2303, AFGE, AFL-CIO](#). The impasse before the Panel concerned whether the Agency's decision to terminate the 5/4-9 compressed work schedule (CWS) of bargaining unit employees in the Army Dental Activity (DENTAC) is supported by evidence that the schedule has caused an adverse agency impact. Relying on cost comparisons and analysis between the current schedule and the proposed 5-8 schedule, the Agency asserted that the 5/4-9 CWS has caused a reduction in productivity, a diminished level of service to its soldiers, and an increase in the cost of DENTAC's operations. The Union claimed that the Agency's analysis contains misleading and incomplete information. The Panel ordered the

termination of the 5/4-9 CWS in DENTAC because it concluded that the Agency demonstrated that the 5/4-9 CWS is causing a reduction in the productivity of the DENTAC.

#### **MERIT SYSTEMS PROTECTION BOARD DECISIONS**

- AT315H050915-I-1  
2006 MSPB 166  
June 12, 2006
- [Allen v. Department of the Navy](#)*. The Board overturns its Administrative Judge and states that the jurisdictional analysis of whether the removal of an individual from an excepted service position during probation is appealable is not under 5 C.F.R. § 315.806 but rather whether the individual qualifies as an “employee” under either 5 U.S.C. §§ 7511(a)(1)(B) or 7511(a)(1)(C); finds individual not an “employee” and dismisses case for lack of jurisdiction.
- CB7121060011-V-1  
2006 MSPB 145  
June 2, 2006
- [Slavich v. Social Security Administration](#)*. *The Board sustained an arbitrator’s decision that a grievant did not demonstrate harmful error regarding contract violations alleged to have occurred when the agency completed the grievant’s critical elements and performance standards.*
- SF0351050576-I-2  
2006 MSPB 148 June  
6, 2006
- [Campbell v. Department of Defense](#)*. *The Board notes that an appellant can waive rights to a hearing only by clear, unequivocal, or decisive action; such a waiver must also be informed, that is, the appellant has been fully apprised of the relevant adjudicatory requirements and options in the case; Board finds its Administrative Judge failed to fully inform the appellant and remands the case for a hearing.*