

**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.*

**DECISION AND ORDER  
ON  
UNION'S MOTION FOR JOINDER OF CLAIMS  
OF GS-950 AND GS-904 JOB SERIES**

**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.*

**On behalf of the Department of Housing and Urban Development:**

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

**I. PROCEDURAL BACKGROUND**

On February 9, 2006, based on a request by the American Federation of Government Employees, Council 222, AFL-CIO (AFGE), the Arbitrator requested that the Department of Housing and Urban Development (HUD) (collectively, the Parties) state its position on the joinder of the Fair Labor Standards Act (FLSA) claims of GS-904 employees with the claims of GS-950 employees at the next arbitration hearing set for

March 6 through 10, 2006.<sup>1</sup> On February 9, 2006, the Arbitrator advised the parties' counsels as follows:

[a]bsent HUD's agreement on joinder today, I will accept a motion for joinder from AFGE. I will allow HUD to reply to the motion and then rule on it.

On February 9, 2006, HUD responded:

[a]t this time, the agency cannot agree to a joinder of the GS-904s with the . . . GS-950s.

On February 9, 2006, AFGE moved as follows:

The Union moves for joinder of the GS-950-11/12 Paralegals and GS-904-11 Law Clerk series for hearing. The positions are similar enough in grade, duties and scope to warrant joinder and the Agency has not provided a good reason to not join them. Further, it is in the spirit of the agreements and prior practice to join job series together, and it is in the nature of judicial economy to join them as well.

On February 15, 2006, HUD responded:

The Agency opposes the joinder of the 904 series with the 950 series for the purposes of an arbitration. From a purely analytical standpoint, and contrary to the union's assertion, the positions are not similar enough in grade, series and scope to support that action. In this regard, it must be noted that the 904 series is for law school graduates who have not yet become members of the bar yet perform lawlery tasks. In contrast, the 950 series is for Paralegals who neither need to attend law school nor pass a bar examination. Paralegals perform legal support tasks. Thus, the two series exist for completely separate and distinct functions, and, accordingly, are not similar in "scope". Law Clerk positions lead to attorney positions. Paralegal positions do not have such promotion potential. Because of this, there is no basis to warrant their joinder in this case. Moreover, the union provided no authority for its assertion that it is in the spirit of the agreements and past practice to join job series together. In fact, there is no such past practice in this case. Neither was there ever an agreement to join job series. Judicial economy is simply not an issue, but economy of agency operations is. To join the series would impose an unnecessary burden of preparation.

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<sup>1</sup> The communications among the parties' counsels and the Arbitrator were by electronic mail (e-mail).

## II. APPLICABLE STATUTORY AND COLLECTIVE BARGAINING AGREEMENT PROVISIONS

The provisions of 5 USC § 7121(b) state, in pertinent part:

Any negotiated grievance procedure . . . shall –  
    (1) be fair and simple,  
    (2) provide for expeditious processing, and  
    (3) include procedures that –

\* \* \*

(C) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

*The Agreement between U.S. Department of Housing and Urban Development and American Federation of Government Employees, AFL-CIO (Agreement)* states, in pertinent part:

**Section 23.05 – Arrangements.** Upon selection of an arbitrator in a particular case, the respective representatives shall communicate with the arbitrator and each other in order to finalize arrangements. No ex parte communications shall be permitted on the merits of the case, but both parties may discuss procedural arrangements as necessary. Any disputes on procedures shall be settled by the arbitrator consistent with this Agreement.

## III. DECISION AND ORDER

The record establishes that on June 18, 2003, pursuant to Agreement Section 22.15, AFGE filed a Grievance of the Parties (GoP) challenging HUD's alleged pattern and practice of directing bargaining unit employees to travel during non-duty hours without compensation. Further, the record establishes that on December 24, 2003, AFGE filed a second GoP on behalf of all bargaining unit employees claiming that HUD failed to properly classify the bargaining unit employees under FLSA overtime provisions, and failed to properly and fully compensate these employees for overtime work. The Parties agreed to combine the grievances. The grievances were not resolved under the Parties grievance procedure and AFGE invoked arbitration.

As the result of the arbitration process, the Parties settled AFGE claims concerning the FLSA status of Grade-10 and below employees. On October 3 and 4, 2005, the Parties participated in a hearing to resolve the issue of the FLSA status of GS-318 and GS-360 employees. The Parties briefs on this issue are due February 16, 2006.

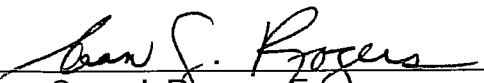
In furtherance of the resolution of the grievances at arbitration, the Parties have agreed to a hearing on AFGE's claims concerning GS-950 employees from March 6 through 10, 2006. The Arbitrator understands approximately 110 employees encumber GS-950 positions and approximately 30 employees encumber GS-904 positions.<sup>2</sup> AFGE has moved to join the employees' claims in the two job series. HUD opposes the joinder of claims for the reasons stated above.

The Arbitrator also understands that AFGE's GoP may encompass more than 6,000 bargaining unit employees. In this light, the joinder of GS-904 claims with GS-950 claims is in the interest of arbitral economy. HUD's assertions that "the positions are not similar enough in grade, series and scope to support" joinder is out weighed by the statutory requirement at 5 USC § 7121(b) that the Parties' grievance procedure "be fair and simple, . . . [and] provide for expeditious processing." For these reasons and based on the Arbitrator's power at Agreement Section 23.05, the Arbitrator finds AFGE's motion for joinder of the FLSA claims of GS-950 employees with the FLSA claims of GS-904 employees is: a reasonable procedural arrangement; consistent with Agreement Sections 22.15 and 22.16; and consistent with 5 USC § 7121(b), as well.

Based on the record developed by the parties and for the reasons discussed above, the Union's *Motion for Joinder of Claims of GS-950 and GS-904 Job Series* is granted.

**ORDER:**

The March 6 through 10, 2006 arbitration hearing will encompass AFGE's FLSA claims concerning GS-950 and GS-904 job series.

  
Sean J. Rogers, Esq.  
Alexandria, Virginia  
February 16, 2006

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<sup>2</sup> The GS-950 position is the Paralegal job series and the GS-904 is the Law Clerk series.