

IN THE MATTER OF ARBITRATION BETWEEN:

American Federation of Government, Employees (AFGE), Council of HUD Locals 222, UNION,	]	Issue: Fair and Equitable Grievance
v.	]	Case No. 03-07743
U.S. Department of Housing & Urban Development, AGENCY.	]	Arbitrator: Dr. Andrée Y. McKissick, Esq.

**SUMMARY NO. 10 OF IMPLEMENTATION MEETING AND ORDER**

This Arbitrator met with the Parties on April 12, 2016, to discuss the progress of the Parties with implementation of the January 10, 2012, Opinion and Award (the "Award") in the above captioned matter. Present for the Union were: Michael J. Snider, Esq., Jacob Y. Statman, Esq., from Snider & Associates, LLC, and Holly Salamido, Union Council President. Present for the Agency were: Javes Myung, Esq. and David M. Ganz, Esq. This is the tenth Summary of Implementation Meeting ("Summary No. 10"), the first nine (9) having been issued on March 14, 2014 ("Summary No. 1"), May 17, 2014 ("Summary No. 2"), August 2, 2014 ("Summary No. 3"), January 10, 2015 ("Summary No. 4"), February 27, 2015 ("Summary No. 5"), May 16, 2015 ("Summary No. 6"), June 27, 2015 ("Summary No. 7"), February 27, 2016 ("Summary No. 8"), and March 26, 2016 ("Summary No. 9") respectively.

**I. Introduction**

The Union provided an Agenda for the Implementation Meeting (IM). The items described herein generally follow that Agenda. As a preliminary matter, the Union arranged for a court reporter at this Implementation Meeting, and requested that, as has been the practice in prior Implementation Meetings, the court reporter would be used only when the Arbitrator deemed necessary.

At the onset of the Implementation Meeting the Agency raised its continued objection to these implementation meetings pending the current United States Federal Labor Relations Authority (FLRA). As was the case during the ninth Implementation Meeting, the Union stated that it only intended to raise specific matters not currently on appeal before the FLRA. This Arbitrator agreed with the Union that any pending Requests for Reconsideration did not preclude the Implementation Meeting from taking place as FLRA regulations clearly state that neither a request for reconsideration, nor a request for a stay, serves to stay the effectiveness of any FLRA Decision. To date, such a Stay has not been issued by the FLRA. This Implementation Meeting Summary and Order contains a summary of the matters discussed at the Implementation Meeting/Hearing, as well as rulings based upon those discussions.

## **II. Hearing Testimony**

Prior to the hearing, the Union requested this Arbitrator to issue subpoenas for three (3) Agency employees to appear at the Implementation Meeting/Hearing. Specifically, the Union requested the appearance of (1) Deputy Secretary Nani Coloretti; (2) Acting Chief financial Officer Joseph Hundgate; and (3) Chief Human Capital Officer Towanda Brooks in order to elicit testimony relevant to this matter. Pursuant to Section 23.09 of the Parties Collective Bargaining Agreement, the Union also timely filed a witness list naming those three (3) individuals with the Agency and Arbitrator.

At the hearing, it was revealed that while the Arbitrator did sign the requested subpoenas, a copy of the signed subpoenas was only sent to the Union. The Union failed to serve the subpoenas erroneously believing that the Arbitrator has sent a copy to the Agency as well.

The Agency argued that it did not have proper notice of the expectation that the witnesses appear because it did not receive the signed subpoenas. **Tr., p. 4.** However, the Union timely and

properly provided its witness list pursuant to the Parties' Collective Bargaining Agreement ("CBA" or "Contract"). Moreover, there was no doubt that the Agency received the un-signed subpoenas and that this Arbitrator had shared her intention to sign the subpoenas. **Tr., pp. 19-20.** There is no additional obligation to provide notice and this Arbitrator finds that the Agency was on proper notice of this expectation because the Union previously stated its intention to call these witnesses and properly filed its witness list.

The Agency further argued that the Union's proffer as to the testimony of the witnesses was improper because the Union was allegedly attempting to obtain testimony that was "pre-decisional and deliberative, and it's protected from release by several [Office of Management and Budget] OMB circulars." **Tr., p. 6.** However, the Union pointed out that every single proffer noted that the Union "does not intend to elicit any testimony concerning privileged or confidential information." **Tr., p. 12.** Instead, the Agency strongly asserts that the expected testimony is privileged and confidential.

This Arbitrator agrees with the Union that the subpoenas and witness list were not improper. Moreover, the Agency will have counsel present for any elicited testimony and has the ability to object to any specific or general line of questioning. At that time a ruling can be issued as to the appropriateness, or lack thereof, of the question(s) presented.

After additional discussions concerning this issue both on and off the record, the Union agreed that it would waive the appearance of the requested witnesses at this particular Implementation Meeting/Hearing, but that the Union would request new subpoenas and would again timely file a witness list so that there could be no dispute as to the Agency's notice at the next scheduled Hearing. It was also agreed that the next meeting, when these witnesses would be called, would be a formal, on the record hearing, with testimony. This Arbitrator finds that given

the current posture of the case, there is a need for a formal evidentiary hearing so that this Arbitrator can ascertain the status of implementation.

### **III. Remaining Agenda Items**

After discussing the testimony portion of the Implementation Meeting/Hearing, the Parties proceeded to discuss various outstanding items from the Agenda.

#### **a. Union's Fair Labor Standards Act (FLSA) Request for Information**

On March 7, 2016, the Union properly filed a Request for Information pursuant to 5 U.S.C. §7114(b) requesting information about payments made for overtime to class members pursuant to the FLSA. This information request was made so that the Union could properly ascertain damages in this case and this Arbitrator finds that it was a proper request. The Agency acknowledged receipt of the Request and stated that they would look into a formal response. This Arbitrator ordered the Agency to provide an update to the Union no later than June 1, 2016.

#### **b. Chilling Effect Email**

The Union noted that the Agency was still not in compliance with this Arbitrator's Orders concerning certain outstanding matters. Specifically, the Union stated that the Agency had still not sent out the chilling effect blast email to the Bargaining Unit. This Arbitrator ordered the Agency to send out the agreed-upon blast email no later than May 1, 2016.

#### **c. Remaining Items from Agenda**

The remaining Agenda items were continued until the next Implementation Meeting/Hearing.

#### IV. Conclusion

The purpose of the April 12, 2016 Implementation Meeting/Hearing was to monitor and oversee implementation in and compliance of the Award. Nothing discussed or stated at the meeting or in this Summary should be construed as a new requirement or modification of the existing Award. This Arbitrator continues to maintain jurisdiction over the Award and all subsequent Summaries as well as the Union's request for attorney fees, costs and expenses until the matter is completed. This jurisdiction extends to all outstanding items in this matter.

The next meeting will be a formal, evidentiary Hearing. However, it shall be rescheduled by mutual agreement due to a scheduling conflict with a prior scheduled mediation.



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Dr. Andrée Y. McKissick, Esq.  
Arbitrator

June 30, 2016