IN THE MATTER OF ARBITRATION BETWEEN:

American Federation of Government, Employees (AFGE), Council of HUD Locals 222, UNION, v. US Department of Housing & Urban Development, AGENCY.	Issue: Fair and Equitable Case No. 03-07743 FLRA Docket No. 0-AR-4586 Arbitrator: Dr. Andree Y. McKissick, Esq.

UNION'S RESPONSE IN OPPOSITION TO AGENCY'S RESPONSE TO SHOW CAUSE ORDER AND EXCEPTIONS TO ARBITRATOR MODIFICATION

AFGE Council of Locals 222 (the "Union"), by and through its undersigned counsel, hereby timely responds in opposition to both the Agency's Response to Order to Show Cause and the Agency's Exceptions to Arbitrator Modification. The Union incorporates by reference its Motion for Order to Show Cause. In support, thereof, the Union states as follows:

Background

As noted by the Authority and in the Union's Motion for Order to Show Cause, this case has an extensive procedural history dating back to the filing of the Grievance on November 13, 2002. Most relevant to this instant filing, however, are: the Arbitrator's Remedial Award issued on January 10, 2012, **Exhibit A** (the "Remedial Award"); the Arbitrator's Summary of Implementation Order dated March 14, 2014, **Exhibit B** (the "First Summary"); the Arbitrator's Summary of Implementation Order dated May 17, 2014, **Exhibit C** (the "Second Summary"); and the Arbitrator's Summary of Implementation Order dated August 2, 2014, **Exhibit D** (the

"Third Summary"). The Summaries simply clarify and/or reiterate the findings contained in the Remedial Award. Indeed, in each of the three Summaries, the Arbitrator specifically notes her continuing jurisdiction over implementation and states unequivocally that the Summaries are clarifications and nothing contained in them should be construed as a modification of the Remedial Award. *Infra.*

I. The Remedial Award.

On January 26, 2011, the Authority issued its decision on the Arbitrator's September 29, 2009, merits Award. *AFGE 222 v. U.S. Department of HUD*, 65 FLRA 433 (2011). In its decision, the Authority set aside the Arbitrator's remedy but left intact the finding of the underlying violation with instructions of a remand for the remedy. *Id.*

On January 10, 2012, the Arbitrator issued her Remedial Award. **Exhibit A**. The Remedial Award was upheld by the FLRA on August 8, 2012. *AFGE 222 v. U.S. Department of HUD*, 66 FLRA 867 (2012). In the Remedial Award the Arbitrator ordered the following relief:

> That the Agency process retroactive permanent selections of all affected BUE's into currently existing career ladder positions with promotion potential to GS-13 level. Affected BUE's shall be processed into positions at the grade level which they held at the time of the violations noted in my prior findings, and (if they met time-in-grade requirements and had satisfactory performance evaluations), shall be promoted to the next career ladder grade(s) until the journeyman level. The Agency shall process such promotions within (30) thirty days, and calculate and pay affected employees all back pay and interest due since 2002.

Exhibit A, pp.2-3.

The Arbitrator defined the class of Grievants as follows:

> All Bargaining Unit employees in a position in a career ladder (including at the journeyman level), where the career ladder lead to a lower journey man grade than the journeyman (target) grade of a career ladder of a position with the same job series, which was posted between 2002 and present. These include BUE's in positions referenced in Joint Exhibits 2, 3, 4, 7G and Union Exhibits 1 and 9.

Id., p. 4

In sum, the Remedial Award, which was upheld, plainly identified the class in this matter. All that should have been required to implement the Remedial Award was a review of the employees who encumbered the Series listed in the exhibits anytime during the relevant damages period (2002-present), ensured that they met the performance and time-in-grade requirements, and calculate the back pay, interest, and emoluments owed. The Agency, however, attempted to set forth its own class definition thereby necessitating subsequent implementation meetings.

II. The First Summary.

On March 14, 2014, the Arbitrator issued the first Summary of Implementation Meeting. **Exhibit B**. The Agency did not file exceptions to the First Summary so it became final and binding thirty-days after service. **5 U.S.C. § 7122(b), 5 CFR § 2425.2(b)**. Implementation meetings and subsequent Summary Orders became necessary because the Agency refused to implement the Remedial Award as it was written. As the Arbitrator noted:

> The purpose of the implementation meeting was to clarify the members of the class that was defined in my January 10, 2012 Award. **Nothing discussed or stated at the meeting should be construed as a new requirement or modification of the existing Award. Rather, the meeting and this summary were, to the extent necessary, intended to clarify** with specificity which Bargaining Unit Employees are eligible class members....
>
> ...The Agency has requested written clarification of my Award (including on August 7, 2013 and November 13, 2013). **I indicated that no clarification was necessary as my Award was clear and unambiguous.** More recently, however, the Agency has unilaterally determined, based on its own methodology, that there are a minimal number of class members which it was able to identify. The Union's methodology has identified thousands of potential class members through data provided by the Agency. **Despite the clarity of my Award, the Agency has failed to timely implement the Award as ordered.**

Exhibit B, p. 2 (Emphasis added).

The Arbitrator further noted:

> Moreover, the Parties are at an impasse regarding the appropriate methodology for identifying the class of employees eligible for backpay and promotions. **Impasse in implementation is unnecessary because the Award is clear in its definition of the class. The Class definition is data driven, not announcement driven, as is clear from my Award and the Adverse Inference drawn due to the Agency's failure to produce data, as I told the Agency previously last spring and summer**...
>
> ...**The eligible class members are easily identified by listings of employees who encumbered positions in Job Series identified in the Exhibits as listed in the Award**, during the relevant time frame of 2002 until 2012, and ongoing until the Agency ceases and desists from posting positions that are violative of my Award.

Exhibit B, p. 3. (Emphasis added).

To the extent any clarification was necessary, the Arbitrator plainly provided it in her First Summary, which became final and binding after thirty days passed without the Agency filing Exceptions. She reiterated that her ruling was based, in part, on the adverse inference that she had previously drawn against the Agency for failing to provide necessary documentation during the course of the Grievance filing. She also noted that the class of employees entitled to relief encompassed all bargaining unit employees who encumbered any positions in any of the job series referenced in the relevant hearing exhibits. It is undisputed that the GS-1101 series, the series at issue in the Exceptions, is one of the **many** series included in the referenced exhibits; as such, when the Arbitrator specifically referenced the GS-1101 series in her Second and Third Summaries, it was simply a clarification and reiteration of what had already been provided in the Remedial Award and First Summary and was therefore not a modification. See *Infra.*

III. The Second Summary.

On May 17, 2014, the Arbitrator issued her Second Summary of Implementation Meeting. **Exhibit C**. The Agency did not file exceptions to the Second Summary so it became final and binding thirty-days after service. **5 U.S.C. § 7122(b)**. In the Second Summary the Arbitrator reiterated her prior orders, stating:

> It became apparent through discussion that the witnesses who testified at the hearing were **in two job series, GS-1101 and GS-236. Employees encumbering those job series are clearly within the scope of the Award, although they comprise a small portion** of the job series covered by the Award, and therefore will serve as the basis for the next round of Grievants to be promoted with back pay and interest. A subset of the GS-1101 series is the PHRS (Public Housing Revitalization Specialist) job title. **Although the Award covers all GS-1101 employees who were not promoted to the GS-13 level (among others),** the PHRS group is discrete and therefore the Parties were directed to work through the GS-1101 series to identify all eligible class members in the PHRS position, and to work to have them retroactively promoted with back pay and interest, among other relief. The Parties were directed to then move on to the CIRS (Contract Industrial Relation Specialist) employees in the GS-246 series, **the other GS-1101 employees, and then others in other applicable job series, until implementation is complete.**

Exhibit C, p. 3 (Emphasis added).

The Agency has argued that the Third Summary is an impermissible modification because it appears that the Arbitrator is no longer requiring the Parties to "work through" the GS-1101 series to "identify all eligible class members;" but instead provided a blanket order to promote the GS-1101 employees. **Agency Response to Order to Show Cause, p. 4**. Such a contention is without merit. Despite the various Orders in this case the Parties are still required to "work through" and "identify all eligible class members" based on the lists and data provided. The Remedial Award and First Summary state clearly what the remedy is, and the Second Summary clarified and reiterated (again) that the **Remedial Award covers all GS-1101 employees who were not promoted to the GS-13 level** (among others). *Id.*

IV. The Third Summary.

On August 2, 2014, the Arbitrator issued her Third Summary of Implementation Meeting. **Exhibit D**. The instant Exceptions were filed in response to the Third Summary. The Third Summary contains no new requirements or modifications to the Remedial Award or prior Summaries. In the Third Summary the Arbitrator reiterated her prior orders, stating:

> As stated in prior Summaries, this Arbitrator has instructed the Parties to make substantial progress on identifying class members. The Parties were instructed that based upon this Arbitrator's award, as an example, all GS-1101 employees at the GS-12 level from 2002 to present were to be promoted, per the Back Pay Act and CBA, with backpay and interest, as of their earliest date of eligibility...
>
> ...Initially, the basics of a new Agency proposal were discussed, mostly by Mr. Fruge by phone. This Arbitrator noted that the Agency's new proposal, as described by Mr. Fruge, does not comport with the Award, prior Summaries or with this Arbitrator's prior instructions to the Parties. This Arbitrator further reminded the Agency that any use of location, vacancies or any other limiting factor would not comport with the Award...

Exhibit D, pp. 1-2.

The Agency filed Exceptions to the Third Summary because it alleged that the cited text contained impermissible modifications to the Remedial Award. However, as discussed in both the Order to Show Cause and *infra,* there is no modification, and to the extent that there was, the Exceptions would still be untimely.

Argument & Analysis

I. The Exceptions must be dismissed because no impermissible modification occurred.

The Agency relies on the doctrine of *functus officio* in support of its Exceptions that the Arbitrator exceeded her authority. However, that doctrine only applies in a situation where there

is an impermissible modification of an Award. Because no impermissible modification occurred, the Exceptions must be dismissed.

A. Applicable Legal Standard

Under the doctrine of *functus officio*, once an arbitrator resolves the matter submitted to arbitration, the arbitrator is generally without further authority. *U.S. Dep't of Transp., FAA, Nw. Mountain Region, Renton, Wash.*, 64 FLRA 823, 825 (2010). The doctrine of *functus officio* prevents arbitrators from reconsidering a final award. *See AFGE, Local 2172*, 57 FLRA 625, 627 (2001) (citing *Devine v. White*, 697 F.2d 421, 433 (D.C. Cir. 1983)). Consistent with this principle, the Authority has found that, unless an arbitrator has retained jurisdiction or received permission from the parties, the arbitrator exceeds his or her authority when reopening and reconsidering an original award that has become final and binding. *See U.S. Dep't of Justice, Fed. Bureau of Prisons, Fed. Corr. Complex, Coleman, Fla.*, 66 FLRA 300, 302 (2011) (citing *Overseas Fed'n of Teachers AFT, AFL-CIO*, 32 FLRA 410, 415 (1988)). In this case, it is undisputed that the Arbitrator has retained jurisdiction over implementation and that the Parties agreed to participate and attend implementation meetings without objection.

Furthermore, even if the Arbitrator had not specifically retained jurisdiction, or if the Parties had not agreed to participate in implementation meetings, the exception to the doctrine of *functus officio*, such as when an arbitrator merely clarifies an award, would be applicable. *AFGE, Local 400*, 50 FLRA 525, 526 (1995). The Authority has held that an arbitrator may clarify an ambiguous award even without a joint request from the parties, but the clarification must conform to the arbitrator's original award. *United States Dep't of the Army Corps of Eng 'rs, Northwestern Div. and Portland Dist.*, 60 FLRA 595, 596 (2005). Indeed, even if the Agency had not agreed to participate in implementation meetings or if the Arbitrator had not retained

jurisdiction, a supplemental award providing any necessary clarifications would still be permitted. Moreover, where an arbitrator expressly retains jurisdiction in the original award for purposes of resolving any dispute regarding interpretation or implementation, the arbitrator does not act improperly by issuing an award resolving any dispute over implementation of the original award. *See United States Dep't of the Air Force, Seymour Johnson Air Force Base, N.C.*, 56 FLRA 249, 253 (2000) (*Seymour Johnson AFB).*

The Authority has consistently held that an arbitrator may clarify an ambiguous award *if* the clarification conforms to the arbitrator's original findings. *See, e.g., United States Dep't of the Army, Army Info. Sys. Command, Savanna Army Depot*, 38 FLRA 1464, 1467 (1991). Only when an arbitrator in response to a clarification request modifies an award and the modification gives rise to the deficiencies alleged in the exceptions has the Authority held that the filing period for exceptions began with the arbitrator's response to the request for clarification. *U.S. Department of the Interior, Bureau of Land Management, Eugene District Office and National Federation of Federal Employees, Local 1911*, 6 FLRA 401, 403 n. 2 (1981). Here, the Third Summary does not modify the Remedial Award or the Second Summary, and as such the Exceptions must be dismissed.

B. The Third Summary did not modify the Remedial Award.

The Remedial Award defined the class as "All Bargaining Unit employees in a position in a career ladder (including at the journeyman level), where the career ladder lead to a lower journey man grade than the journeyman (target) grade of a career ladder of a position with the same job series..." **Exhibit A**. In the Third Summary, the Arbitrator reiterated: "[T]he Parties were instructed that based upon this Arbitrator's award, **as an example**, all GS-1101 employees at the GS-12 level from 2002 to present

were to be promoted, per the Back Pay Act and CBA, with backpay and interest, as of their earliest date of eligibility. . ." **Exhibit D**.

As noted by the Authority, there is nothing in the language of the Third Summary that permissibly or impermissibly modified the Remedial Award. **Order to Show Cause, p. 5.** "To the extent the Arbitrator cites one series of employees who are covered by the explicit terms of the Remedial Award, this appears to be a clarification – and not a modification – of the Remedial Award. " *Id.*

Indeed, based upon the Agency's failure to properly implement the Remedial Award, it is conceivable that the Arbitrator will have to clarify, and list with specificity, every single series of eligible employees in subsequent Summaries, despite the fact that the Arbitrator already identified many of the affected Job Series in her Remedial Award, by reference to Joint and Union Hearing Exhibits which referenced those Job Series. **Exhibit A.**

As noted, the Remedial Award defined the class as "All Bargaining Unit employees in a position in a career ladder (including at the journeyman level), where the career ladder lead to a lower journey man grade than the journeyman (target) grade of a career ladder of **a** position with the **same** job series..." **Exhibit A (emphasis added).** By stating a career ladder of "a" position with "the same" job series, instead of saying "a career ladder of the same position in the same job series," the Arbitrator clearly intended (and has now clarified) that she indeed intended to include in the affected class of employees all employees in every job series that was listed in the Exhibits referenced in her Remedial Award. It is no modification, therefore, to include all GS-1101 employees in the affected class, as the 1101 Series is indisputably one of the Job Series listed in those Exhibits.

Because there was no modification to the Remedial Award, the Agency's Exceptions are untimely and must be dismissed.

C. The Third Summary did not modify the Second Summary.

Assuming *arguendo*, that the Third Summary did modify the Remedial Award, the Exceptions would still be untimely. As noted, the Second Summary contained the explicit Order that all GS-1101 series employees were eligible for relief. **Exhibit C.** To the extent that Second Summary modified the Remedial Award (which it did not), the Agency's failure to file Exceptions after receipt of that **Second** Summary is fatal to their claim herein. **5 U.S.C. § 7122(b), 5 C.F.R. § 2425.2(b).**

In its response to the Order to Show Cause, the Agency argues that a modification was made in the Third Summary because the Arbitrator "no longer requires that the parties work through the GS-1101 to identify eligible class members." **Agency Response, p. 4.** Instead, the Agency argues that "Arbitrator McKissick establishes an absolute requirement that eligible class members are based solely upon encumbering a position in the GS-1101 series, and with no related requirement to identify eligible class members." *Id.* This argument is without merit and is not a fair interpretation of the Arbitrator's clarifying comments on the subject.

The Arbitrator defined the class in the Remedial Award. **Exhibit A, *supra*.** The Arbitrator reiterated her award in the First and Second Summaries. ***Supra.*** Specifically, in the Second Summary the Arbitrator noted that "[A]lthough the Award **covers all GS-1101 employees** who were not promoted to the GS-13 level (among others), the PHRS group is discrete and therefore the Parties were directed to work through the GS-1101 series to identify all eligible class members in the PHRS position, and to work to have them retroactively promoted with back pay and interest, among other relief. The Parties were directed to then move on to the

CIRS (Contract Industrial Relation Specialist) employees in the GS-246 series, the other GS-1101 employees, **and then others in other applicable job series**, until implementation is complete." **Exhibit C.** This language further supports the language in the First Summary in which the Arbitrator stated that "...**The eligible class members are easily identified by listings of employees who encumbered positions in Job Series identified in the Exhibits." Exhibit B (emphasis added).** Neither the First Summary nor the Second Summary were appealed and are final and binding upon the Parties.

The Arbitrator's Third Summary similarly states: "[T]he Parties were instructed that based upon this Arbitrator's award, as an example, all GS-1101 employees at the GS-12 level from 2002 to present were to be promoted, per the Back Pay Act and CBA, with backpay and interest, as of their earliest date of eligibility. . ." **Exhibit D.**

The "absolute requirement" alleged by the Agency in the Third Summary was already found in the Remedial Award, the First Summary and the Second Summary. To wit, when the Arbitrator required the Parties to "work through" the employees in the GS-1101 series, she was simply ensuring that the employee met the definition noted in the Remedial Award; specifically, that they met time-in-grade requirements and had satisfactory performance evaluations. **Exhibit A.** The Remedial Award contained that requirement, and that requirement is implicit in all subsequent Summaries. Indeed, the Union agrees that class members, to be promoted, must have met time-in-grade requirement and must have had satisfactory performance evaluations – that is the "working through" to which the Arbitrator refers.

The Order to promote all GS-1101 employees in the Third Summary did not modify the plain language of the Second Summary, which clearly stated that the Award covers all GS-1101

employees who were not promoted to the GS-13 level (among others). **Exhibit C**. Therefore, the Agency's Exceptions must be dismissed.

D. The Order restricting any "use of location, vacancies, or other limiting factors to identify grievants" is not a modification of the Remedial Award.

The Agency argues that the Third Summary modifies the Remedial Award because it redefines "the application of factors used to identify grievants eligible for the remedy of a retroactive promotion to the GS-13 level." **Exceptions, p. 9**. The Agency clarified in its Response to Order to Show Cause that the Arbitrator's Order that "any use of location, vacancies or any other limiting factor would not comport with the Award" was a modification of the Remedial Award and "expands the definition of the class of eligible employees." **Agency Response to Order to Show Cause, p. 6**.

The Arbitrator's Third Summary did not expand the Remedial Award which defines the class eligible for relief as: "[A]ll Bargaining unit employees **in a position in a career ladder** (including at the journeyman level), where that career ladder lead to a lower journeyman grade than the journeyman (target) grade **of a career ladder of a position with the same job series**, which was posted between 2002 and present. These include BUE's in positions referenced in Joint Exhibits 2, 3, 4, 7G and Union Exhibits 1 and 9." **Exhibit A.** The only reason the Arbitrator was forced to explain that the limitation should not occur was because the Agency was attempting to modify the Award on its own. The clarification in the Third Summary was provided to explain to the Agency that nothing in the class definition permitted it to modify the class and remove otherwise eligible claimants. That section of the Third Summary, therefore, was provided because despite being on repeated notice that the class was not to be modified, the Agency still continued its attempts to the contrary.

E. The data provided by the Agency reveals that there is at least one Project Manager Position that contains a GS-13 career ladder.

Though the argument is not relevant or valid based upon a plain reading of the Remedial Award, the Agency provided and relies upon an affidavit from Ms. Towanda Brooks to demonstrate that there is at least one position in the GS-1101 series that does not have a career ladder to the grade 13. **Exceptions, p.10.** Specifically, the Agency contends that the Arbitrator modified the Remedial Award when she ordered relief for all GS-1101 employees because:

> [A]t lease one position in the GS-1101 series, Project Manager, did not have a career ladder to the grade 13 for the remedy of a retroactive promotion from grade 12 to 13. Further, those employees encumbering positions at the GS-1101 series that did not have a career ladder to the GSS-13 such as the Project Manager could not meet the criteria outlined in the Opinion and Award to qualify as a grievant, even though the Implementation Summary states otherwise.

Exceptions, p. 10.

That argument is not relevant or valid because the class definition is clear that it can be any position within the same job Series, and there is no dispute that the GS-1101 Series contains GS-13 career ladder positions. However, even if that were not the case, the Argument still fails for two reasons: (a) the Arbitrator already noted in the First Summary that part of the reason for her Order was based upon the adverse inference that she found against the Agency and that the Agency cannot rely on vacancy announcements (**Exhibit B, *supra*)**; and (b), a review of the data (which is the very data the Union requested in 2002, and continuing, and was told did not exist anymore) plainly demonstrates that there **is at least** one Project Manager Position that does contain a GS-13 career ladder. **Exhibit E.** There is also a Senior Project Manager and numerous Housing Project Manager Positions that also contain a career ladder to the

GS-13. ***Id.*** The Agency has not identified any differences between these positions and the Project Manager position.

As such, it is clear the Remedial Award was not modified because the Agency has been unable to demonstrate that the GS-1101 Series does not contain a grade 13 career ladder, and there is even a grade 13 career ladder Project Manager Position. This evidence would make implementation of the Arbitrator's Order applicable to all incumbents, who otherwise meet the definitional requirements in the Order, of any Project Manager position, even if as the Agency argues there is one Project Manager Position that did not have a GS-13 career ladder.

CONCLUSION

The Agency's Exceptions were untimely. All three Summaries were consistent and permissibly clarified the Remedial Award. Indeed, the Arbitrator specifically noted that nothing in any of the Summaries should be construed as a modification of her Remedial Award. Moreover, the Third Summary did not modify the Second Summary, and even if the First or Second Summary had modified the Remedial Award, the Agency failed to file Exceptions to those Modifications. The Agency's Exceptions, therefore, must be dismissed.

Respectfully Submitted,

Michael J. Snider, Esq.
Jacob Y. Statman, Esq.
Snider & Associates, LLC
600 Reisterstown Rd., 7th Floor
Baltimore, Maryland 21208
Phone: (410) 653-9060
Fax: (410) 653-9061
Counsel for the Union

EXHIBITS:

A – Remedial Award

B – First Summary of Implementation Meeting

C - Second Summary of Implementation Meeting

D - Third Summary of Implementation Meeting

E – Affidavit of Hershel Goodwin (with attachment)

EXHIBIT
A

FEDERAL MEDIATION AND CONCILIATION SERVICE

In the Matter of Arbitration:	
U.S. DEPARTMENT of HOUSING and URBAN DEVELOPMENT	**Re: Fair and Equitable Remedy**
and	**FMCS No: 03-07743**
AMERICAN FEDERATION of GOVERNMENT EMPLOYEES, AFL-CIO	**Remanded from: 59 FLRA 630 65 FLRA 90**

Remanded for Remedy: Dr. Andrée Y. McKissick, **ARBITRATOR**

APPEARANCES:

For Management:
Norman Mesewicz, Deputy Director, LER
James Reynolds, Deputy Director
U.S. Dept. of Housing & Urban Development
451 7th Street, SW
Washington, D.C. 20410

For Union:
Michael Snider, Esquire
Jason I. Weisbrot, Esquire
Jacob Y. Statman, Esquire
Snider & Associates
104 Church Lane, Suite 100
Baltimore, MD 21208

Carolyn Federoff, Esquire, Former President
AFGE Council 222
108 Ashlaud Street
Melrose, MA 02176

DATE OF REMEDY ORDERED: **January 10, 2012**

RE: Article 23, Section 11 of the Agreement between U.S. Department of Housing and Urban Development and American Federation of Government Employees AFL-CIO, effective 1998-present. Exceptions: Where exception is taken to an arbitration award and the Federal Labor Relations Authority (FLRA) sets aside all or a portion of the award, the arbitrator shall have the jurisdiction to provide alternative relief, consistent with the FLRA decision. The arbitrator shall specifically retain jurisdiction where exceptions are taken and shall retain such jurisdiction until the exception is disposed.

PREFACE

Since a settlement was not reached by the parties, this Arbitrator is now formulating an alternative remedy as directed by 65 FLRA, No. 90, dated January 26, 2011.

ORDER

Having read and reviewed all prior submissions of the parties, and FLRA rulings, in light of this Arbitrator's prior findings and rulings, including that the Agency violated Article 4, Sections 4.01 and 4.06. These Grievants were unfairly treated and were unjustly discriminated against, that the Agency violated Article 9, Section 9.01, as classification standards were not fairly and equitably applied. The Agency also violated Article 13, Section 13.01, as it sought to hire external applicants, instead of promoting and facilitating the career development of internal employees, and that but for these violations. The Grievants would have been selected for currently existing career ladder positions with promotion potential to the GS-13 level (See Merits Award (MA) at 15). This Arbitrator finds that all of the below are appropriate remedies and that, if the FLRA finds that any are not appropriate, the next numbered remedy shall apply, and therefore this Arbitrator hereby ORDERS:

1. That the Agency process retroactive permanent selections of all affected BUE's into currently existing career ladder positions with promotion potential to the GS-13 level. Affected BUE's shall be processed into positions at the grade level which they held at the time of the violations noted in my prior findings, and (if they met

time-in-grade requirements and had satisfactory performance evaluations), shall be promoted to next career ladder grade(s) until the journeyman level. The Agency shall process such promotions within thirty (30) days, and calculate and pay affected employees all back pay and interest due since 2002.

2. In the alternative, and only in the event the FLRA vacates ORDER No. 1 above, and pursuant to my finding that "but for" the Agency's violations, the Grievants would have been selected for the subject vacancy for which they applied, this Arbitrator ORDERS that the Agency retroactively select the affected GS-12 employees into the subject vacant career ladder positions with retroactive grade increases. The Agency shall process such selections within thirty (30) days, and calculate and pay affected employees all back pay and interest due since 2002.

3. In the alternative, and only in the event the FLRA vacates ORDER No. 1 and 2 above, this Arbitrator hereby ORDERS that the violative Agency selections from 2002 to present be set aside, that the Agency provide each Grievant with one priority consideration and that the Agency must re-run all of the vacancies which were found to have been in violation of the CBA between 2002 and the present. The Agency should process such selections within sixty

(60) days, and calculate and pay affected employees all back pay and interest due since 2002.

4. In the alternative, and only in the event the FLRA vacates ORDER No. 1, 2 and 3 above, that the Agency retroactively place all affected BUE's into an unclassified position description identical to those of the newly hired current GS-13 employees, which accurately reflects their duties from 2002 to present, and then this Arbitrator ORDERS the Agency to classify and grade those PD's, retroactively placing the Grievants in them effective 2002, with back pay and interest.

The Agency is hereby ORDERED to stop advertising positions in a way that requires current employees to take downgrades in order to secure greater promotion potential. Such action was termed constructive demotion (See MA at 13 and 14). This portion of the Order does not apply to non-status vacancy announcements.

The Class of Grievants subject to the Remedy addressed herein is defined as follows: All Bargaining unit employees in a position in a career ladder (including at the journeyman level), where that career ladder lead to a lower journeyman grade than the journeyman (target) grade of a career ladder of a position with the same job series, which was posted between 2002 and present. These include BUE's in positions referenced in Joint Exhibits 2, 3, 4, 7G and Union Exhibits 1 and 9. Pursuant to Article 23, Section 11

of the Agreement, this Arbitrator hereby retains jurisdiction to provide alternative relief, in the event that any relief provided is found to be inconsistent with law or otherwise not available, and if this decision is set aside or in whole or in part on that basis.

This Arbitrator retains jurisdiction over an award of Attorney Fees upon petition by the Union, which shall be entertained within a reasonable time following receipt of this Award. The Agency shall have a reasonable opportunity to respond.

IT IS SO ORDERED

Date: January 10, 2012

ARBITRATOR

Cc: Michael J. Snider, Esq.
Jason I. Weisbrot, Esq.
Jacob Y. Statman, Esq.
Snider & Associates, LLC
Counsel for the Union

Norman Mesewicz, Deputy Director, LER
Counsel for the Agency

Carolyn Federoff, EVP
AFGW Council 222
Union Representative

C:\IUD vs AFGE 01-2012.doc

EXHIBIT
B

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

On February 4, 2014, this Arbitrator met with the Parties to discuss implementation of the January 10, 2012, Opinion and Award (the "Award") in the above captioned matter. Present for the Agency were: Tresa A. Rice, Esq., Javes Myung, Esq., Jim E. Fruge, and Kathryn Brantley. Present for the Union were Michael J. Snider, Esq., and Jacob Y. Statman, Esq. from Snider & Associates, LLC, and Carolyn Federoff, EVP, from AFGE Council of Locals, 222.

After this Award was issued, the Agency filed Exceptions, which were dismissed by the FLRA on August 8, 2012. The Award became final and binding on that date.

In the Award, this Arbitrator ordered:

> That the Agency process retroactive permanent selections of all affected BUE's into currently existing career ladder positions with promotion potential to GS-13 level. Affected BUE's shall be processed into positions at the grade level which they held at the time of the violations noted in my prior findings, and (if they met time-in-grade requirements and had satisfactory performance evaluations), shall be promoted to the next career ladder grade(s) until the journeyman level. The Agency shall process such promotions within thirty (30) days, and calculate and pay affected employees all back pay and interest due since 2002.

The Award further defined the class of Grievants subject to the Remedy as follows: All Bargaining Unit Employees in a position in a career ladder (including at the journeyman level), where the career ladder lead to a lower journeyman grade than the journeyman (target) grade of a career ladder of a position with the same job series, which was posted between 2002 and present.

These include BUE's in positions referenced in Joint Exhibits 2, 3, 4, 7G and Union Exhibits 1 and 9.

The purpose of the implementation meeting was to clarify the members of the class that was defined in this Arbitrator's January 10, 2012 Award. Nothing discussed or stated at the meeting should be construed as a new requirement or modification of the existing Award. Rather, the meeting and this summary were, to the extent necessary, intended solely to clarify with specificity which Bargaining Unit Employees are eligible class members.

The Agency has requested written clarification of this Award (including on August 7, 2013 and November 13, 2013). This Arbitrator indicated that no clarification was necessary as this Award was clear and unambiguous. More recently, however, the Agency has unilaterally determined, based on its own methodology, that there are a minimal number of class members which it was able to identify. The Union's methodology has identified thousands of potential class members through data provided by the Agency. Despite the clarity of this Award, the Agency has yet to timely implement the Award as ordered.

For example, in this Award, and as clarified in phone conferences with the Parties, all six Bargaining Unit Employees who testified at the hearing on behalf of the Union (also listed below) are eligible class members. The Agency was required to promote them with back pay and interest, which it failed to do. It was then ordered to promote them with back pay and interest by September 1, 2013, which it failed to do. As of today, the Agency "has reviewed the class of Grievants defined in the Opinion and Award and have determined that two [out of the six] employee witnesses are entitled to the back pay and interest payment." (Agency letter dated 12/18/13). The Agency has yet to implement the Award as ordered. This Arbitrator again reiterated at the implementation meeting what was clarified last summer: that based upon this Award as written, all six Union witnesses are eligible class members. This Arbitrator also notified the Agency that its methodology of determining the class members conflicts with the

specific findings in this Award, if the result of its own methodology revealed that only two out of six witnesses were eligible class members.

Moreover, the Parties are at an impasse regarding the appropriate methodology for identifying the class of employees eligible for back pay and promotions. Impasse in implementation is unnecessary because the Award is clear in its definition of the class. The Class definition is data driven, not announcement driven, as is clear from this Award and the Adverse Inference drawn due to the Agency's failure to produce data, as this Arbitrator explained to the Agency previously last spring and summer. The eligible class members are easily identified by listings of employees who encumbered positions in Job Series identified in the Exhibits as listed in the Award, during the relevant time frame of 2002 until 2012, and ongoing until the Agency ceases and desists from posting positions that are violative of this Arbitrator's Award.

Pursuant to the Union's December 13, 2012 data request, the Agency provided data to the Union on January 18, 2013 which listed all of the Bargaining Unit Employees that encumbered, per the definition of the Class set forth in the Award, the Job Series referenced in Joint Exhibits 2, 3, 4, & 7G and Union Exhibits 1 and 9.

The six Bargaining Unit employees who testified at the hearing, specifically: (1) Lynna Schonert, (2) Victoria Reese-Brown, (3) Melanie Hertel, (4) Julia A. McGuire, (5) Bonnie Lovorn, and (6) Marcia Randolph-Brown similarly fall within the class definition. As such all six are eligible Class Members. The Agency shall process retroactive promotions with back pay and interest, as previously ordered, within thirty (30) days from the date of this Summary.

The Agency shall communicate with the Union concerning the implementation of the previously ordered Remedy No. 1, as clarified in this Clarification. Copies of all forms (including SF-52 and SF-50), back pay and interest calculations, payment forms, forms showing

adjusted retirement annuities, etc., shall be provided to the Union in a prompt and timely manner. All forms and calculations for previous payments shall be provided to the Union as well.

The Union and Agency shall continue working to identify additional class members as set forth in this Arbitrator's Award and as stated in the meeting, and shall keep the Arbitrator informed of its progress. Another implementation meeting is scheduled to take place at the Agency on March 26, 2014, at 10:00 AM. This Arbitrator expects the Parties to meet in person and/or by phone to work on the identification of additional class members and to submit methodologies for doing so at our March 2014 meeting.

This Arbitrator continues to retain jurisdiction over this matter for all matters relating to implementation as well as an award of attorney fees, costs and expenses.

Dr. André Y. McKissick, Esq.
Arbitrator

3-14-2014
Date

EXHIBIT
C

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 March 26, 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 Agency were: Tresa A. Rice, Esq., Javes Myung, Esq., Jim E. Fruge (by phone), and Kathryn Brantley (by phone). Present for the Union were Michael J. Snider, Esq. from Snider & Associates, LLC, and Carolyn Federoff, EVP, from AFGE Council of Locals, 222 (by phone).

As set forth in this Arbitrator's Summary of the Implementation Meeting held February 4, the Agency was to accomplish the following:

1. Process retroactive promotions with back pay and interest for all six witnesses within thirty (30) days from the date of the Summary (March 14, 2014);
2. Communicate with the Union promptly concerning implementation of back pay and interest for all six witnesses, including providing copies of all forms, back pay and interest calculations, payment forms, forms showing adjusted retirement annuities, etc.
3. Meet with the Union to identify additional class members as set forth in the Award and to submit methodologies for doing so at the March 26, 2014 Implementation Meeting.

During our prior meeting, this Arbitrator noted that the Agency's methodology of identifying class members entitled to relief under the Award was inadequate. Thus, this

Arbitrator directed the Parties to meet and agree on a methodology, or to present alternative methodologies at our March 26, 2014 meeting.

During our prior meeting, this Arbitrator noted that the Agency had omitted to promote the six witnesses who testified at the hearing, with back pay and interest. Upon explaining that the Agency was incorrect with its interpretation, and once that was clarified, the Agency replied that it would promote those individuals with back pay and interest. As of our meeting on March 26, 2014, the Agency had not yet completed the process of retroactively promoting four out of the six witnesses, had not paid those four any back pay and had not paid any of the witnesses their full back pay and interest.

Although the Agency has not paid any of these six witnesses in full, it has consistently advised that it has a pending request for the authorization to transfer funds that is subject to OMB (Office of Management and Budget) approval. The Agency also advised that this position is based upon guidance received from officials in the Agency's Office of Chief Financial Officer (OCFO), who are responsible for ensuring the fiscal responsibility of the Agency and its individual program offices.

Specifically, the Agency's OCFO has identified deficiencies in prior year funds for the Office of Public and Indian Housing, which is the program office primarily responsible for effectuating back pay and retroactive promotion actions for the witnesses. The Agency has further advised that OCFO staff continue to engage with OMB on fulfilling the Department of Housing and Urban Development's (HUD) request to transfer the funds necessary to fully compensate the witnesses.

The Agency has since indicated that it had begun the process of initiating payment to the four remaining witnesses. The Agency has further indicated that its payroll and personnel staff have a review process consistent with all cases in which it must implement for back pay and retroactive actions. Consistent with its established office practice, payroll and personnel staff are

currently employing its standard protocols and procedures in fulfilling back pay and retroactive promotion actions for the witnesses.

Additionally, the Agency has not yet provided the Union with any of the forms, calculations, or other evidence of retroactive promotion or calculation and payment of back pay for the witnesses.

The six Bargaining Unit employees who testified at the hearing, specifically: (1) Lynna Schonert, (2) Victoria Reese-Brown, (3) Melanie Hertel, (4) Julia A. McGuire, (5) Bonnie Lovorn, and (6) Marcia Randolph-Brown all fall within the class definition. As such all six are eligible Class Members. The Agency has not paid any of these six witnesses in full, nor has it stated that it intends to, short of OMB approval. This is not in compliance with this Arbitrator's Award, or the Summary of the February 4, 2014, Implementation Meeting.

The Agency has since indicated that it had begun the process of initiating payment to the four remaining witnesses, but that the process was complicated, protracted and that none of the six witnesses would be paid in full by April 14, 2014, due to alleged deficiencies in prior year funds.

The Agency is directed to provide to the Arbitrator and Union copies of all communications with OMB. If the Agency believes that any of its communications with OMB are privileged or otherwise not releasable to the Union, it shall provide them to the Arbitrator for *in camera* review, and the Arbitrator will decide whether they should be released. In either case, the Agency shall provide the Union with a summary of the general information contained in the communications. The Agency shall provide to the Union and Arbitrator copies of all policies, laws, rules and regulations relied upon to not pay the witnesses until OMB provides approval. All of the items in this paragraph shall be accomplished within two weeks of the date of this Summary.

In our prior Meeting and Summary, it was made clear that the Agency was to meet with the Union to identify additional class members as set forth in the Award and jointly to submit methodologies for doing so at the March 26, 2014 Implementation Meeting. The Parties informed this Arbitrator that they met on March 13, 2014, and that the Union asked the Agency if it agreed with the Union's list of class members; if not, the Union asked the Agency for suggestions of alternative methodologies to identify class members.

The Agency confirmed at the March 26, 2014, Implementation Meeting that it does not agree with the Union's list of class members, arguing that the scope of the data exceeds the claims period. The Agency agreed, however, that it is at fault for failing to provide the Union with data confined to the claims period. The Agency also confirmed that it has not yet developed or presented for the Union's consideration an alternative methodology for identifying class members.

In the prior Summary this Arbitrator noted that the Agency had unilaterally determined, based upon its own methodology, that there are a minimal number of class members which it was able to identify, including only two of the six witnesses. As set forth in the prior Summary, any methodology that failed to identify each of the six witnesses as class members is by definition flawed. The Agency insists that it is unclear of this Arbitrator's Award and thus prefers to interpret the Award narrowly. However, the Agency was informed that while it may disagree with this Award, it must nevertheless implement the Award as written – not as the Agency unilaterally interprets it. It was explained again that this Arbitrator intends for this Award to be interpreted broadly, so as to apply to the largest class of Grievants possible.

Coming up with a satisfactory methodology should not be difficult. Impasse in implementation should be unnecessary because the Award is clear in its definition of the class. The Class definition is data driven, not vacancy announcement driven, as is clear from the Award and the Adverse Inference drawn due to the Agency's failure to produce evidence, as

previously mentioned last spring and summer and in the prior Summary. The eligible class members are easily identified by listings of employees who encumbered positions in Job Series identified in the Exhibits as listed in the Award, during the relevant time frame of 2002 until 2012, and ongoing until the Agency ceases and desists from posting positions that are violative of this Arbitrator's Award.

As discussed at the March 26, 2014, meeting, the appropriate portion of the eligible class of Grievants would be the easiest to identify, so as to begin implementation of the Award with undisputed class members. It became apparent through discussion that the witnesses who testified at the hearing were in two job series, GS-1101 and GS-236. Employees encumbering those job series are clearly within the scope of the Award, although they comprise a small portion of the job series covered by the Award, and therefore will serve as the basis for the next round of Grievants to be promoted with back pay and interest. A subset of the GS-1101 series is the PHRS (Public Housing Revitalization Specialist) job title. Although the Award covers all GS-1101 employees who were not promoted to the GS-13 level (among others), the PHRS group is discrete and therefore the Parties were directed to work through the GS-1101 series to identify all eligible class members in the PHRS position, and to work to have them retroactively promoted with back pay and interest, among other relief. The Parties were directed to then move on to the CIRS (Contract Industrial Relation Specialist) employees in the GS-246 series, the other GS-1101 employees, and then others in other applicable job series, until implementation is complete.

The Union requested quarterly Bargaining Unit Lists in December 2012, to assist in implementation of the Award. The Agency represents that it cannot produce quarterly Bargaining Unit Lists but that it can and will produce annual Bargaining Unit lists on a Fiscal Year basis in electronic format. The Agency was and is directed to provide the Union with annual Bargaining Unit Lists in electronic format within two weeks of the date of this Summary,

as well as a current Bargaining Unit List, and shall appoint a Point of Contract in its IT department to work with a Union appointee to work on a method of providing the Union with the data that it requested in the form of quarterly Bargaining Unit Lists, in order to identify class members and their eligibility with particularity. The Point of Contact (POC) shall be identified within two weeks of the date of this Summary.

At the March 26, 2014 meeting, the Agency, for the first time, presented a statement that it believed that the retroactive promotions and back pay should only be processed retroactively from November 2002. This was not agreed to by the Union and this Arbitrator did not approve of this at any time. The Union proposed either August or September 2002 as a retroactive promotion/payment date. The Parties are directed to discuss the back pay/retroactive promotion date together and to either come to an agreement or to submit the matter to this Arbitrator for a decision.

As previously ordered, the Agency is required to communicate with the Union concerning the implementation of the previously ordered Remedy No. 1, as clarified in this Clarification. Copies of all forms (including SF-52 and SF-50), back pay and interest calculations, payment forms, forms showing adjusted retirement annuities, etc., shall be provided to the Union in a prompt and timely manner. All forms and calculations for previous payments shall be provided to the Union as well.

In light of the failure to come up with any alternative methodology to that of the Union for identifying class members, despite this Arbitrator's instructions to do so, the Agency was instructed that the Award is to be construed broadly and to implement it in that manner. While the Award covers all GS-1101 employees who were not promoted to the GS-13 level in 2002 (among others), the PHRS group is discrete and should be easily identified. Therefore the Parties were directed to work through the GS-1101 series, beginning with the PHRS employees, to identify all employees and to work to have them retroactively promoted with back pay and

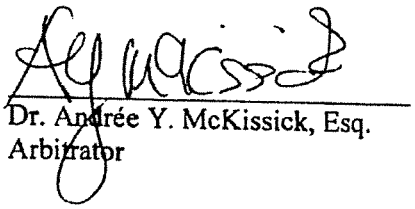
interest, among other relief. The Parties were directed to then move on to the other GS-1101 employees and the CIRS (Contract Industrial Relation Specialist) employees in the GS-246 series, and then others in that series, and then others in other applicable job series, until implementation is complete.

The Union and Agency shall continue working to identify additional class members as set forth in the Award and as stated in the meeting, and shall keep the Arbitrator informed of is progress.

The Parties are to meet in person or by phone no less than two times prior to our next meeting, which will be on June 12, 2014. The Parties are to keep this Arbitrator apprised of progress and any impasses. This Arbitrator expects the Parties to make substantial progress on their own; so that we see concrete progress by the time we meet again in July 2014.

The purpose of these meetings is to monitor implementation of the January 10, 2012 Award. Nothing discussed or stated at the meeting should be construed as a new requirement or modification of the existing Award.

This Arbitrator continues to retain jurisdiction over this matter for all matters relating to implementation as well as an award of attorney fees, costs and expenses.



Dr. Andrée Y. McKissick, Esq.
Arbitrator

May 17, 2014

EXHIBIT
D

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 June 12, 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 Agency were: Tresa A. Rice, Esq., Javes Myung, Esq., Jim E. Fruge by phone, and Mike Anderson. Present for the Union were Michael J. Snider, Esq. and Jacob Y. Statman, Esq., from Snider & Associates, LLC, and Carolyn Federoff, EVP, from AFGE Council of Locals, 222. This is the third Summary of Implementation Meeting, the first two having been issued on March 14, 2014, and May 17, 2014, respectively. Both prior Summaries are hereby incorporated by reference and remain in full force and effect.

As stated in prior Summaries, this Arbitrator has instructed the Parties to make substantial progress on identifying class members. The Parties were instructed that based upon this Arbitrator's Award, as an example, all GS-1101 employees at the GS-12 level from 2002 to present were to be promoted, per the Back Pay Act and CBA, with back pay and interest, as of their earliest date of eligibility. As a simple subset that should be easily identifiable, this Arbitrator instructed the Parties to identify all PHRS employees, who would comprise the first set of class members. The Union stated that it provided its list of PHRS class members to the Agency in early May 2014. It requested feedback from the Agency, in compliance with this Arbitrator's Summary, on multiple occasions. The Agency did not and has not disagreed with the Union's PHRS class member listing,

nor has it proposed an alternative methodology of identifying those class members. Consistent with the Award, this Arbitrator expects the Parties to work together to compile a list of PHRS employees from the annual employee listings provided by the Agency so that concrete progress could be achieved by the next implementation meeting. As noted on prior occasions, this Award is to be interpreted broadly so as to include the maximum amount of class members as possible.

Despite these factors, and the untimeliness of the Agency's request, the Agency has requested yet another thirty (30) days to provide a response to the Union's lists of eligible employees that encumbered PHRS and CIRS positions, including explanation as to how it constructed the list(s) and if applicable, why it disagrees with the Union's list(s) and the Union's methodology, which this Arbitrator approved and discussed in the prior Summary. Initially, the basics of a new Agency proposal were discussed, mostly by Mr. Fruge by phone. This Arbitrator noted that the Agency's new proposal, as described by Mr. Fruge, does not comport with the Award, prior Summaries or with this Arbitrator's prior instructions to the Parties.

This Arbitrator further reminded the Agency that any use of location, vacancies or any other limiting factor would not comport with the Award. This Arbitrator did allow the Agency one last opportunity to compile a list of PHRS and CIRS employees who should be promoted with back pay, and permitted that the Agency be provided thirty (30) days from the date of the June 12, 2014 meeting to present their PHRS and CIRS lists. This Arbitrator's Award, which is final, must be fully followed. It is expected that the Award is to be implemented by the Agency as written, and as clarified through the meetings and subsequent Summaries. The Parties shall discuss the Union and Agency PHRS and CIRS lists, if they differ. After discussion of the lists, the Parties will present to this Arbitrator a Stipulation signed by the Parties to be submitted to the Arbitrator after they meet. The Stipulation should list all eligible PHRS and CIRS employees, the amount of back pay and interest due each, and a date by which the retroactive promotions, recalculated

retirement annuities (as applicable), back pay and interest will be paid to each. Any disagreement between the Parties shall be submitted to this Arbitrator in writing for consideration.

The Union noted during the meeting that it was not receiving advance information prior to monies being disbursed to its Bargaining Unit Members, and the problems arising therefrom. This Arbitrator ordered the Agency that at least one week prior to the issuance of any monies to affected class members that the Agency shall provide the Union with the details of who is being paid, for what time period, the gross payment, and all applicable deductions and withholdings.

Contrary to this Arbitrator's prior orders, the Union further noted during the meeting that the Agency was not providing the Union with SF-50s, worksheets, or a list of the deductions or withholdings that were being taken out of payments to class members. Thus, this Arbitrator ordered that within two weeks from the meeting, the Agency is to inform the Arbitrator and Union as to the internal controls that have been put into place to ensure that the Union receives timely notifications of all payments made including all applicable and necessary withholding details. Moreover, within two weeks from the meeting, the Agency will inform the Arbitrator and Union about: (1) whether income tax has been taken out of retirees' payments; (2) whether retirement and/or TSP contributions have been deducted from the payments to current employees; (3) whether the Agency has paid its portion of any retirement and/or TSP payments to current employees; and (4) how interest is being calculated.

At the meeting the Union inquired about the status of the FY-2011 payments that, to date, have not been paid. This Arbitrator ordered, based upon the Agency's own timeline, that no later than the week of June 23, 2014, the Agency will inform the Arbitrator and the Union of the Status of the FY-2011 payments to the already eligible class members.

Despite this Arbitrator's prior Orders, the Agency has not responded to the Union's request to reach an agreement on a proposed earliest back pay date. As such, within two weeks from the

meeting, the Union and Agency will reach an agreement on the earliest back pay date, or will submit the matter to the Arbitrator for a decision.

At the meeting, the Union raised the concern that back pay calculations were not being conducted prior to the issuance of the SF-50, which could lead to math and payment errors not being caught until after payments had already been made. This Arbitrator ordered the Agency to remedy this problem by running all calculations and then meeting with the Union.

In May 2014, the Union filed a Request for Information pursuant to 5 U.S.C. § 7114(b). The Union noted that it had not yet received a satisfactory response to Request No. 1, which requested the contact information for all potential class members. This Arbitrator ordered that within three weeks from the meeting, the Agency was required to provide the Union with an acceptable database or list of the contact information for all possible class members.

The Agency is reminded that it continues to be in violation of the prior Orders requiring that all six witnesses receive retroactive promotions and all back pay, interest and emoluments. The Agency also continues to be in violation of the Orders to submit all documentation pertaining to the retroactive promotions and payments, including but not limited to: copies of all forms, back pay and interest calculations, payment forms, forms showing adjusted retirement annuities, etc. These Orders are hereby extended to the additional eleven (11) employees that the Agency previously identified as eligible class members. Those eleven (11) employees are: (1) Brenda Crispino (Retired), (2) Steven Di Pietro, (3) Santo Duca, (4) Leroy Ferguson, (5) Gilbert Galinato, (6) James House, (7) Kaeron Masters-High (Retired), (8) Tammie Simmons, (9) Anne Trumbla, (10) Gwen White (Retired), and (11) Edward Williams, Jr. This Arbitrator expects to see substantial, concrete progress towards promotions, back pay and interest payments and recalculation of annuities for these employees in an expeditious matter, and full communication between the Parties during the calculations period and prior to communications with and payment to the employees.

The Union and Agency shall continue working to identify additional class members as set forth in the Award and as stated in the meeting, and shall keep the Arbitrator informed of their progress.

The Parties are to meet in person or by phone no less than two times prior to the next meeting, which will be on August 28, 2014, beginning at 10:00 AM. The Parties are to keep the Arbitrator apprised of progress and any impasses. It is expected that the Parties make substantial progress on their own so that concrete progress can be achieved by the time of the August 28, 2014 meeting.

The purpose of these meetings is to monitor implementation of this Arbitrator's 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.

This Arbitrator shall continue to retain jurisdiction over this matter for all matters relating to implementation as well as an award of attorney fees, costs and expenses.

Dr. Andree Y. McKissick, Esq.
Arbitrator

August 2, 2014

FMCS - Implementation Meeting(HUD) August 2014.docx

EXHIBIT
E

AFFIDAVIT OF HERSHEL GOODWIN

I, Hershel Goodwin, being over the age of eighteen and competent to provide testimony hereby affirm as follows:

1. I am a Paralegal and the head of Information Technology at Snider & Associates, LLC.
2. I am familiar with the Fair and Equitable Grievance against the U.S. Department of Housing and Urban Development.
3. Upon information and belief, as part of the implementation process in this case, the Union has served the Agency with multiple Requests for Information pursuant to 5 U.S.C. §7114(b).
4. Amongst the requests, was a request for the vacancy announcement data that the Agency purported to have recently found. Upon information and belief, this was the data that had been requested since 2002, that the Agency had previously informed the Union could not be obtained.
5. A review of the Agency provided data demonstrates that there is a Project Manager Position that contains a GS-13 career ladder.
6. There are other numerous Housing Project Manager positions that also contain a career ladder to the GS-13 level.
7. An un-altered printout of the data provided, filtered to include Housing Project Manager, Senior Project Manager, and Project Manager positions containing a GS-13 career ladder is attached hereto.

I hereby affirm that the foregoing is true and correct to the best of my knowledge and belief.

Hershel Goodwin — 10 Nov 2014

Hershel Goodwin Date

		Year		Closing Date	Title	Prog	Locatio	Grades Adv	Career Ladder FPL		
RE	DEU	2002	0004z	12/27/2001	HOUSING PROJECT MANAGER	HSNG	HQ	12/13	13		
RE	MSH	2002	0022z	12/27/2001	HOUSING PROJECT MANAGER	HSNG	HQ	12/13	13		
RE	DEU	2002	0007Az	1/18/2002	HOUSING PROJECT MANAGER	HSNG	HQ	12/13	13		
RE	MSH	2002	0028Az	1/18/2002	HOUSING PROJECT MANAGER	HSNG	HQ	12/13	13		
RE	MSH	2002	0033z	2/22/2002	HOUSING PROJECT MANAGER	HSNG	HQ	12/13	13		
RE	MSH	2002	0050z	2/22/2002	HOUSING PROJECT MANAGER	HSNG	HQ	11/12/13	13		
RE	MSH	2002	0077z	3/29/2002	HOUSING PROJECT MANAGER	HSNG	HQ	12/13	13		
RE	MSH	2002	0147z	7/9/2002	HOUSING PROJECT MANAGER	HSNG	HQ	12/13	13		
RE	DEU	2002	0063z	8/2/2002	HOUSING PROJECT MANAGER	HSNG	HQ	11/12/13	13		
RE	MSH	2002	0183z	8/2/2002	HOUSING PROJECT MANAGER	HSNG	HQ	11/12/13	13		
RE	DEU	2002	0076z	8/15/2002	HOUSING PROJECT MANAGER	HSNG	HQ	12/13	13		
RE	MSH	2002	0202z	8/15/2002	HOUSING PROJECT MANAGER	HSNG	HQ	12/13	13		
RE	DEU	2002	0075z	8/19/2002	HOUSING PROJECT MANAGER	HSNG	HQ	12/13	13		
RE	DEU	2002	0090z	8/19/2002	HOUSING PROJECT MANAGER	HSNG	HQ	12/13	13		
RE	MSH	2002	0200z	8/19/2002	HOUSING PROJECT MANAGER	HSNG	HQ	12/13	13		
RE	MSH	2002	0203z	8/19/2002	HOUSING PROJECT MANAGER	HSNG	HQ	12/13	13		
RE	DEU	2002	0116z	8/26/2002	HOUSING PROJECT MANAGER	HSNG	HQ	13/14	14		
RE	MSH	2002	0239z	8/26/2002	HOUSING PROJECT MANAGER	HSNG	HQ	13/14	14		
RE	DEU	2002	0115z	8/26/2002	HOUSING PROJECT MANAGER	HSNG	HQ	11/12/13	13		
RE	MSH	2002	0238z	8/26/2002	HOUSING PROJECT MANAGER	HSNG	HQ	11/12/13	13		
RE	DEU	2002	0139z	9/6/2002	HOUSING PROJECT MANAGER	HSNG	HQ	13/14	14		
RE	MSH	2002	0262z	9/6/2002	HOUSING PROJECT MANAGER	HSNG	HQ	13/14	14		
RE	MSH	2003	0066z	3/24/2003	HOUSING PROJECT MANAGER	HSNG	HQ	12/13	13		
RE	DEU	2003	0035z	3/24/2003	HOUSING PROJECT MANAGER	HSNG	HQ	12/13	13		
RE	MSH	2003	0112z	5/23/2003	HOUSING PROJECT MANAGER	HSNG	HQ	12/13	13		
RE	MSH	2003	0155z	8/25/2003	HOUSING PROJECT MANAGER	HSNG	Field	12/13	13		
9	MSA	2004	0040z	3/17/2004	Senior Project Manager	HSNG	Field	12/13	13		
RE	MSH	2004	0111z	4/16/2004	PROJECT MANAGER (NEIGHBORHOOD NETWORKS)	HSNG	HQ	12/13	13		
RE	MSH	2004	0215z	4/30/2004	HOUSING PROJECT MANAGER	HSNG	HQ	12/13	13		
RE	MSH	2006	0320z	8/30/2006	HOUSING PROJECT MANAGER	HSG	Wash	13/14	14	No	FPL 14
RE	DEU	2006	0196z	8/30/2006	HOUSING PROJECT MANAGER	HSG	Wash	13/14	14	No	FPL 14
RE	DEU	2008	0028z	1/9/2008	Management Analyst (Project	FHEO	Wash	13/14	14		