IN THE MATTER OF ARBITRATION BETWEEN:

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

SUMMARY OF IMPLEMENTATION MEETING

This Arbitrator met with the Parties on August 28, 2014, to discuss the progress of the Parties with the 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. and Jacob Y. Statman, Esq., from Snider & Associates, LLC, Holly Salamido, Jerry Gross and Sal Viola. Present for the Agency were: Tresa A. Rice, Esq., Javes Myung, Esq., Craig T. Clemmensen, Mary Pavlik, and Towanda Brooks. This is the fourth Summary of Implementation Meeting Order ("Summary 4"), the first three having been issued on March 14, 2014 ("Summary 1"), May 17, 2014 ("Summary 2"), and August 2, 2014 ("Summary 3"), respectively. The Agency filed Exceptions before the FLRA to the August 2, 2014, Summary of Implementation Meeting Order, and those Exceptions are currently pending. This Order only relates to the Award and the first and second Summary Orders, which are final and binding. This Order does not relate to the August 2, 2014 Summary (Summary 3).

At the August 28, 2014 meeting, the Union raised concerns that the Agency is chilling the negotiated grievance process by requiring Agency employees to speak with management prior to speaking with attorneys from Snider & Associates, LLC, about this case. This Arbitrator informed the Agency that it was to notify all Bargaining Unit Employees that they do not need to contact management prior to discussing the Fair and Equitable case with the Union's counsel. Specifically, this Arbitrator strongly recommended that the Agency should consistently utilize the following language:

1. BUEs may participate in any interview conducted by a firm employee without the need to inform management or receive permission from management.
2. It is illegal for management/supervisors to direct employees not to participate or to in any way discourage participation.

This language was based in part on the Union's counsel's previous email. Although the Agency claims that these allegations could not be substantiated, the Arbitrator finds that the Union's version of events to be credible.

The Parties have had a disagreement concerning the earliest date for the Grievance's damages period. After giving the Parties ample opportunity to work this out between themselves, it is now ripe for this Arbitrator to issue a clarification on the matter. The Agency's position is that the earliest the damages period could begin would be on November 13, 2002, the date of the Grievance. The Union argues that the damages period should begin as early as possible, as this is and has been an ongoing and continuous violation. The Award states that the Agency shall process "promotions with (30) thirty days, and calculate and pay affected employees all back pay and interest due since 2002." The Parties agreed that new evidence provided by the Agency in May 2014, showing that the earliest date in 2002 that a violation was found was January 18, 2002. The Parties also agreed that the Agency, when processing the seventeen (17) retroactive promotions described in Summary 1 and Summary 2, had an effective promotion and back pay date prior to November 13, 2002.

The Award is hereby clarified that the damages period begins on January 18, 2002, which was the first date in 2002 that a violation was shown to have existed.[1] This ruling is based upon data provided by the Agency to the Union and shared with this Arbitrator at the hearing by the Parties. If the Union or Agency presents additional new evidence or data, this ruling may be further clarified, in contradistinction to a modification as the Agency alleges.

The Parties have also disputed the end date for inclusion in the class and have sought clarification on that issue as well. The Agency's position was that no class member could be included after August 8,

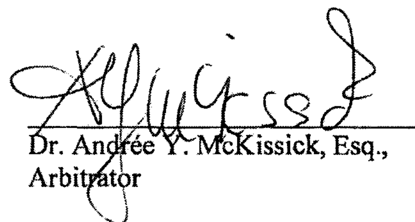
[1] This ruling does not yet apply to the eleven employees identified by the Agency during its initial methodology. For the time being, this Arbitrator will take those employees under advisement while the Parties work together to resolve their back-pay date.

2012, the date the Award became final. The Union has argued that the Award states "until the present," and that the Agency's violations have been ongoing and continuous and that the Agency has failed to implement the Award. Based upon the Agency's failure to implement the Award, Bargaining Unit Employees (BUEs) shall continue to be considered class members until the award is fully implemented. In light of the foregoing analysis, August 8, 2012, is an improper cut-off date, and contradicts the Award.

This Arbitrator ordered the Parties to schedule a weekly conference call to discuss all outstanding issues relating to implementation in this case. The Parties are to keep this Arbitrator apprised of progress and any impasses. This Arbitrator continues to expect the Parties to make substantial progress between themselves.

The purpose of the August 28, 2014 implementation meeting was to monitor and oversee implementation of the January 10, 2012 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.

Even with the pendency of the Agency's Exceptions, this Arbitrator continues to maintain jurisdiction over the Award and Summaries 1 and 2. The Parties are directed to provide their availability for the next implementation meeting no later than five (5) days after receipt of this Order. The next Implementation Meeting is now scheduled for February 4, 2015 at 10:00 AM at the Agency's address.



Dr. Andrée Y. McKissick, Esq.,
Arbitrator

January 10, 2015