

**BEFORE
SEAN J. ROGERS
ARBITRATOR**

In the Matter of Arbitration between:

**AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
COUNCIL 222, AFL-CIO**

Union

and

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

Agency.

FLSA Exemption of GS-360 (Grade 11, 12, 13,
14 and 15) Equal Opportunity Specialist

**DECISION AND ORDER
ON UNION'S REQUEST FOR REPLY BRIEF
TO AGENCY' OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT**

APPEARANCES:

On behalf of the American Federation of Government Employees, Council 222:

Michael J. Snider, Esq., Snider & Associates, LLC – *representing the Union and the Grievants.*

Carolyn Federoff, Esq., President, AFGE Council 222 – *representing the Union and the Grievants.*

On behalf of the Department of Housing and Urban Development:

Norman Mesewicz, Esq., Deputy Director of Labor Relations – *representing the Agency.*

I. PROCEDURAL BACKGROUND

On November 3, 2005 during the merits hearing in the above-captioned matter, the American Federation of Government Employees, Council 222, AFL-CIO (AFGE or Union) filed a Motion for Summary Judgment (Motion) at the conclusion of its case-in-chief.

(Transcript (Tr) 165). On November 4, 2005, the parties' counsels presented oral arguments on the Motion. (Tr 7-31). The Arbitrator denied the Union's Motion without prejudice. The Arbitrator stated that the Union was free present its Motion at the conclusion of the Department of Housing and Urban Development's (Agency or HUD) case or with the Union's post-hearing brief. (Tr 31-34).

On November 13, 2005, the Union renewed and amended its Motion. The Union's amended Motion expands its November 3, 2005 Motion to include a Motion of Summary Judgment as regards all remaining classes of Agency-exempt bargaining unit employees under the Fair Labor Standards Act (FLSA).

On January 9, 2005 pursuant to the parties' agreement, HUD filed an Opposition to the Union's amended-expanded Motion.

On January 11, 2006, the Union requested leave to file a reply brief to HUD's Opposition to the amended-expanded Motion.

On January 12, 2006, HUD filed an opposition to the Union's request to file a reply brief to HUD's Opposition to the Motion.

II. THE UNION'S REQUEST FOR LEAVE TO RESPOND TO HUD'S OPPOSITION TO THE MOTION

HUD asserts a number of grounds in opposition to the Union's request to respond to the Agency Opposition to the Motion. HUD argues that the union, the Agency and the Arbitrator knew the Union would refile the Motion, yet the Union never raised or discussed a reply brief. HUD argues that all issues raised in the Motion have been or should have been fully argued, and there is no justification for further submissions. HUD argues that to prolong argument on the Motion would not promote arbitral economy, but would needlessly waste the parties' resources on redundant efforts. HUD argues that AFGE did not discuss its request to file a reply brief with the Agency before making the request to the Arbitrator. For these reasons, HUD requests that the Arbitrator deny the Union request to file a reply brief to HUD's Opposition to the Motion.

III. THE UNION'S MOTIONS AND REQUEST TO FILE A REPLY BRIEF

The Union's November 3, 2005 Motion and its November 13, 2005 renewed, amended and expanded Motion are substantive, comprehensive motions supported by argument and case cites. HUD's Opposition responds to the Union's Motion substantively and comprehensively. The record establishes that the parties' counsels did not discuss further submissions at hearing or during post-hearing conference calls and e-mail exchanges which included the Arbitrator.

Based on the parties' counsels agreement, post-hearing briefs are due January 31, 2006. The Union and HUD are not limited as regards any arguments each may choose

to present in their post-hearing briefs.

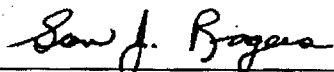
For these reasons, the Arbitrator finds that the parties' counsels did not agree to further submissions and none is needed by the Arbitrator to complete the record on the Motion and Opposition. However, the Arbitrator will not rule on the Motion until the parties briefs are received and reviewed as part of the Award.

V. DECISION AND ORDER

The Union's request for leave to file a reply brief to HUD's Opposition to the Motion is denied.

ORDER:

1. The Union's January 11, 2006 request for leave to file a reply brief to HUD's Opposition to the Motion is denied.
2. The Union's Motion to Dismiss and HUD's Opposition thereto will be considered with the merits of the grievance.



Sean J. Rogers, Esq.
Alexandria, Virginia
January 13, 2006