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This is the 10th of periodic supplements to the March 1978 Digest of Labor Arbitration Awards in the Federal Service. It provides subject head notes, statements of issue, and summaries of the award and its basis, for arbitration cases as of July 1981. It also indicates the parties, the arbitrator and the date of the award.

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DIGEST OF LABOR ARBITRATION AWARDS IN THE FEDERAL SERVICE

SUPPLEMENT NO. 10, JULY 1981

FOREWORD

This publication supplements digests of Federal arbitration awards in the LAIRS (Labor Agreement Information Retrieval System) as of July 1, 1981. Please include this supplement with the Digest of Labor Arbitration Awards in the Federal Service, March 1978. The cases follow in numerical sequence according to the five-digit record number.

Please note that arbitrations 12996 and 13104 in this supplement are meant to substitute for those of the same numbers in Supplement No. 9, March 1981.

The Digest is a companion report to the Index of Federal Labor Relations Cases, July 1, 1981. Users of the Index will note that arbitration decisions are identified by the five-digit LAIRS record number. After identifying the subject matter and the LAIRS record number in the Index, users may then locate the record number in this Digest in order to find the corresponding arbitration award. LAIRS record numbers are listed in numerical order. Record numbers beginning with '1' identify binding arbitration decisions, '2' advisory arbitration decisions. The Digest contains the subject matter of the arbitration case, the issue, the award and basis for the award, the arbitrator's name, date of award, the parties' identification, and the number of pages in the full text.

Remember, each digest is designed to summarize the essential facts of the arbitration. It is not a substitute, in all circumstances, for review of the full text. Arbitrations should be cited by the LAIRS NO. Full texts, in microfiche form, may be purchased from the LAIRS office.

The original Digest and all of the supplements are available for purchase from the National Technical Information Service, Department of Commerce, Springfield, VA 22161.

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BINDING ARBITRATIONS

OVERTIME -- RESTRICTIONS, SELECTION CRITERIA

12996 Did management violate the agreement by having second shift employees perform overtime work?

No. Late on Friday afternoon, management discovered that employees would be needed to perform an unscheduled overtime assignment on Sunday. Because the first shift employees had already left the workplace, management selected several second shift employees. The union objected to management's selection and contended that the first shift employees should have been given first opportunity to perform the overtime. The arbitrator found that the agreement did not require management to select first shift personnel for overtime assignments before the second shift was utilized. Therefore, the grievance was denied.

NICHOLAS H. ZUMAS May 13, 1981 Department of Commerce, National Oceanic Atmospheric Administration - Washington, DC and American Federation of Government Employees, Local 2640 13 pages

ARBITRATION -- SCOPE, ARBITRABLE MATTERS DEFINED

13104 Was the grievance of a probationary employee regarding his termination a proper subject for arbitration?

Yes. Management contended that the grievant had no right, either contractual or statutory, to file a grievance under the agreement. The arbitrator addressed the question of arbitrability from the standpoint of management's specific contentions. She noted that the question of whether Section 7121(c)(4) of the Statute precludes probationary employees from filing contractual grievances concerning termination was answered in the negative in 4 FLRA No. 51. Management's assertion that the grievance was not a proper subject for arbitration was also based upon a contractual provision which excluded from the negotiated grievance procedure matters for which a statutory appeal exists. The arbitrator concluded that the termination of the grievant was not a matter for which a statutory appeal existed. She noted that probationary employees are specifically excluded from filing such appeals under Section 7701 of the CSRA. The arbitrator held that there was no bar to the arbitration of the instant grievance on the merits in the Act, the Statute, and/or the agreement. The agency was directed to proceed to arbitration on the merits.

MOLLIE HEATH BOWERS June 2, 1981 United States Air Force, Headquarters - Washington, DC and American Federation of Government Employees 13 pages

Cite Cases as LAIRS ____

EMPLOYER RIGHTS -- ISSUE RULES

13153 Did management's issuance of an order, which caused realignment of the facility, violate the agreement?

Yes. The arbitrator determined that a realignment of the facility did occur because two areas of specialization resulted from the order. The grievance was sustained. Management was directed to comply with the provisions of the agreement.

PRESTON J. MOORE February 23, 1981 Department of Transportation, Federal Aviation Administration - San Antonio, Texas and Professional Air Traffic Controllers Organization 5 pages

OVERTIME -- PAY PRACTICES

13154 Did management violate the agreement when it refused to compensate the grievant for the six minutes overtime in question?

Yes. The grievant worked thirty-six minutes beyond the end of his shift, clocking out accordingly. He was compensated for the extra half-hour but not for the remaining six minutes. The arbitrator sustained the grievance and ordered management to make the grievant whole for the six minutes. He made his decision on the basis of the overtime provision of the contract, which states that overtime be paid for periods less than a quarter-hour when the overtime is required for continuity of operations. The arbitrator held that this provision applied to the nature of the work in question.

LAWRENCE MANN December 11, 1978 United States Air Force, Kelly Air Force Base - San Antonio, California and American Federation of Government Employees, Local 1617 6 pages

Cite Cases as LAIRS _____

LEAVE -- MISCELLANEOUS PAID, ADMINISTRATIVE

13155 Did management violate the agreement by failing to grant the grievants administrative leave?

This arbitration involved eight grievances which were filed in consequence of management's refusal to grant administrative leave for a certain day or days in February 1978. Each grievant asserted that an emergency snow condition precluded her from getting to work. The arbitrator made an individual ruling on each case, depending upon the respective grievant's reasonable and continuing efforts to get to work on the days in question.

RUSSELL A SMITH January 8, 1981 Department of Treasury, Internal Revenue Service - Brookhaven, New York and National Treasury Employees Union, Local 99 50 pages

PROMOTION -- PROCEDURES, PERFORMANCE RATING/EVALUATION, FAILURE TO PROMOTE

13156 Was the evaluation which was used in ranking the grievant for a promotion fair?

Yes. The grievant was rated on a promotion evaluation form by the employee responsible for the day-to-day direction of his office's operations. Subsequently, the grievant's immediate supervisor, who was new to the office, considered this evaluation information in formulating his own independent evaluation of the grievant, which was slightly lower. The grievant was then put on the best qualified list but was not chosen for the promotion. The arbitrator held that the evidence was insufficient to show that the grievant's performance merited higher ratings than those awarded by his immediate supervisor. The arbitrator also noted that the supervisor was not obligated to adopt the other employee's evaluation as his own.

ROGER C. WILLIAMS January 8, 1981 Department of Treasury, Internal Revenue Service - Memphis, Tennessee and National Treasury Employees Union, Local 98 19 pages

Cite Cases as LAIRS _____

DISCIPLINE -- DISHONESTY, ABUSE OF AUTHORITY, NEGLECTFUL CONDUCT, BREACH OF CONFIDENCE

13157 Did management's suspension of the grievant for abuse of authority promote the efficiency of the Service?

Yes. The grievant was employed as a tax examiner and her job entailed utilization of a data retrieval system whereby information could be extracted about taxpayers. On several occasions, she made unauthorized access to files of a friend and some of her coworkers. Since these actions violated security rules and regulations for accessing tax accounts, management proposed a fourteen day suspension. The grievant admitted that she gained access to the files, but claimed she had received authorization to do so. However, there were no documents to support the grievant's claim. The arbitrator determined from the evidence that management's decision to suspend the grievant was justified.

JONAS AARONS February 5, 1981 Department of Treasury, Internal Revenue Service - Fresno, California and National Treasury Employees Union, Local 97 23 pages

DISCIPLINE -- DISHONESTY, FALSIFICATION OF RECORDS

13158 Did the agency have just cause to suspend the grievant for five days for alleged intentional falsification of reports?

Yes. The agency's review of the grievant's daily work reports revealed that during a four-week period she made twenty errors, all of them in over-stating the volume of cards she keypunched. The grievant denied management's contention that she was guilty of deliberate and intentional falsification of her production. The arbitrator held that an inference of deliberate falsification could reasonally be made from the evidence; to find the errors accidental would require an explanation of coincidence, which would be highly unlikely.

HERBERT FISHGOLD September 8, 1980 Department of Treasury, Internal Revenue Service - Philadelphia, Pennsylvania and National Treasury Employees Union, Local 71 4 pages

FACILITIES/SERVICES -- TRANSPORTATION, TRAVEL ALLOWANCES; PAY PRACTICES -- SUPPLEMENTARY, TRAVEL/PER DIEM

13159 Were the grievants entitled to travel pay for work performed at a different location during a temporary period?

Yes. The grievants, a group of machinists, were regularly employed at a shipyard but were assigned to work on a ship at a nearby naval base. They requested but were denied travel pay for their transportation to and from the base. (Other employees normally stationed at the shipyard but assigned to work on the same ship were awarded travel pay in response to grievances filed over this matter.) In the present case the shipyard contended that the permanent duty station of the machinists was changed from the shipyard to the naval base, thereby disqualifying the grievants for travel pay. The arbitrator held that this action conflicted with the Joint Travel Regulations issued by the Department of Defense, which state that the permanent duty station may not be changed when "...there is reason to expect the employee to return to his permanent duty station within six months from the date of initial assignment." This action occurred in this case. Also, the arbitrator took into consideration the award in the other grievance mentioned above. The grievance was sustained.

FREDERICK U. REEL February 4, 1981 United States Navy, Norfolk Naval Shipyard - Portsmouth, Virginia and Metal Trades Council 9 pages

ARBITRATION -- PROCEDURES, TIME LIMITATIONS

13160 Was the union's request for arbitration timely filed, and therefore was the matter grieved adjudicable by the arbitrator?

No. The union's request for arbitration was not submitted within fifteen days after receipt of the step three grievance decision, as required by the agreement. Therefore, the arbitrator ruled that it was unnecessary to consider the merits of the substantive issue(s), and the grievance was dismissed as untimely.

JAMES M. HARKLESS February 23, 1981 United States Navy, Naval Air Station - Patuxent River, Maryland and American Federation of Government Employees, Local 1603 4 pages

Cite Cases as LAIRS _____

DISCIPLINE -- NON-PERFORMANCE, CONFLICT OF INTEREST, ABUSE OF AUTHORITY, NEGLECTFUL CONDUCT, BREACH OF CONFIDENCE

13161 Did the thirty-day suspension of the grievant for: (1) making a false and misleading public statement that brought discredit to the agency, and (2) utilizing his official position and title to obtain personal information, promote the efficiency of the service?

On the basis of the evidence and testimony the arbitrator sustained all fifteen days of the disciplinary action as based on the first charge and ten days of the suspension as based on the second. The first charge stemmed from statements the grievant made at a political debate between two Congressional candidates. The agency successfully contended that the statements were not only false and misleading but brought discredit to the agency and lowered the morale of fellow employees. The second charge stemmed from three personal phone calls the grievant made in order to obtain personal information regarding his ex-wife. The arbitrator held that the agency successfully sustained the charge that the grievant utilized his position and title in a coercive fashion to obtain the personal information in two of the three incidents. The arbitrator therefore ordered that the grievant be made whole for five days of the thirty-day suspension.

ROBERT G. MEINERS November 15, 1980 Department of Treasury, Internal Revenue Service - Boise, Idaho and National Treasury Employees Union 12 pages

PAY PRACTICES -- DIFFERENTIALS, ENVIRONMENTAL; SAFETY -- ASSIGNMENTS, HAZARDOUS WORK

13162 1. Was management in compliance with its obligations to protect employees from exposure to toxic chemicals? 2. Did management violate the agreement by failing to provide environmental pay differentials to employees who handled such toxic chemicals?

1. The arbitrator determined that management was only in partial compliance with its obligations to protect employees. Twenty-two corrective measures were proposed in the award to bring about full compliance by management. 2. The arbitrator found that management was in violation of the agreement by not providing environmental differentials in nine instances where employees were exposed to toxic chemicals. Furthermore, it was determined that the parties were not in full compliance with procedural requirements of the agreement and applicable regulatory provisions, with respect to environmental pay. They were directed to utilize available procedures before proceeding to arbitration on such issues.

WILLIAM J. FALLON January 31, 1981 United States Navy, Portsmouth Naval Shipyard - Portsmouth, New Hampshire and Metal Trades Council 104 pages

LEAVE -- SICK, MISUSE

13163 Was the five-day suspension of the grievant for abuse of sick leave for just cause?

Yes. The grievant failed to report to work on a Friday and the following Monday. On the Friday in question he called in and reported that he had a backache; however, he failed to call in on Monday. The medical certificate he submitted stated that he had been treated for hypertension. Finally, management had credible witnesses who saw the grievant at a nearby racetrack on both days. The arbitrator found that the agency met its burden of proof with respect to the charges but ruled that the five-day suspension constituted excessive discipline. Also, he noted that conceivably the grievant could have begun to feel better during the days in question and therefore decided to go to the track after it was too late normally to go to work. The arbitrator also made note of the grievant's fine and long work record. The suspension was reduced to one day and the grievant made whole for the remaining four days.

MARLIN M. VOLZ November 28, 1980 United States Navy, Naval Ordnance Station - Louisville, Kentucky and International Association of Machinists and Aerospace Workers, Local 830
6 pages

ARBITRATION -- OFFICIAL TIME, UNION REPRESENTATIVES

13164 Did management violate the agreement when it refused to change a steward's shift to allow him to participate in an arbitration hearing as the grievant's representative in a duty status?

No. The arbitration hearing was scheduled during normal working hours, as required by the agreement, but the steward's shift began at the conclusion of normal working hours. The steward was denied a shift change to participate in the hearing in a duty status. The arbitrator upheld management's action, noting that the agreement grants supervisors a discretionary authority to change shift hours for participation in official hearings.

JOSEPH F. GENTILE December 30, 1980 United States Navy, Marine Corps Logistics Base - Barstow, California and American Federation of Government Employees, Local 1482 11 pages

Cite Cases as LAIRS _____

EMPLOYER RIGHTS -- OTHER; GRIEVANCE -- PROCEDURES; ARBITRATION -- PROCEDURES

13165 Did management have the right to deny the union's request for the appearance of the shipyard commander as a witness at an arbitration hearing?

The arbitrator held that management did not have the right to deny the union's request for the appearance of the shipyard commander as a witness at an arbitration hearing. The arbitrator noted that the agreement, as well as self-evident principles of fairness and due process, justify the appearance of necessary witnesses. However, the commander cannot be compelled by the arbitrator to appear as a witness. If management does not agree that an individual is a necessary witness, it may submit that issue to the arbitrator selected by the parties for an interlocutory ruling.

R. CHARLES BOCKEN November 19, 1980 United States Navy - Pearl Harbor Naval Shipyard, Hawaii and Metal Trades Center 6 pages

LEAVE -- PERSONAL BUSINESS, MISUSE; DISCIPLINE -- NEGLECTFUL CONDUCT

13166 Did management violate the agreement when it imposed a one-day suspension on the grievant for unauthorized absence?

No. The grievant came to work knowing that he had an appointment after work, but had forgotten some papers he needed. The grievant, who had already punched in, was instructed by his supervisor to punch out, go home and get the papers, and return to work. The grievant did not return to work that day; instead, he rescheduled his appointment to an earlier time during the workday. No leave was officially requested or authorized. The arbitrator did not accept the union's contention that the sudden availability of an earlier appointment constituted a bona fide emergency which justified not reporting back to work. The grievance was denied.

JOHN H. ABERNATHY December 31, 1980 United States Navy, Puget Sound Naval Shipyard - Bremerton, Washington and Metal Trades Council 11 pages

Cite Cases as LAIRS ____

PAY PRACTICES -- DIFFERENTIALS, ENVIRONMENTAL

13167 Was the grievant entitled to environmental differential pay for the work in question?

No. The grievant, a pipefitter, accepted and performed a grinding assignment which subjected him to soil beyond that normally expected on the job of a pipefitter. The union contended the conditions and assignment justified environmental differential pay. The arbitrator denied the grievance, noting that the grinding work was an appropriate assignment made to a qualified person for which there was no past practice of awarding environmental pay.

THOMAS Q. GILSON December 19, 1980 United States Navy - Pearl Harbor Naval Shipyard, Hawaii and Metal Trades Council
9 pages

DISCIPLINE -- DISORDERLY CONDUCT, INSUBORDINATION, ABUSIVE/THREATENING LANGUAGE

13168 Was the five-day suspension of the grievant for insubordination and abusive language taken for just cause?

Yes. The dispute in this matter arose when the foreman questioned an employee who was drinking a cup of coffee on the job near certain machinery. The grievant objected to the foreman's application of the no coffee rule at the machine shop job site, became incensed, and made abusive and hostile statements to the foreman. Testimony indicated that in the machine shop area the machine operators can take coffee to the machines while working. However, the arbitrator held that the employee's conduct merited disciplinary action. The arbitrator noted that the employee had a duty to obey the foreman's no coffee order and then make a protest through the grievance procedure. The grievance was denied.

ROBERT A. O'NEILL December 24, 1980 United States Navy, Puget Sound Naval Shipyard - Bremerton, Washington and Metal Trades Council
10 pages

Cite Cases as LAIRS _____

PROMOTION -- RANKING OF CANDIDATES, PERFORMANCE RATING/EVALUATION

13169 Did management violate the agreement when its rating and ranking of the grievant failed to place the grievant on the five name promotion referral list for the position in question?

No. The union contended that the rating did not fairly credit the grievant's past work experience in the area covering the position in question. Management contended that there were some differences between the work performed in the old and current positions, and therefore employees who were currently performing the duties were given slightly more credit than employees who previously worked in that area but since had been working elsewhere. The arbitrator concluded from the limited evidence presented that management followed proper procedure and acted reasonably and fairly in its ranking of the grievant. The arbitrator noted that current experience is usually given more credit than past experience.

WILLIAM S. RULE January 3, 1981 United States Navy, Marine Corps Logistics Base - Barstow, California and American Federation of Government Employees, Local 1482 9 pages

DISCIPLINE -- DISHONESTY, FALSIFICATION OF RECORDS

13170 Did management violate the agreement by issuing a letter of reprimand to the grievant for falsification of records?

No. The grievant incorrectly answered "no" to a question on an employment application that inquired, "Within the last five years have you quit a job after being notified that you would be fired?" The arbitrator did not accept the grievant's contention that he answered "no" because he quit the earlier job in response to an investigation, not an action for removal. Evidence indicated that the grievant had indeed quit the earlier position in response to an action for removal. The arbitrator held that the grievant's act of withholding information warranted the disciplinary action.

WILLIAM S. RULE January 2, 1981 United States Navy, Marine Corps Logistics Base - Barstow, California and American Federation of Government Employees, Local 1482 9 pages

Cite Cases as LAIRS _____

DISCIPLINE -- NEGLECTFUL CONDUCT; UNSAFE WORK METHODS

13171 Was management's five-day suspension of the grievant for unsafe work methods justified?

Yes. The grievant was directed by his supervisor to assist on the movement of a crane, which required the operations of two switches simultaneously. The grievant knew of the standard operating procedures. However, at the time he was controlling the movement of the crane, he switched only one and not the other. This caused the derailment of the crane for which the grievant was held responsible and was subsequently suspended for five days. Recognizing the grievant's prior good work record, the arbitrator reduced the suspension to four days.

R. CHARLES BOCKEN January 6, 1981 United States Navy - Pearl Harbor Naval Shipyard, Hawaii and Metal Trades Council 5 pages

DISCIPLINE -- NEGLECTFUL CONDUCT, LEAVING JOB SITE; PROCEDURES, UNION REPRESENTATION

13172 Was the written reprimand issued to the grievant for improperly leaving his job site and discussing union business without permission taken for just cause?

No. The grievant was assigned to a specific job site in a compartment on board a ship. On the day in question the foreman observed the grievant at another location on the ship during work hours. Management contended that the grievant was off of his assigned job site without permission to discuss union business. The arbitrator sustained the grievant's position, however, despite the fact that the grievant was aware that he was violating the requirement for permission to leave the job site to conduct union business. The arbitrator found that the manner in which the employer handled the disciplinary action was faulty when cast against accepted standards of just cause. He noted that the action did not follow proper procedure, the pre-decision investigation was incomplete, and the infraction did not merit the degree of discipline. The arbitrator directed that the written reprimand be removed from the grievant's record.

JOHN W. KELTNER January 15, 1981 United States Navy, Puget Sound Naval Shipyard - Bremerton, Washington and Metal Trades Council 23 pages

Cite Cases as LAIRS ____

LEAVE -- SICK, CALL-IN REQUIREMENT

13173 Was the letter of reprimand issued to the grievant for just cause?

No. The grievant was absent from work on excused sick leave status because of an on-the-job injury. On June 8th, the start of a new work week, he failed to call his supervisor to report his continuing sick leave status. Upon his return to work the grievant was charged with being absent without leave for twenty-four hours and also issued a letter of reprimand. The grievant believed that it was not necessary to report his continuing absence since he was in an excused status. The arbitrator determined that the grievant had no willful intent nor was he negligent for failing to call in on June 8th. The arbitrator noted that management knew about the grievant's illness and his extended sick leave absence. Management was directed to change the absence without leave status to sick leave and modify the letter of reprimand.

ROBERT M. LEVENTHAL January 22, 1981 United States Navy, Marine Corps Logistics Base - Barstow, California and American Federation of Government Employees, Local 1482 11 pages

REPRESENTATION -- UNION OFFICIALS/STEWARDS, OFFICIAL TIME ALLOWANCE

13174 Did management violate the agreement when the grievant was denied official time to pursue a grievance?

No. The grievant, council vice president of the union, requested official time of approximately one hour for representational duties. Because the request was denied, the grievant used his own personal time. Several days later he filed a grievance alleging that official time was arbitrarily denied and requested that he be paid nine hours of overtime which included the time spent preparing the grievance. Based on the evidence the arbitrator ruled that management did not violate the agreement by refusing the official time allowance. The grievant had ample time to perform his representational duties on the following day.

NORWOOD J. RUIZ February 13, 1981 Department of Justice, Immigration and Naturalization Service - Washington, DC and American Federation of Government Employees 19 pages

Cite Cases as LAIRS _____

ARBITRATION -- SCOPE, ARBITRABLE MATTERS DEFINED

13175 Does the arbitrator lack jurisdiction in a grievance concerning the procedures and manner management used to fill a supervisory (non-bargaining unit) position?

Yes. The union grieved the methods management employed to fill a supervisory, non-bargaining unit position. The arbitrator held that he lacked jurisdiction over this matter in that the terms of the negotiated agreement do not automatically apply to non-bargaining unit personnel; included in this context are the criteria and methods to be used in filling non-bargaining unit positions. The arbitrator noted the absence of language in the agreement indicating that its provisions are applicable to the filling of supervisory positions. He also cited two FLRA decisions (3 FLRA 44 & 3 FLRA 66) to support his decision.

SHERMAN DALLAS February 8, 1981 United States Army, Infantry Center - Fort Benning, Georgia and Metal Trades Council 6 pages

PROMOTION -- PROCEDURES, FAILURE TO PROMOTE, CRITERIA

13176 Did the grievant continue to receive fair and impartial consideration under a merit promotion selection when the selecting official unfavorably took into account an incident involving the grievant?

No. The grievant was being favorably considered under a merit promotion action. The selecting official then received a report that the grievant was involved in an argument with another employee. The official reacted unfavorably to the report and refused to hear the grievant's side of the story or conduct an inquiry. The official evaluated the grievant as one who could not get along with others, and another individual was chosen for the position. The arbitrator held that the official failed to carry out basic elements of fairness in utilizing the incident to the detriment of the grievant. He directed management to reaccomplish the selection process through another selection official and expunge theincident from the grievant's record.

JOHN G. GREGG February 21, 1981 United States Army, Engineer Center - Fort Belvoir, Virginia and American Federation of Government Employees, Local 1052 4 pages

Cite Cases as LAIRS ____

PAY PRACTICES -- SUPPLEMENTARY, BACK PAY; WORK ASSIGNMENT -- TEMPORARY, DETAILS

13177 Were the grievants entitled to back pay for duties performed in a higher graded position?

No. The grievants were GS-11 Compliance Officers who performed duties which they thought deserved a GS-12 classification and therefore GS-12 pay. After reviewing the position descriptions for the two jobs, the arbitrator determined that several requirements for the GS-12 were not present in the GS-11 job. Additionally, the grievants did not claim that they performed the tasks or were required to assume the responsibility of the GS-12 classification with such regularity and consistency as to make it evident that they performed the higher job.

THOMAS L. HEWITT March 2, 1981 Department of Labor - Washington, DC and American Federation of Government Employees, Local 644 10 pages

ARBITRATION -- ARBITRABLE MATTERS DEFINED

13178 Was the union's grievance against management for removing one of two correctional service employees assigned to a housing unit at a penitentiary arbitrable?

No. The employee was removed to another post for a temporary period of time. The union contended that such actions jeopardized the safety of the remaining employees. The arbitrator ruled that the matter was not arbitrable, in view of the provisions of the agreement and the Civil Service Reform Act of 1978. Additionally, the arbitrator stated that the objection to arbitrability was one of a substantive nature based on a review of applicable federal statutes and relevant arbitration awards dealing with federal agencies.

PAUL E. FITZSIMMONS March 13, 1981 Department of Justice, State Penitentiary - Marion, Illinois and American Federation of Government Employees, Local 2343 8 pages

Cite Cases as LAIRS ____

PROMOTION -- FILLING VACANCIES, CRITERIA

13179 1. Did the individual selected for a supervisory position possess the minimum qualifications for the position in question? 2. If not, should the individual be relieved from the position?

1. No. On the basis of the record the arbitrator agreed with the grievant that the individual selected for the position did not possess the required six years of relevant qualifying experience, which was the minimum standard established by the employer. Therefore, the merit promotion plan was not carried out within its spirit and intent. 2. The arbitrator ordered management to remove the individual from the position and to follow the terms of the merit promotion plan in filling the vacancy.

JOHN PHILLIP LINN February 27, 1981 National Guard Bureau, Colorado Air National Guard - Aurora, Colorado and Association of Civilian Technicians 23 pages

REPRESENTATION -- UNION OFFICIALS/STEWARDS, OFFICIAL TIME ALLOWANCE; NEGOTIATION/CONSULTATION -- PROCEDURES, OFFICIAL TIME ALLOWANCE

13180 Did the employer violate the agreement or pertinent law when it denied overtime and night differential to union negotiators for a night negotiating session?

No. Representatives of the employer and union met in negotiations that continued into the night. The union requested but was denied overtime for the evening session. The arbitrator ruled that there was no basis in law (5 USC 7131) or in the current understandings between the parties to consider the disputed time as duty time for which overtime pay should be granted. The arbitrator noted that the union negotiators were not otherwise in duty time during the evening negotiations, and therefore were not entitled to pay.

DANIEL E. MATTHEWS March 9, 1981 United States Army - Aberdeen Proving Ground, Maryland and International Association of Machinists and Aerospace Workers, Local 2424 12 pages

Cite Cases as LAIRS ____

DISCIPLINE -- NON-PERFORMANCE; FACILITIES/SERVICES -- TRANSPORTATION; PAY PRACTICE -- SUPPLEMENTARY, TRAVEL/PER DIEM

13181 Was the letter of reprimand issued to the grievant for failure to carry out an assignment issued for just cause?

No. The grievant, a customs inspector, was issued a letter of reprimand for his failure to put himself in a position where he could go from one assignment to another. The grievant had placed himself at his first duty station. He was later given a second assignment approximately thirty miles away, but believed he could not get to the assignment. He claimed that he didn't have sufficient gas in his car, a government car was not available, and he did not have sufficient funds for other transportation. (Management had a policy that travel advances would not be made for local travel on official government business, as in this case, but would be reimbursed later.) The arbitrator held that disciplinary action was inappropriate due to the fact that the policy was under active discussion at the time, and that this context necessitated some sort of forewarning regarding the disciplinary action. This had not been provided. The arbitrator directed that the reprimand be removed from the grievant's record.

THOMAS M. PHELAN February 24, 1981 Department of Treasury, Customs Service - Washington, DC and National Treasury Employees Union 22 pages

SAFETY -- PROCEDURES, REPORTS/NOTICE TO UNION, COMMITTEE

13182 Was management in violation of the agreement in the manner in which it responded to an emergency situation at the facility?

Yes. On February 2, approximately twenty employees became ill because of inhalation of carbon monoxide. The union argued that management failed to notify and to permit it to participate in monitoring health and safety matters, including the February 2 incident. Furthermore, management had refused to hold safety meetings with the union's representatives. The arbitrator ruled that management violated the agreement and directed management to comply with the safety and health provisions. The parties shall meet for the purpose of establishing a joint safety committee and the arbitrator shall retain jurisdiction over the interpretation and implementation of the award in the event a dispute arises.

BARBARA CHVANY February 24, 1981 Department of Treasury, Bureau of the Mint - San Francisco, California and American Federation of Government Employees, Local 51 26 pages

OVERTIME -- RESTRICTIONS, SELECTION CRITERIA

13183 Did management violate the agreement by assigning two electricians to overtime work?

No. Two electricians were assigned to perform temporary repair work. Equipment men who were qualified for the work claimed that failure to assign one mechanic was contrary to past practice and violated the agreement. The arbitrator found that the two job descriptions somewhat overlapped and allowed management freedom to assign either electricians or equipment operators to the job.

HAROLD B. NORMAN March 4, 1981 United States Army, Rock Island Arsenal - Rock Island, Illinois and International Association of Machinists and Aerospace Workers, Local 102 5 pages

WORK ASSIGNMENT -- TEMPORARY, DETAILS; PAY PRACTICES -- SUPPLEMENTARY, RETROACTIVE

13184 Did management violate the agreement by detailing the grievants for an extended period of time to fill a position without compensation?

Yes. Management detailed the three grievants to vacant positions until permanent replacements could be found for the jobs. The union argued that since the details were for an extended period of time, the grievants should have been temporarily promoted and paid accordingly for the higher-rated duties. The arbitrator found that management did not adhere scrupulously to the regulations or to the agreement in its assignment of the grievants. The arbitrator directed management to make the grievants whole.

SHERMAN DALLAS February 28, 1981 United States Army, Aviation Center - Fort Rucker, Alabama and Metal Trades Council 8 pages

Cite Cases as LAIRS ____

EMPLOYEE RIGHTS -- PERSONNEL RECORDS, INSERTIONS TO

13185 Did management violate the agreement or pertinent regulations when it placed an appraisal form in the grievants' personnel files without their knowledge or consultation?

Yes. Management admitted error in that the grievants were not given the opportunity to discuss the forms with their first-level supervisors before they were made part of their records. Management contended the error was harmless. The arbitrator ruled that certain provisions of the agreement and pertinent regulations were effectively eliminated when no discussion occurred. He noted that discussion with the first-level supervisor does provide an employee a basis for challenging an appraisal, and management should have found a way to accomplish this. The arbitrator directed that the forms be removed from the grievants' personnel records.

JAMES P. WHYTE March 12, 1981 United States Air Force - Langley Air Force Base, Virginia and National Association of Government Employees, Local R4-106 7 pages

PERFORMANCE -- RECOGNITION, QUALITY PAY INCREASE

13186 Was management's refusal to grant the grievant an award justified?

Yes. On September 1, the grievant asked his supervisor to recommend him for an award under the incentive awards program. After reviewing the personnel folder, including written evaluations, the supervisor advised the grievant that he was not going to recommend him for a performance award. The supervisor concluded that the grievant's level of performance had not been significantly in excess of what was required of a GS-13 on the critical elements of the job. The arbitrator determined that the supervisor's refusal to recommend the grievant for a performance award was not arbitrary or capricious. Accordingly, the grievance was denied.

RAYMOND GOETZ March 4, 1981 Department of Treasury, Internal Revenue Service - Des Moines, Iowa and National Treasury Employees Union, Local 4 22 pages

Cite Cases as LAIRS ____

DISCIPLINE -- MISAPPROPRIATION OF PROPERTY, ABUSE OF AUTHORITY

13187 Was the forty-five day suspension of the grievant for: (1) willful misuse of a government-owned vehicle, and (2) conduct unbecoming to an officer, taken for just cause?

(1) Yes. The grievant had requested and received approval for use of a government car for a legitimate field operation. He then became ill, requested sick leave, and the first approval was torn-up. One-half hour later, the grievant came back and requested a specific government vehicle to affect repairs on it. The grievant contended he received verbal approval for use of the car but management denied this. The grievant also offered the car to another investigator, but this investigator did not accept it. On the basis of the evidence, the grievant's contradictory testimony and his proclivity to use the vehicle for personal use, the arbitrator sustained the charge. (2) No. The arbitrator denied the charge of conduct unbecoming to an officer. The arbitrator stated that since the other investigator did not accept the car, punishment cannot be administered to the grievant for this particular reason. Also, the grievant cannot be held responsible for the fact that the other investigator missed the next day's operation. Therefore, the arbitrator reduced the suspension to thirty-five days and awarded the grievant ten days' back pay.

DONALD J. PETERSEN March 5, 1981 Department of Justice, Immigration and Naturalization Service - Chicago, Illinois and American Federation of Government Employees, Local 2718 8 pages

DISCIPLINE -- MISAPPROPRIATION OF PROPERTY

13188 Was the thirty-one day suspension of the grievant for misuse of a government vehicle taken for just cause?

Yes. The grievant used a government vehicle assigned to him for personal recreational use during a weekend. The union contended that the grievant did not act willfully within the meaning of the applicable statute because he did not know that his use of the car for personal recreation violated a law. The arbitrator ruled that since the grievant acted with full knowledge of the facts (i.e., he was using a government car for unofficial reasons) his plea of ignorance of the law does not go to the element of willfulness. The grievance was denied.

SEYMOUR STRONGIN December 19, 1980 Health and Human Services, Social Security Administration - Baltimore, Maryland and American Federation of Government Employees, Local 1923 3 pages

Cite Cases as LAIRS ____

DISCIPLINE -- DISHONESTY, FALSIFICATION OF RECORDS

13189 Did management have just cause to impose a fourteen day suspension on the grievant for falsification of an official document?

Yes. The grievant had stated that she had an appointment at another office within the agency, and requested and received an administrative permit to visit this office. Evidence indicated that the grievant's appointment had been cancelled, that she utlized the time for other purposes and falsified the permit with respect to the time spent in the office in which she had had the appointment. The arbitrator concluded that the agency properly took disciplinary action against the grievant.

JOHN F. CARAWAY February 23, 1981 United States Air Force, Oklahoma City Air Logistics Center - Tinker Air Force Base, Oklahoma and American Federation of Government Employees, Local 916
8 pages

DISCIPLINE -- DISORDERLY CONDUCT, INSUBORDINATION

13190 (1) Did management improperly deny the grievant union representation at a meeting with his supervisor during which the principal topic of discussion was possible discipline? (2) Did management unfairly discharge the grievant for insubordination?

(1) No. The grievant possessed a history of conflict with his two supervisors. The incidents consisted of repeatedly challenging supervisory authority, uncooperative attitude and language, criticism of the supervisor, and failure to follow directions. At a warning conference the grievant was offered the opportunity to have a union representative present, but he declined. The arbitrator dismissed the grievant's complaint on the basis of credible management testimony. (2) The arbitrator determined that the ultimate question consisted of whether the grievant's derogatory behavior toward his supervisor warranted dismissal on a charge of insubordination. The arbitrator noted that insubordination did indeed occur during several of the exchanges in question. However, in view of the grievant's twenty years of government service, the arbitrator ordered the grievant's reinstatement without back pay.

WILLIAM LEVIN December 11, 1980 Department of Labor - Washington, DC and National Union of Compliance Officers
27 pages

NON-DISCRIMINATION -- TYPES

13191 Was the grievant harrassed by her first-line and second-line supervisors?

No. The grievant contended that she was being harrassed by management actions. Among her claims were improper entries on her record, improper procedures used duringcounseling sessions, and the improper changing of her work products by the second-level supervisor. After reviewing the facts and the evidence presented, the arbitrator ruled that the union fell short of proving that harrassment of the grievant had taken place. Therefore, the grievance was denied in its entirety.

CLAUDE B. LILLY September 2, 1980 United States Air Force - Kelly Air Force Base, Texas and American Federation of Government Employees, Local 1617 31 pages

DISCIPLINE -- NEGLECTFUL CONDUCT, ABSENTEEISM; LEAVE -- WITHOUT PAY, DENIAL

13192 Was the reprimand given to the grievant for unauthorized absence taken for just cause?

Yes. The grievant received a reprimand for failing to request leave without pay in a timely manner. She had been absent from work due to an on-the-job injury for several months and did not file a request for leave until her return. Management claimed that the reprimand was supported by the circumstances. The grievant knew she was required to file a form for absence because of a previous disciplinary reprimand only months before this current situation. The arbitrator ruled that the grievant was obligated to seek approval for the leave without pay and she simply ignored that obligation until she returned. Therefore, the grievance was denied.

EVA ROBINS March 10, 1981 Veterans Administration, Medical Center - Lyons, New Jersey and American Federation of Government Employees, Local 1012 12 pages

Cite Cases as LAIRS _____

OVERTIME -- ELIGIBILITY, EXEMPT/NON-EXEMPT; LEAVE -- MILITARY

13193 Were the grievants entitled to overtime pay while on military leave during the period in question?

The grievants took military leave in order to fulfill a reserve obligation for two weeks active duty for training. In prior years employees were paid for overtime they could have worked but for being on military leave. This time, however, the overtime pay was denied on the grounds that the overtime the grievants could have worked was not regularly scheduled overtime, as required by FPM regulations in these circumstances, but was irregular and erratic. The arbitrator concluded that twenty-four of the hours in question for one of the two grievants met the test of regularly scheduled and would have been earned but for the military leave. Therefore, he directed that this grievant be paid for these hours. The hours in question for the other grievant did not meet the above test and were denied. A discussion of appropriate Comptroller General decisions as applied to the facts of this case was presented by the arbitrator.

MAX B. JONES March 3, 1981 United States Navy, Norfolk Naval Shipyard - Portsmouth, Virginia and Metal Trades Council 11 pages

HOURS OF WORK -- GUARANTEE, HOLIDAY

13194 Did management violate the agreement in scheduling a supervisor to work a shift in place of the grievant?

Yes. The arbitrator determined from the evidence that a supervisor was scheduled to work to avoid paying the grievant for holiday hours. This was not an unanticipated emergency because the schedule had been set up two months in advance. Because of management's attempt to deprive the grievant of holiday pay, the arbitrator ruled that he should receive the overtime pay for the day in question. The grievance was sustained.

BENNETT S. AISENBERG March 9, 1981 Department of Commerce, National Weather Service - Kansas City, Missouri and National Weather Service Employees Organization, Local 3-36 13 pages

Cite Cases as LAIRS _____

REPRESENTATION -- UNION OFFICIALS/STEWARDS, OFFICIAL TIME ALLOWANCE; GRIEVANCE -- REPRESENTATION, UNION RIGHTS, LIMITATIONS

13195 Was management's restriction of the representational function of the chief steward to twenty percent of his weekly work hours a violation of the agreement or of existing laws?

Yes. Management attempted to impose a cap on the amount of time devoted to representational duties because of the increasingly high percentage of official duty time being devoted to such duties. The agreement allowed for reasonable time for such duties. The union contended that this allowed that time necessary to represent a particular case. Management contended that it had accepted the language but not the union interpretation of the term reasonable time. The arbitrator noted the legitimate difference in interpretation and held that 5 USC 7131 official time is controlling over the language in the agreement. This statutory provision provides that official time be granted in any amount the agency and exclusive representative agree to be reasonable. Since this requires good-faith negotiations, the arbitrator found that management cannot impose a restriction unilaterally. The arbitrator directed that the parties commence good-faith negotiations on representational time.

J. THOMAS KING February 20, 1981 United States Air Force, XVIII Airborne Corps - Fort Bragg, North Carolina and American Federation of Government Employees, Local 1770 41 pages

DISCIPLINE -- DISORDERLY CONDUCT, INSURBORDINATION

13196 Was the grievant's letter of reprimand for insubordination issued in accordance with the provisions of the agreement?

Yes. The grievant was in the union office to prepare for negotiations. Management claimed that he had been advised that there would be no negotiations on that date. At 9:00, the grievant was specifically directed by his supervisor to return to work. This order was ignored until the grievant received a written order to return to work. The grievant's actions prompted management to issue a letter of reprimand. The arbitrator agreed with management's position that the acts constituted insubordination. Therefore, the grievance was denied.

THOMAS J. ERBS February 9, 1981 Veterans Administration, Harry S. Truman Memorial Hospital - Columbia, Missouri and American Federation of Government Employees, Local 3399 12 pages

Cite Cases as LAIRS ____

DISCIPLINE -- INSUBORDINATION, ABUSIVE LANGUAGE

13197 Did management have cause to suspend the grievant three days for insubordination?

Yes. The grievant, a union steward, requested official time to attend to representational duties. His supervisor denied the request, saying that he was needed at his job. The grievant became angry, cursed his supervisor in front other employees, and left the work site for an hour. The agency charged the grievant with insubordination and suspended him for three days. The grievant appealed, and the arbitrator upheld the agency's action. The arbitrator held that the grievant's display of temper, use of curse words, and absence from job site warranted a three-day suspension.

THOMAS J. ERBS February 23, 1981 United States Air Force - Scott Air Force Base, Illinois and National Association of Government Employees, Local R7-23 14 pages

POSITION CLASSIFICATION — POSITION DESCRIPTION, WORKING OUT OF CLASSIFICATION

13198 (1) Did the grievant's position description accurately reflect his duties? (2) Was the grievant properly classified?

(1) Yes. The arbitrator found that the grievant's position description as a Plant Account Clerk, GS-7, accurately reflected his duties. (2) The arbitrator ruled that the appeal of classifications was excluded from the grievance procedure. Thus, he did not rule on that point of the grievance.

JOSEPH KULKIS February 19, 1981 United States Navy, Navy Public Works Center - Pensacola, Florida and International Association of Machinists and Aerospace Workers, Local 192 10 pages

Cite Cases as LAIRS ____

DISCIPLINE -- DISORDERLY CONDUCT, ABUSIVE/THREATENING LANGUAGE; NEGLECTFUL CONDUCT, LEAVING JOB SITE

13199 Was the ten day suspension issued to the grievant for abusive language taken for just cause?

No. The grievant was suspended for ten days for loafing on duty, being away from her job without permission, and using offensive language. Management based the suspension primarily on the offensive language charge. The grievant admitted that she made an offensive comment, but that it was not directed at her supervisor and that it was common shop talk. The arbitrator found that the grievant had not directed the comment at her supervisor, and that discipline for use of shop talk was not appropriate. The grievant was made whole with respect to lost pay and benefits.

JACK CLARKE December 19, 1980 Non-Appriated Fund/Air Force, Warner Robins Air Logistics Center - Robins Air Force Base, Georgia and American Federation of Government Employees, Local 987 14 pages

DISCIPLINE -- INCOMPETENCE; WORK ASSIGNMENT -- PROBATIONARY

13200 Is the issue arbitrable? And if so, did management have cause to terminate the grievant, a probationary employee, for poor performance?

The arbitrator found the issue arbitrable. He ruled that the appeal of the termination of probationary employees has been found to be arbitrable by the Federal Labor Relations Authority in 4 FLRA No. 51 (LAIRS No. 00423). The arbitrator, however, upheld the agency's action, and denied the grievance. He found that the grievant had been provided sufficient training, individual on-the-job assistance, and advanced explanations of her deficiences prior to her termination. He ruled that these actions should have enabled her to reach a reasonable level of competency within the time period. However, since she was unable to reach such a level, the termination was reasonable.

SAMUEL S. SHAW February 20, 1981 Health and Human Services, Social Security Administration - Holland, Michigan and American Federation of Government Employees, Local 3272 15 pages

Cite Cases as LAIRS _____

DISCIPLINE -- NEGLECTFUL CONDUCT, UNSAFE WORK METHODS

13201 Was the five-day suspension taken against the grievant for unsafe work methods taken for just cause?

The grievant was directed to move a crane so that another crane could be moved into position for operation. Safety rules required that crane operators fill out a daily check list if a crane is to be moved, which the grievant failed to do. As he was moving the crane, certain parts of it started to malfunction, which required that the crane be shut down. After management inspected the crane and found nothing wrong, the grievant was given a five-day suspension for failure to observe safety instructions and for careless workmanship which resulted in a delay in production. After reviewing the evidence, the arbitrator found that the grievant was guilty of safety rules violation but not guilty of careless workmanship. The five day suspension was vacated. Management was directed to impose the applicable discipline for a first offense in violation of safety regulations.

ALBERT J. HOBAN February 10, 1981 United States Navy, Portsmouth Naval Shipyard - Portsmouth, Virginia and Metal Trades Council 11 pages

TRAINING -- LABOR RELATIONS, OFFICIAL TIME; REPRESENTATION -- OFFICIAL TIME

13202 Did management violate the agreement by denying the grievant official time for representational purposes?

Yes. The grievant, a union steward, requested official time to attend a training session for grievance resolution and to prepare for filing a ULP complaint. The agency denied both requests. The arbitrator ruled that management did not violate the agreement when it did not permit the grievant to attend the training session, since another union official was attending the session, and the grievant was needed at his job. However, he ruled that the grievant was entitled to official time to meet with other union officers on the ULP complaint. The arbitrator ruled that the grievant should have one hour annual leave restored to him.

WILLIAM S. RULE February 7, 1981 United States Army - Fort MacArthur, California and American Federation of Government Employees, Local 2866 17 pages

Cite Cases as LAIRS _____

DISCIPLINE -- DISORDERLY CONDUCT, INSUBORDINATION; NEGLECTFUL CONDUCT, PATIENT ABUSE

13203 Did management have just cause to support the disciplinary reprimands imposed on the grievant for events in question?

No. The grievant was asked to take a patient to surgery. She was reprimanded for unreasonable delay in carrying out the instructions and disrespectful conduct towards those giving the instructions. The second incident occurred later that day, while the grievant was admitting a patient. The second reprimand charged the grievant with speaking to the patient in a loud, abusive voice. From the evidence presented at the hearing, the arbitrator determined that the reprimands were not based on just cause. Management was directed to remove the reprimands and all references to them from the grievant's personnel file.

JOHN PHILLIP LINN February 16, 1981 Veterans Administration - Sheridan, Wyoming and American Federation of Government, Local 1219 16 pages

EMPLOYEE RIGHTS -- PERSONAL, GROOMING

13204 Was management correct in its interpretation of the agreement in ordering the grievant to comply with regulations while wearing a military uniform?

A group bulletin required all technicians to wear uniforms for the visit of an inspection team. Although the grievant doubted the propriety of the order, he complied with it. However, because he did not want to get a haircut, the grievant wore a wig with his uniform. Management gave him a reprimand for not complying with grooming standards. The arbitrator found that management violated the agreement by not permitting the grievant to wear a wig, since he had been allowed to wear one on previous occasions. The grievance was sustained. Management was directed to remove the reprimand from the grievant's personnel file.

EZRA S. KRENDEL February 16, 1981 National Guard Bureau - Wilmington, Deleware and Association of Civilian Technicians 7 pages

Cite Cases as LAIRS _____

DISCIPLINE -- INSUBORDINATION

13205 Did management have cause to issue the grievant a written reprimand for insubordination?

Yes. The grievant was taking his lunch break at his desk. He had his feet up on his desk, and was reading a newspaper. His supervisor ordered him to remove his feet from the desk, and to go to the lounge area to relax. The grievant refused. After the supervisor repeated the order, the grievant complied, but used abusive language. The arbitrator found that management had cause to issue the letter of reprimand. He found that the office area was a public area open for business at the time the grievant was at lunch. Thus, it was reasonable for management to try and maintain a business-like appearance and atmosphere in the work area. The arbitrator ruled that the grievant's behavior was detrimental to the efficiency of the service. Therefore, management had cause to discipline the grievant. Grievance denied.

DANA E. EISCHEN February 14, 1981 United States Air Force, Headquarters - Hancock Field, New York and Service Employees International Union, Local 200 15 pages

EMPLOYEE RIGHTS -- APPAREL; FACILITIES/SERVICES -- UNIFORMS

13206 Did management violate the agreement by requiring the technicians to wear uniforms when attending a training school?

No. Technicians were given the opportunity to attend training sessions at military schools. The agency required the technicians to wear uniforms while in training at the school. The union filed a grievance over this requirement, arguing that the requirement was in violation of the agreement. The arbitrator ruled that management did not violate the agreement. He noted that attendance at service schools was governed by agency regulations, which required the wearing of uniforms.

ROBERT V. PENFIELD February 24, 1981 National Guard Bureau - Topeka, Kansas and National Association of Government Employees, Local R14-87 16 pages

Cite Cases as LAIRS _____

WORK ASSIGNMENT -- REASSIGNMENT; PERFORMANCE APPRAISAL

13207 · Did management violate the agreement when it reassigned the grievant to another position?

Yes. The agency transferred the grievant to another position without informing her of the reasons for the reassignment. The arbitrator ruled that management violated the terms of the agreement by its action. The grievant's work performance was below an acceptable level. Under the terms of the agreement, the agency was required to counsel the grievant as to the elements of her performance that were considered less than satisfactory, and give her an opportunity to improve before reassigning her to a new position. Since the agency failed to follow these procedures, the arbitrator ordered the agency to return the grievant to her former position.

HAROLD H. LEEPER February 18, 1981 Veterans Administration, Medical Center - Little Rock, Arkansas and American Federation of Government Employees, Local 2054 25 pages

PAY PRACTICES -- DIFFERENTIALS, ENVIRONMENTAL

13208 Were the grievants entitled to environmental pay (EDP) for their exposure to potassium chromate?

No. The union contended that although the grievants did not suffer any ill effects from this exposure, they were entitled to EDP, since the agreement authorizes such pay for potential as well as actual injury from unusually severe hazards. The arbitrator gave due weight to the greater specificity of the employer's evidence and expert witness in ruling that no potential existed for injury from such an exposure. The grievance was denied.

JOHN H. ABERNATHY October 10, 1980 United States Navy, Puget Sound Naval Shipyard - Bremerton, Washington and Metal Trades Council 20 pages

Cite Cases as LAIRS _____

PROMOTION -- RANKING OF CANDIDATES

13209 Did management violate the agreement by failing to give the grievant appropriate consideration for the vacancy in question?

No. The grievant applied for the position in question, and was rated by a promotion panel. Two names were picked as best qualified, and forwarded to the selecting official. The grievant was not found to be among the best qualified, and filed a grievance. The arbitrator denied the grievance. He ruled that the grievant had been given proper consideration for the position. He noted that there was no agreement provision which prohibited the promotion panel from forwarding only two names, and that only two names had been forwarded in the past.

LAWRENCE HOLMAN December 22, 1980 United States Army, Troop Support and Aviation Material Readiness Command - St. Louis, Missouri and National Federation of Federal Employees, Local 405 7 pages

DISCIPLINE -- NON-PERFORMANCE, SLEEPING ON THE JOB

13210 Did management violate the agreement when it suspended the grievant for three days for sleeping on the job?

No. The grievant appeared to be sleeping on the job to two management officials who observed him for a period of five minutes. An investigation was held and the grievant was suspended for three days. The arbitrator agreed with management's contention that this was a clear-cut case of sleeping on the job. The fact that the grievant was on pain medication which affected his alertness was not allowed to mitigate the suspension because of the responsibility of the grievant's position.

MOLLIE HEATH BOWERS December 12, 1980 United States Navy, Norfolk Naval Shipyard - Portsmouth, Virginia and Metal Trades Council 8 pages

Cite Cases as LAIRS _____

UNION RIGHTS -- OFFICE SERVICES,TELEPHONE; REPRESENTATION -- UNION OFFICIALS/STEWARDS, OFFICIAL TIME ALLOWANCE

13211 (1) Was the grievant improperly denied the use of the telephone on official time? (2) Can the union utilize the FTS to make long distance phone calls outside the area represented by the union local?

(1) Yes. The grievant, a legislative chairperson of the union, was denied use of the telephone facilities on official time for the purpose of contacting members of Congress and their staffs regarding legislation. Management contended that this was a matter of internal union business, which is expressly denied official time. The arbitrator held that phone calls to Congressmen concerning pending legislation is a matter affecting employment and therefore within the ambit of the union's official duty of representation. The union's duty to represent the interests of its membership to Congress is not one which can properly be classified as pertaining to the internal business of the union. (2) Yes. Management contended that FTS calls were toll calls, and toll calls were prohibited by the agreement. Based on the evidence the arbitrator held that FTS calls are not toll calls within the meaning of the agreement provision. Also, since the FTS is infact the government's long-distance telephone network it would be contradictory to restrict use of the service to the area represented by the local union.

CHARLES L. MULLIN, JR. December 17, 1980 Health and Human Services, Social Security Administration - Pittsburgh, Pennsylvania and American Federation of Government Employees, Local 3231 15 pages

DISCIPLINE -- DISHONESTY, THEFT; NON-DISCRIMINATION -- OTHER

13212 Was the one-day suspension issued to the grievant for alleged theft of government property taken for just cause?

Yes. The grievant was stopped by a guard with approximately thirteen dollars worth of government goods in his possession, for which he was given a one-day suspension. On the same day another employee was caught putting government oil in his personal car. This individual later replaced the oil and was given a letter of caution. The union contended that the grievant was not treated fairly because he received a suspension. The arbitrator held that the grievant was indeed found in possession of government property without authorization. The arbitrator held that in view of the differences in the two fact situations the agency was not discriminatory in suspending the grievant.

ALBERT J. HOBAN March 2, 1981 United States Navy, Portsmouth Naval Shipyard - Portsmouth, Virginia and Metal Trades Council 6 pages

DISCIPLINE -- NON-PERFORMANCE; UNION RIGHTS -- TELEPHONE

13213 Did management have cause to suspend the grievant five days for abuse of telephone privileges?

Yes. Agency policy prohibits the employees from making personal telephone calls, except in an emergency. The grievant was warned about her abuse of this policy. On the day in question, the grievant made several personal calls, and stayed on the phone for over a half hour. The arbitrator ruled that the agency had cause to suspend the grievant, but reduced it from a five day to a four day suspension since there was confusion over the intent of the policy.

ALBERT A. BLUM November 18, 1980 Health and Human Services - Chicago, Illinois and American Federation of Government Employees, Local 1395 11 pages

PAY PRACTICES -- ENVIRONMENTAL DIFFERENTIALS

13214 Were the employees in question entitled to an environmental differential for exposure to airborne asbestos fibers?

No. Test results demonstrated that the level of airborne asbestos fibers did not exceed the level permitted by O.S.H.A. standards. Thus, the employees were not entitled to a differential.

CURTIS C. ALLER February 28, 1981 United States Navy, Mare Island Naval Shipyard - Vallejo, California and Metal Trades Council 15 pages

PAY PRACTICES -- WITHIN-GRADE INCREASE

13215 Did management violate agency regulations when it denied the grievant a within-grade increase?

Yes. The grievant's supervisor did not follow the procedures established by agency regulations. The regulations require that an employee receive counseling on his inadequacies, an opportunity to defend his performance, and a chance to improve. Further, the arbitrator ruled that the evidence introduced to support management's decision to deny the within-grade increase was not substantial. He ordered the agency to award the grievant a retroactive increase.

DANIEL E. MATTHEWS February 6, 1981 Nuclear Regulatory Commission - Washington, DC and National Treasury Employees Union, Local 208 20 pages

ARBITRATION -- SCOPE, ARBITRABLE MATTERS DEFINED

13216 Was the grievance concerning the employment restoration rights of the grievant an arbitrable matter?

No. The grievant was not restored to her prior job after she had taken leave because of a work-related disability. Management claimed that it would be too risky to restore the grievant to her prior job because of her disability and record of recurrences. The arbitrator agreed with management that the matter was not arbitrable. He noted that this matter was covered by statutory appeals procedures, and that the agreement specifically excludes from the grievance procedure matters covered by the appeals procedure.

JOHN A. HOGAN February 22, 1981 Veterans Administration - Bedford, Massachusetts and National Association of Government Employees, Local R1-32 7 pages

DISCIPLINE -- DESTRUCTION OF PROPERTY; FACILITIES/SERVICES -- TRANSPORTATION, AUTO

13217 Did management violate agency regulations when it required the grievant to pay for damages incurred to a government automobile while he was using it?

Yes. The grievant was involved in an accident while driving a government vehicle. The agency claimed that the grievant had the accident while using the vehicle for personal business, and sought to have the amount set off from his retirement account. The arbitrator ruled that the grievant could not be held liable for the damages. He noted that the agency regulations prohibiting the use of government vehicles for personal use were not clear at the time of the accident. Also, other employees were using the vehicles in a similar fashion at that time. Thus, he sustained the grievance.

PEARCE DAVIS February 26, 1981 Department of Justice, Immigration and Naturalization Service- Burlington, Vermont and American Federation of Government Employees 9 pages

Cite Cases as LAIRS _____

UNION RIGHTS -- REORGANIZATION

13218 Did management violate OPM or Army regulations when it implemented certain organizational changes which affected the civilian-military ratio?

In October 1978, management received a series of directives which indicated that seventy-three civilian positions would be deleted and an attendant increase of twenty-eight spaces for enlisted and officer positions. The union argued that management violated regulations by converting positions from civilian to military, using excess military in abolished positions, and using temporary employees in excess of two years. The arbitrator determined that management was not in violation of regulations because the organizational change was dictated by a higher level authority. Therefore the grievance was dismissed.

HENRY B. WELCH February 11, 1981 United States Army, Missile Command - Redstone Arsenal, Alabama and American Federation of Government Employees, Local 1858 15 pages

FACILITIES/SERVICES -- HEALTH, BLOOD DONATION; LEAVE -- MISCELLANEOUS PAID, ADMINISTRATIVE

13219 Was the grievant entitled to have two hours of annual leave reclassified as blood donor leave?

Yes. The grievant called his supervisor before the start of the work shift to request four hours of emergency annual leave and four hours of blood donor leave. The request was made because the grievant's sister was undergoing emergency surgery. When the grievant returned to work, he found that his supervisor had only given him two hours of administrative leave. The union contended that this was a violation of past practice, since other units at the base granted a flat four hours for blood donations. After reviewing the evidence, the arbitrator determined that the long standing past practice of granting four hours of blood donor leave conflicted with the agreement provision. Management was directed to pay the grievant two hours administrative leave. The parties were directed to negotiate on the issue of off-base blood-donor leave.

JOHN A. BAILEY February 23, 1981 United States Air Force - San Antonio Air Logistics Center, Texas and American Federation of Government Employees, Local 1617 34 pages

Cite Cases as LAIRS _____

PROMOTION -- PRESELECTION

13220 Did management violate the agreement by preselecting an employee for the vacancy in question?

No. The union did not present sufficient evidence which indicated that the employee had been preselected to fill the vacancy. The agency went through the normal selection procedure, in which all the applicants were fairly considered for the position.

ARTHUR J. HEDGES February 27, 1981 Veterans Administration, Medical Center - Vancouver, Washington and American Federation of Government Employees, Local 2583 8 pages

REPRESENTATION -- OFFICIAL TIME ALLOWANCE, TYPES OF MEETINGS; DISCIPLINE -- ABSENTEEISM

13221 Did management violate the agreement when it charged the grievants, who were union officials, as AWOL on the day in question?

Yes. The grievants had been given permission to take official time to attend to representational duties. The grievants went off the base to meet with a representative of the FLRA concerning the status of several ULP's that the union had filed. During their absence, a sudden, unscheduled increase in the workload occurred. Their supervisors were unable to locate them, since they were off base. Subsequently, the agency charged the grievants as AWOL. The arbitrator ruled that the grievants were not AWOL on the day in question, and that they were to be made whole for any lost earnings. The arbitrator noted that the grievants had been properly released from their duties, and that their meeting with the FLRA official was for a legitimate purpose for which official time could be granted under the terms of the agreement. Further, he noted that management miscommunication on the day in question resulted in the AWOL charge. Grievance sustained.

NATHAN COHEN March 3, 1981 United States Air Force, McGuire Air Force Base, New Jersey and American Federation of Government Employees, Local 1778 23 pages

Cite Cases as LAIRS _____

PROMOTION -- PROCEDURES, USE OF OTHER PROCEDURES

13222 Did the procedural process followed by management in the selection of an individual for promotion violate the Merit Promotion Plan?

No. The grievant contended that he was denied the promotion on the basis of a joint selection made by two management officials and that a joint selection went beyond the authority granted management in the Merit Promotion Plan. The arbitration held on the basis of the evidence that a joint selection did not occur. Rather, the designated selecting official made the decision. The other officials merely participated in the interviews and made recommendations. The arbitrator found that management did not violate the terms or spirit of the Plan.

JAMES A EVENSON December 19, 1980 Veterans Administration, Regional Office - Denver, Colorado and American Federation of Government Employees, Local 1557 9 pages

OVERTIME -- RESTRICTIONS, NOTIFICATION REQUIREMENTS; WORK ASSIGNMENT -- RESTRICTIONS, NOTIFICATION REQUIREMENTS

13223 Was the failure to give five days advance notice of a change in the days of the grievant's regularly scheduled administrative work week a violation of agreement?

Yes. The union interpreted the agreement to mean that if the agency changes an employee's administrative work week (Monday through Friday) to include Saturday the employee must receive notice of the change by Tuesday preceding the Monday of the work week in which the changes occur. If such notice is not given, the union contended that the employee is entitled to work his regularly scheduled administrative work week and then work Saturday on an overtime basis. In the case at hand the agency changed the work week to include Saturday, but neither five days notice nor overtime were provided. The arbitrator did not accept the agency's argument that it cannot know in advance that Saturday work is needed, and therefore, the intent is to spare it of the obligation to pay in those instances. The grievance was sustained and the agency was ordered to pay the grievant overtime for the day in question.

DAVID L. BECKMAN February 28, 1981 Department of Treasury, Bureau of Alcohol, Tobacco and Firearms - Washington, DC and National Treasury Employees Union 12 pages

Cite Cases as LAIRS ____

FACILITIES/SERVICES -- WORK CLIMATE, TEMPERATURE

13224 Did management violate the agreement by not releasing personnel when specified temperatures were reached?

No. The agreement provides in part, that if heat and humidity have reached 95 degrees and 55 percent humidity, the nonairconditioned areas of the warehouse will be closed. The union contended that on July 21st such a situation existed when management decided to hold a twenty-minute safety meeting before releasing employees. It argued that a violation occurred because employees were to be released within one half hour after notification. After reviewing the agreement language and prior practice, the arbitrator ruled that no infraction of the agreement occurred by management's utilization of working time for a safety meeting. Therefore the grievance was dismissed.

HARRY H. KUSKIN December 26, 1980 United States Army, Publications Center - Baltimore, Maryland and American Federation of Government Employees, Local 1409 20 pages

EMPLOYER RIGHTS -- ASSIGN WORK; POSITION CLASSIFICATION -- POSITION DESCRIPTION; WORK ASSIGNMENT -- UNDESIRABLE

13225 Did management violate the agreement when it required the grievants to perform a lavatory servicing assignment?

Yes. The janitorial work was assigned to employees in the category of aircraft attendant and aircraft worker. The union grieved these assignments as not within the scope of these employees' position descriptions, and argued that these duties had never been performed by these employees. From an analysis of the position descriptions taken in their entirety the arbitrator held that the intent was to describe the kind of duties ordinarily performed by mechanics and mechanic's helpers, not janitorial duties. Therefore the arbitrator held that the assignments in question were not job related. He directed the agency not to assign these two duties to the employees in question.

HENRY M. GRETHER March 3, 1981 United States Air Force, 3902C Air Base Wing - Offutt Air Force Base, Nebraska and American Federation of Government Employees, Local 1486 8 pages

Cite Cases as LAIRS _____

WORK ASSIGNMENT -- CONDITIONAL, SHIFT

13226 Did management violate the agreement by refusing to allow employees to choose their shifts?

No. Five cooks in the hospital dining hall desired to choose a particular shift according to their service computation date. The union argued that management violated the agreement by refusing to let the employees select their desired shifts. Since the agreement language was ambiguous as it related to the facts of this arbitration, the arbitrator had to determine the intent of the parties. He found the evidence in the 1978 negotiations in which the language did not apply to cooks who were not on fixed shifts. Therefore, since the cooks shifts were not fixed, the grievance was denied.

JOHN C. SHEARER January 29, 1981 United States Air Force, Carswell Air Force Base, Texas and American Federation of Government Employees, Local 1364 12 pages

POSITION CLASSIFICATION -- POSITION DESCRIPTION, WORKING OUT OF CLASSIFICATION; EMPLOYER RIGHTS -- ASSIGN WORK

13227 Did management violate the agreement when it obtained the aid of an administrative staff member to set up utensils and serve coffee at a conference?

No. The union contended that such duties were outside the scope of administrative personnel. Management wished to save money and thus sought individuals to perform the task. The arbitrator agreed with management's contention that no assignments were made and that the services were volunteered. In view of this finding the issue of whether or not the assignment would have been proper had it been ordered was rendered moot. The grievance was denied.

CHARLES F. IPAVEC September 5, 1981 United States Air Force, 2750th Air Base Wing - Wright-Patterson Air Force Base, Ohio and American Federation of Government Employees, Local 1138 20 pages

Cite Cases as LAIRS _____

POSITION CLASSIFICATION -- POSITION EVALUATION

13228 Was the desk audit of the grievant improper?

The grievant received a notice of audit on June 30th, but the review did not occur until September 15th. The union claimed that the audit was improper because expeditious notice was not given. The arbitrator found that the notice was unreasonably long. In the future, long-range notices without an additional oral or written notice within two days to two weeks will not be considered proper notice.

WILLIAM M. ELLMANN March 4, 1981 Department of Health and Human Services, Social Security Administration - Southfield, Michigan and American Federation of Government Employees, Local 3239 13 pages

DISCIPLINE -- NEGLECTFUL CONDUCT, PATIENT ABUSE

13229 Was the letter of reprimand issued to the grievant for patient abuse taken for just cause?

Yes. The grievant, a nursing assistant, was charged with being verbally abusive to two patients. The arbitrator tested the relative weight and credibility of the evidence presented and concluded that the testimony of the patients and management was more convincing than that of the grievant and the union. The charge of patient abuse, together with the letter of reprimand, were upheld.

JOSEPH M. PASTORE, JR. March 2, 1981 Veterans Administration, Medical Center - New York, New York and American Federation of Government Employees, Local 2094 11 pages

Cite Cases as LAIRS _____

NON-DISCRIMINATION -- TYPES; EMPLOYEE RIGHTS -- PERSONAL

13230 Was the supervisor's conduct toward the grievant a violation of the agreement?

Yes. The grievant claimed that over a period of several months there was an ongoing and concerted attempt by the clinical supervisor to misrepresent, discredit and distort her professional performance and activities. The most recent example was the supervisor's action of scheduling the grievant to work five consecutive weekends, a violation of the agreement. As a remedy for the infractions of harassment, the union requested that the supervisor be reprimanded and removed from her supervisory position. An entire series of events revealed in testimony persuaded the arbitrator that the supervisor was attempting through various means to rid herself of grievant's services. The totality of the supervisor's actions constituted harassment. Management was ordered to cease and desist in this conduct.

WILLIAM S. DEVINO March 9, 1981 Veterans Administration, Medical and Regional Office Center - Togus, Maine and American Federation of Government Employees, Local 2610 13 pages

DISCIPLINE -- INSUBORDINATION, UNSAFE WORK METHODS; FACILITIES/SERVICES -- HEALTH, PHYSICAL EXAMINATION

13231 Did the employer possess just cause to suspend the grievant for one day for failure to take a fitness for duty examination?

Yes. The dispute centered around the requirement by the employer that the grievant take a fitness for duty examination as a condition for continuing to operate mobile equipment, within a restricted area. Management wanted the grievant to take such an examination for his failure to wear a gas mask during a drill, and to confirm whether or not he was physically able to wear the mask under normal conditions. The arbitrator held that the employer had the appropriate authority to direct the grievant to take a fitness for duty examination. Substantial grounds existed for suspicion that the grievant might not be able to perform his required duties while wearing a gas mask. None of the grievant's excuses were accepted.

ROBERT J. ABLES March 10, 1981 United States Army, Lexington Blue Grass Depot Activity - Richmond, Kentucky and International Association of Machinists and Aerospace Workers, Local 859 14 pages

Cite Cases as LAIRS ____

REPRESENTATION -- UNION OFFICIALS/STEWARDS, OFFICIAL TIME ALLOWANCE

13232 Does management have the right to refuse to grant official time on an as-needed basis to a grievance vice chairman as that time is assessed by the local union president?

The union argued that management is virtually required to grant the amount of time requested and assessed as necessary by the union. The arbitrator found nothing in the agreement or in the record which showed that the parties intended to prohibit management from granting time to a grievance vice chairman; nor was there anything which showed that such a grant was required under any circumstances. Grievance denied.

DANIEL HOUSE February 26, 1981 Department of Health and Human Services, Social Security Administration - New York, New York and American Federation of Government Employees 20 pages

TRAINING -- LABOR RELATIONS; LEAVE -- MISCELLANEOUS PAID, ADMINISTRATIVE

13233 Did the agency violate the agreement by granting only eight hours of administrative leave for union officials to attend a union sponsored training seminar?

No. Management denied the union's request for sixteen hours of administrative leave to hold a training seminar for union officials-citing the agency workload-and approved eight hours for the purpose. The union grieved, contending that a legitimate past practice had been created when management previously approved sixteen hours for seminars in each of three consecutive years. As such, management cannot unilaterally cut off the benefit. The arbitrator held that the pertinent provision in the agreement is permissive and sets a guideline of eight hours for such purposes. The arbitrator concluded that the actions of the parties in previous years did not meet the test of past practice. Rather, management granted the additional leave in keeping with its discretionary powers authorized in the agreement. In the current year, however, the union did not meet its burden of proof in requesting the additional eight hours. The grievance was denied.

PATRICK A. MCDONALD March 13, 1981 Department of Health and Human Services, Social Security Administration - Southfield, Michigan and American Federation of Government Employees, Local 3239 12 pages

Cite Cases as LAIRS _____

PROMOTION -- PROCEDURES, PREFERENCE TO UNIT EMPLOYEES

13234 Did management violate the agreement by not promoting the grievant?

The grievant applied for a merit promotion vacancy for a fiscal accounting clerk GS-5. She was listed on the certificate of eligibles as was the individual ultimately selected for the job. The dispute arose when the grievant protested that the woman selected by the rating panel was an off-base employee, and that this violated the agreement. The agency contended that the grievant was not substantially equal to the person ultimately chosen for the vacancy. After a review of the evidence the arbitrator found that the grievant's qualifications were substantially equal to those of the off-base candidate. Therefore, the selection was improper under the agreement in that management did not select a candidate who was currently working on the base. The arbitrator could not determine from the record that the grievant would or should have been selected over the other base candidates considered highly qualified. He did not find that it would be appropriate to require that the grievant be promoted. The arbitrator decided to retain jurisdiction over the case to allow the parties to propose a remedy they view as lawful and appropriate.

WILLIAM T. RUTHERFORD March 2, 1981 United States Navy, Marine Corps Logistics Support Base - Albany, Georgia and American Federation of Government Employees, Local 2317 19 pages

TRAINING -- PROGRAMS, RETRAINING; WORK ASSIGNMENT -- CONDITIONAL, SHIFT

13235 Did management violate the agreement when it changed the posted watch schedule of the grievant to accomplish necessary retraining?

No. The grievant, an air traffic controller, had been decertified and was directed to undergo training in order to achieve recertification. Management changed the grievant's hours to conform to those of the training instructor for the one week period of the training. The grievant contended that the retraining could have been accomplished without changing her working hours. However, the arbitrator agreed with management that the change was permissable under the agreement because it was necessary in order to have her work with the instructor. None of the alternatives proposed by the grievant or union were feasible to accomplish such a result. The grievance was denied.

JAMES J. SHERMAN March 14, 1981 Department of Transportation, Federal Aviation Administration - Daytona Beach, Florida and Professional Air Traffic Controllers Organization 14 pages

Cite Cases as LAIRS ____

WORK ASSIGNMENT -- CONDITIONAL, SHIFT; EMPLOYER RIGHTS -- ASSIGN WORK; HOURS OF WORK -- SCHEDULING

13236 Did the schedule to which the grievant was assigned for a two week period violate the agreement?

No. The grievant normally worked the administrative shift, 8:30 am to 5:00 pm, Monday through Friday. The union charged that the rotation of shifts to which the grievant was assigned for a two week period differed from that of his normal rotation on the basic watch schedule. The shifts to which he was assigned were a part of the basic watch schedule; however, the union also alleged that they were selected to avoid the use of overtime. The arbitrator held that the contract language was quite clear in stating that "assignments of individual employees to the watch schedule are not considered as changes in the basic watch schedule." Therefore, no violation of the agreement occurred. The overtime allegation was not proven.

JAMES J. SHERMAN March 14, 1981 Department of Transportation, Federal Aviation Administration - Daytona Beach, Florida and Professional Air Traffic Controllers Organization 11 pages

LEAVE -- SICK, DENIAL, APPROVAL, MEDICAL CLEARANCE

13237 Did the agency violate the agreement when it denied the grievant's request for sick leave?

No. The grievant called his employer and requested sick leave because his wife had a contagious disease. The supervisor told him to provide medical documents about his wife's illness and that without it the grievant's sick leave would be changed to absence without leave. The grievant contended that he was not required to furnish such documentation; he was then charged with AWOL. The arbitrator held that the appropriate regulations and provisions of the agreement were adhered to in denying the grievant's request for sick leave, and requiring medical documentation. The grievance was denied.

GEORGE W. HARDBECK March 6, 1981 Department of Transportation - San Diego, California and Professional Air Traffic Controllers Organization 13 pages

Cite Cases as LAIRS _____

ARBITRATION -- SCOPE, ARBITRABLE MATTERS DEFINED

13238 Is the grievance arbitrable? If so, did management violate the agreement by failing to assign eight hours of overtime to the grievant?

No. The grievance was not arbitrable. The union forwarded a written grievance to the chief on July 16th. The chief gave his written denial on August 2nd. On September 13th, the union filed a second step review of the first decision. The agency argued that the letter far exceeded the twenty day limit called for by the agreement, and no extension was sought. The union's defense was that allegations of inequitable overtime assignments are exempt from time restraints. The arbitrator ruled that the grievance was untimely filed.

MARK SANTER December 17, 1980 Department of Transportation, Burlington International Airport - Burlington, Vermont and Professional Air Traffic Controllers Organization 5 pages

DISCIPLINE -- NONPERFORMANCE, INCOMPETENCE, DISORDERLY CONDUCT, INSUBORDINATION

13239 Was the termination of the grievant for incompetence taken for just cause?

Yes. The grievant, a probationary employee, was employed as an air conditioning mechanic. He received a letter from management that his employment was to be terminated. The decision was based on deficiencies in the grievant's attitude and work performance. Management contended that the grievant's attitude and failure to follow instructions were sufficient to justify termination. The arbitrator upheld the termination after a careful consideration of the evidence.

GEORGE SAVAGE KING January 30, 1981 United States Air Force - Dobbins Air Force Base, Georgia and American Federation of Government Employees, Local 2069 9 pages

Cite Cases as LAIRS ____

DISCIPLINE -- NEGLECTFUL CONDUCT, INTOXICATION, DISORDERLY CONDUCT, INSUBORDINATION

13240 Was the ten day suspension of the grievant for being under the influence of alcohol and refusal to follow orders issued for just cause?

Yes. A management official found the grievant, an air traffic controller, to be in a condition where he slurred his speech, spoke in loud tones, and appeared unsteady on his feet. The grievant disobeyed the official's order to lie down, and later left the facility without authorization. Upon weighing the testimony and preponderance of evidence the arbitrator concluded that the charges against the grievant were justified.

FRANCIS J. ROBERTSON March 17, 1981 Department of Transportation, Broome County Airport - Binghamton, New York and Professional Air Traffic Controllers Organization 15 pages

PROMOTION -- PROCEDURES, FILLING VACANCIES, RANKING OF CANDIDATES

13241 Was management's evaluation and ranking of candidates in violation of the agreement?

Yes. The union contended that the representative of the personnel office on the panel did not fully participate in the evaluating and ranking of candidates and therefore the rating of candidates was in error. Three members were on the rating panel; however, the personnel office representative did not rate the candidates. Management admitted that an error had been committed but did not believe the final outcome was effected. The arbitrator found that a serious error occurred from the omission of the ratings. The arbitrator suggested that the successful candidate be reassigned and that the position be readvertised.

JOSEPH LAZAR February 25, 1981 Department of Commerce, National Bureau of Standards - Boulder, Colorado and American Federation of Government Employees, Local 2186 pages

Cite Cases as LAIRS ____

WORK ASSIGNMENT -- TRANSFER, REASSIGNMENT

13242 Did the agency violate the agreement by involuntarily reassigning the grievant from one work team to another?

Yes. A notice was issued that certain vacancies existed for controllers on teams 3 and 4 and volunteers were solicited to fill these vacancies. There were no volunteers and the grievant was involuntarily reassigned from team 7 to team 4. The arbitrator agreed with the union's contention that the clear language of the agreement provides that the least senior employee on a facility-wide basis will be reassigned in the event of a staffing imbalance. Since the grievant was not the least senior employee, the arbitrator upheld the grievance and ordered that corrective action be taken.

JAMES A. MORRIS March 20, 1981 Department of Transportation, Federal Aviation Administration - Knoxville, Tennessee and Professional Air Traffic Controllers Organization 6 pages

DISCIPLINE -- NONPERFORMANCE, INCOMPETENCE

13243 Did management properly propose that the grievant be terminated for just cause? If not, what is the appropriate remedy?

The grievant was employed as a claims representative, and had been receiving promotions because of her excellent performance. Most recently, she had received an upgrade, at which time her supervisor expressed reservations about the quality and accuracy of her work. Because of the deficiencies in performance, a counseling process was commenced which placed the grievant under close scrutiny. Later, management apparently abandoned its efforts to rehabilitate the grievant when it removed her from claims representative duties and instead gave her file clerk assignments. Since that time she has remained in a make work status pending a determination of her status. From the evidence the arbitrator believed the grievant to be a dedicated employee whose deficient performance was not willfull. The grievance was sustained because removal would be excessive and without just cause. The arbitrator directed that the grievant be reassigned.

ROBERT D. STEINBERG January 30, 1981 Department of Health and Human Services, Social Security Administration - San Francisco, California and American Federation of Government Employees 21 pages

Cite Cases as LAIRS ____

TRAINING -- PROGRAMS, CAREER, OTHER

13244 Did the agency violate the agreement when it denied the grievant credit for a course he had taken?

No. The grievant, an elementary school teacher, completed junior college courses in auto tune-up I & II and wished to have the earned credits applied toward the Masters and 30 pay program. This program provides higher salaries for those teachers with a Master's Degree who complete thirty graduate and upper level undergraduate credits. The agency contended that credit for the program is limited to those courses which directly relate to the teacher's current position, which would make the teacher eligible for another position, or which may be considered educationally oriented. The arbitrator concluded that the auto tune-up courses did not fall within the intent of this negotiated language.

ROBERT C. MCCANDLESS March 20, 1981 Office of Secretary of Defense, Dependent Schools - New York, New York and Overseas Educational Association 27 pages

HOURS OF WORK -- SCHEDULING, GUARANTEE, HOLIDAY

13245 Did management violate the agreement when it changed the posted holiday work schedule of the grievants for Christmas Day 1979 and New Year's Day 1980?

The union claimed that management unilaterally changed the watch schedule for the holidays of Christmas and New Year's Day, without the consent of the employees. It requested that the employees be compensated for holiday pay. The arbitrator sustained the grievance and ordered management to cease and desist from changing the posted schedule unless the requirements of the agreement are met. No compensatory damages were awarded.

THOMAS F. CAREY March 21, 1981 Department of Transportation, Federal Aviation Administration - New York, New York and Professional Air Traffic Controllers Organization 13 pages

Cite Cases as LAIRS _____

DISCIPLINE -- DISHONESTY, FALSIFICATION OF RECORDS

13246 Did the agency have just cause to suspend the grievant for one day for falsification of official government records?

Yes. In filling out an application for an airman medical certificate the grievant erroneously responded "no" to items concerning his record of convictions. The arbitrator did not accept the grievant's contention that haste in filling out the form led to the errors. The arbitrator noted that the grievant had prior experience filling out the form. The grievance was denied.

THOMAS F. CAREY March 30, 1981 Department of Transportation, Federal Aviation Administration - Dulles Airport, Virginia and Professional Air Traffic Controllers Organization 16 pages

DISCIPLINE -- DISORDERLY CONDUCT, ABUSIVE/THREATENING LANGUAGE

13247 Did management justly suspend the grievant for use of abusive language?

Yes. The grievant, a contact representative, was given a ten-day disciplinary suspension for conduct unbecoming of a government employee. Management contended that the grievant was rude and disrespectful while processing forms. Furthermore, management contended that the suspension was justified because of another five-day suspension less than two months before the current incident for unbecoming conduct. The record convinced the arbitrator that the grievant had been rude and nasty. Such conduct did provide just and sufficient reason for discipline. Therefore, the grievance was denied.

WILLIAM S. RULE March 30, 1981 Department of Justice, Immigration and Naturalization Service - Washington, DC and American Federation of Government Employees, Local 505 9 pages

Cite Cases as LAIRS _____

TRAINING -- LABOR RELATIONS, PROCEDURES, OFFICIAL TIME; LEAVE -- ADMINISTRATIVE

13248 Did the agency violate the agreement when previously authorized official time for training was changed to annual leave?

Yes. The agency had approved the attendance of three union officials at a four-day union-sponsored seminar on official time. After the seminar started the agency revoked approval of attendance for the first day and charged that day to the employees' annual leave. Management contended that the agenda of the training was not timely submitted and that it later learned that the first day of the seminar was for registration and orientation, not training. However, the arbitrator determined that the agenda was timely filed. Moreover, the record established that the agency had not disapproved the requested administrative leave within the ten-day period provided in the agreement. The arbitrator directed that the attendance of the employees at the session be charged to administrative leave.

PHILIP FELDBLUM March 9, 1981 Department of Justice, Immigration and Naturalization Service - New York, New York and American Federation of Government Employees, Local 1917 7 pages

DISCIPLINE -- NEGLECTFUL CONDUCT, JUST CAUSE

13249 Did management have just and sufficient cause to suspend the grievant for five days in order to promote the efficiency of the service?

The grievant, employed as a detention officer, coordinated the movement of illegal aliens. He was assigned to the airport to meet scheduled flights in order that aliens could be transported. Normally, he worked with a co-employee, but on this occasion his partner had called in sick. The grievant failed to meet a scheduled flight with the result that an illegal alien escaped. Management issued a five-day suspension to the grievant for his negligence. Three days were for his failure to arrive at least one-half hour early to perform escort duty. The additional two days was for non-compliance with standards and instructions. The arbitrator ruled that the three-day suspension was justified, but the two-day suspension was not. The basis for the two-day suspension was that an employee has an obligation to notify his partner of the details of incoming flight. However, as the evidence indicated, the grievant's partner called in sick that day. The arbitrator directed management to revoke the two-day suspension, and awarded the grievant back pay.

BENNETT S. AISENBERG March 10, 1981 Department of Justice, Immigration and Naturalization Service - Twin Cities, Minnesota and American Federation of Government Employees, Local 2718 8 pages

Cite Cases as LAIRS _____

UNION RIGHTS -- JURISDICTIONAL BAR, RESTRICTIONS, LIMITATIONS ON UNIT WORK

13250 Did disapproval of the employee's annual leave request by his supervisor violate the agreement?

No. The employee came to work, decided that no work in his trade would be available that day, and told his supervisor that he had some personal business to attend to and requested leave. The supervisor denied the request, stating that the employee was needed to do other work and that the regular work would be coming into the department during the day. The arbitrator reviewed the evidence and arguments and concluded that the agreement does not give employees the option of taking annual leave in lieu of performing assigned work out of trade.

ROSS GROSHONG March 17, 1981 United States Navy, Naval Air Rework Facility - Cherry Point, North Carolina and International Association of Machinists and Aerospace Workers, Local 2297 9 pages

DISCIPLINE -- NEGLECTFUL CONDUCT, ABSENTEEISM

13251 Was the grievant properly suspended for five-days for absence from an overtime assignment without permission?

Yes. The grievant was directed by his supervisor to perform overtime work on a Saturday. He asked if he could be relieved because he had custody of his daughter on that weekend and was unable to find a baby-sitter. The supervisor tried unsuccessfully to find a replacement, and therefore required the grievant to perform the work. The grievant failed to show up on Saturday and subsequently management issued the five-day suspension. The arbitrator ruled that the suspension was justified because it was the grievant's responsibility to balance his job and family requirements. The grievance was denied.

DENNIS R. NOLAN March 19, 1981 Department of Agriculture, Food Safety and Quality Service - Hiddenite, North Carolina and American Federation of Government Employees, Local 2325 8 pages

Cite Cases as LAIRS ____

EMPLOYEE RIGHTS -- REPRESENTATION; REPRESENTATION -- UNION OFFICIALS/ STEWARDS, OFFICIAL TIME ALLOWANCE; GRIEVANCE -- INDIVIDUAL RIGHTS, UNION REPRESENTATION

13252 Did management violate the agreement by denying the grievant the right to meet with her representative within sixteen hours of the request?

No. The agreement holds that reasonable arrangements have to be made by management to afford employees the right to freely consult on official time with their union representative within sixteen hours of the request; however, the employees must coordinate the time with the supervisor. The arbitrator held that there was no indication of the employee's willingness to coordinate the meeting time with her supervisor. Therefore, the arbitrator denied the union's request for injunctive relief.

PETER FLOREY March 13, 1981 Department of Health and Human Services, Social Security Administration - Philadelphia, Pennsylvania and American Federation of Government Employees, Local 2327 8 pages

PERFORMANCE -- APPRAISAL

13253 Was the appraisal of the grievant's performance in accordance with the agreement?

Yes. The grievant was a service representative, who occupied the classification of GS-7. She aspired to the next higher classification, that of claims representative. In order for her to have been eligible for promotion, she must have accumulated a number of points on a performance evaluation form. The scores the grievant received fell short of producing that total, so she filed the grievance. The grievant contended that management had not given sufficient notice that her job performance in some way needed improvement as is required in the agreement. Management argued that its obligation had been discharged when it advised the grievant how her performance could be improved. The arbitrator determined that the union failed to meet its burden of proof in establishing that the grievant was improperly underrated. The grievance was denied.

BERTHOLD W. LEVY March 17, 1981 Department of Health and Human Services, Social Security Administration - Bristol, Pennsylvania and American Federation of Government Employees, Local 2327 26 pages

Cite Cases as LAIRS _____

LEAVE -- SICK, MEDICAL CLEARANCE; DISCIPLINE --NEGLECTFUL CONDUCT, ABSENTEEISM

13254 Was the three day suspension of the grievant justified?

Yes. On the day in question, the grievant called in to report his illness and request sick leave. Since he had been under a letter of requirement for abusing sick leave, he was obligated to substantiate any requests with a medical certificate. However, he did not visit a physician on the day he was absent, which constituted his third offense. The arbitrator ruled that the suspension was justified.

JOHN W. KENNEDY March 15, 1981 United States Navy - Charleston Naval Shipyard, South Carolina and Metal Trades Council 9 pages

DISCIPLINE -- NONPERFORMANCE, INCOMPETENCE; PERFORMANCE -- OTHER

13255 Did management have just cause to issue a memo to the grievant regarding faulty work procedures?

No. The grievant works as an equipment cleaner, masking and stripping aircraft. The foreman contended the grievant had improperly masked off an area, causing stripper to leak which resulted in damage. The grievant denied he followed improper procedures. A counselling session was held from which a written memo concerning the incident was made. The union alleged that this memo constituted a letter of caution and that this action was inconsistent with other similar occurrences. The arbitrator held that management did not show by a preponderance of the evidence that it was correct in its assessment of the circumstances in the incident. He noted that in previous memos issued, the parties agreed concerning the fault of the employee, unlike the instant case. The arbitrator rescinded the memo.

WAYNE G. ANDERSON March 11, 1981 United States Navy, Naval Air Rework Facility - Cherry Point, North Carolina and International Association of Machinists and Aerospace Workers 15 pages

Cite Cases as LAIRS _____

DISCIPLINE -- DISORDERLY CONDUCT, INSUBORDINATION

13256 Did management violate the agreement when it reprimanded the grievant for disorderly conduct?

Yes. Management issued the reprimand to the grievant for her loud and abusive conduct toward a co-worker. The grievant tried to show that her outburst was warranted by previous conduct of the co-worker. The arbitrator ruled that the grievant's conduct was disorderly and therefore, the reprimand was justified.

WILLIAM D. FERGUSON March 17, 1981 Veterans Administration Medical Center - Charleston, South Carolina and National Association of Government Employees, Local R5-136 7 pages

DISCIPLINE -- ABUSIVE/THREATENING LANGUAGE, DISORDERLY CONDUCT

13257 Did the agency have just cause to suspend the grievant for seven days for making abusive and threatening actions toward the supervisor?

Yes. The grievant became upset, used abusive language and made threatening gestures to his supervisor when she asked him for his administrative permit following a physical exam. Later it was learned that the grievant had indeed been absent 45 minutes without leave. The arbitrator found the record of evidence clear and convincing regarding the charges, and therefore denied the grievance.

PRESTON J. MOORE March 10, 1981 United States Air Force - Tinker Air Force Base, Oklahoma and American Federation of Government Employees, Local 916 4 pages

Cite Cases as LAIRS _____

TRAINING -- CAREER, OTHER; LEAVE -- EFFECT ON WORK SCHEDULE

13258 Did management improperly extend the normal two-year training program of the grievant by eight weeks because of the amount of leave used during the training period?

Yes. Management contended that it properly exercised its discretion in extending the training to cover the time lost. The union argued that management cannot properly hold back a trainee for use of leave if his proficiency is unchallenged or if no need exists. The arbitrator held that the extension was not needed in the circumstances of the particular case. He noted that the record conclusively demonstrated that the grievant did not need the additional training because of the time he missed. Management's decision was therefore arbitrary and improper because it did not consider whether a need existed to justify the extension. The grievance was upheld.

RALPH T. SEWARD March 27, 1981 Government Printing Office - Washington, DC and Washington Government Photo Offset, Local 538 11 pages

DISCIPLINE -- ABUSE OF AUTHORITY, INSUBORDINATION

13259 Did the agency have just cause to terminate the grievant for wanton disregard of directives and insolence?

No. The grievant, a security officer, was dismissed because he followed improper procedures and disregarded directives in apprehending an individual for disorderly conduct. The arbitrator held that management did not substantiate all the charges against the grievant. There was no wanton disregard of directives, in that the grievant believed he had a right to apprehend the individual as a disorderly person. However, the grievant was found to have violated policy directives. The dismissal was reduced to a two-week disciplinary suspension with the grievant to be reinstated with back pay.

PETER D. JASON March 30, 1981 United States Air Force - Selfridge Air National Guard Base, Michigan and Fraternal Order of Police, Local 143 12 pages

Cite Cases as LAIRS ____

DISCIPLINE -- DISABILITY, INSUBORDINATION, LEAVING JOB SITE

13260 Did management have just cause to suspend the grievant for twelve days for failure to follow work instructions, leaving the work area without authorization, and disrespect of authority?

Yes. The arbitrator held that management presented convincing evidence and testimony that the grievant failed to follow work instructions and developed a defiant attitude toward authority. The arbitrator noted that the grievant's response to the charges was mainly a simple denial. He also found no merit in the union's contention that the grievant did not know what was expected of her in the job.

JOHN R. THORNELL March 27, 1981 Department of Health and Human Services, Social Security Administration - Kansas City, Missouri and American Federation of Government Employees, Local 1336 3 pages

POSITION CLASSIFICATION -- POSITION DESCRIPTION, WORKING OUT OF CLASSIFICATION

13261 Did the position description in question adequately reflect the major duties and responsibilities of the classification?

No. The grievant sought revision of a position description for the classification Engineering Technician, contending that the description did not meet the FPM test of adequacy. Specifically, the grievant contended that duties and responsibilities were misidentified, as well as experience and knowledge requirements. The arbitrator held that the union succeeded in demonstrating significant disparities between what the position description stated and what the technicians actually did. Management was directed to revise the position description to accurately reflect the major duties and responsibilities of the classification.

JOHN C. SHEARER March 18, 1981 United States Air Force - McConnel Air Force Base, Kansas and American Federation of Government Employees, Local 1737 9 pages

Cite Cases as LAIRS _____

DISCIPLINE -- NEGLECTFUL CONDUCT, LOITERING; DISORDERLY CONDUCT, ABUSIVE/ THREATENING LANGUAGE

13262 Was the three-day suspension of the grievant for loafing on the job and using abusive language taken for just cause?

The grievant was questioned by his foreman when he was observed taking an unauthorized break, and responded with abusive language. As a warehouseman the grievant should have been helping unload a trailer truck. The arbitrator was convinced that the grievant had indeed been taking an unauthorized break and had used abusive language. However, the arbitrator ruled that a three-day suspension was excessive, and that a lesser penalty would suffice to correct the behavior of the grievant. Under the contract, management failed to determine whether a less severe penalty would correct the problem. The arbitrator ordered that the three-day suspension be set aside and replaced with an official written warning.

BARNETT M. GOODSTEIN March 17, 1981 United States Army, Air Defense Center - San Antonio, Texas and National Association of Government Employees, Local R14-22 15 pages

NEGOTIATION/CONSULTATION -- SCOPE, REFUSAL TO, PROCEDURES, FAILURE TO BARGAIN

13263 Did management have an obligation to bargain with the union on the local level regarding the impact of proposed conversions?

No. Management ultimately converted ten civilian slots to military positions. The union argued that management had an obligation to bargain on the local level because the issue had a specific impact on a particular bargaining unit. Management contended that the only obligation to bargain existed at the national level, since a consolidation of the twenty-one separate units into one national representation had occurred. It was also asserted that the union was afforded a reasonable opportunity to bargain at this level. The arbitrator was unwilling to agree that the impact of the conversions fell within the framework of unique local conditions which would have required a local supplemental agreement. The unions proof did not sustain a possible violation of the agreement.

SAMUEL J. NICHOLAS March 11, 1981 United States Air Force - Kelly Air Force Base, Texas and American Federation of Government Employees, Local 1617 18 pages

Cite Cases as LAIRS _____

ARBITRATION -- SCOPE, ARBITRABLE MATTERS DEFINED; GRIEVANCE -- REPRESENTATION, UNION GRIEVANCE

13264 Was management's action of placing the grievant in an absent without leave status (AWOL) for six hours arbitrable as a union grievance?

No. The master agreement provides two different procedures for grievances, one for employee grievances and the other one for employer-union grievances. A union grievance applies to situations where the union asserts its right to file a grievance on its own behalf, and does not relate to those situations when the union asserts its right to file a grievance on behalf of an employee. The arbitrator held that the case was an employee and not a union grievance. Therefore, the grievance was denied.

JACK CLARKE March 23, 1981 Non-Appropriated Funds, United States Air Force - Warner Robins Air Force Base, Georgia and American Federation of Government Employees, Local 987 30 pages

PAY PRACTICES -- DIFFERENTIALS, ENVIRONMENTAL

13265 Were the employees entitled to environmental differential pay for working conditions involving airborne asbestos fibers?

No. The employees work in a power plant where airborne asbestos fibers are present due to deteriorating insulation. Tests indicated that the fiber concentrations were well below the permissible exposure limit established by the American Conference on Industrial Hygiene and adopted by OSHA. The arbitrator ruled that the facts in the instant case did not sustain the position of the union that the workers in the plant were exposed to a working condition of an unusually severe nature. The grievance was denied.

ROBERT A. O'NEILL February 27, 1981 United States Air Force - Eielson Air Force Base, Alaska and American Federation of Government Employees, Local 1836 13 pages

Cite Cases as LAIRS _____

DISCIPLINE -- NEGLECTFUL CONDUCT, INTOXICATION

13266 Was the two week suspension of the grievant for an alcohol policy violation taken for just cause?

The grievant was charged with bringing alcohol onto work premises and was subsequently suspended for ten days. Because this was the first blemish on the grievant's record, the arbitrator determined that mitigating circumstances existed and that a reduction in the suspension was warranted. The arbitrator ruled that the suspension be reduced to one week and that the grievant be made whole for the difference.

WILLIAM GOMBERG February 27, 1981 Department of Agriculture, Federal Grain Inspection Service - Washington, DC and American Federation of Government Employees, Local 3777 5 pages

POSITION CLASSIFICATION -- POSITION DESCRIPTION, POSITION EVALUATION

13267 Did the position description reflect the duties of base personnel with sufficient accuracy to allow proper classification or must management implement an alternative proposed position description?

The arbitrator ruled that management was not required to implement the alternative position description for the reason that the present position description fulfilled the standard of adequacy required by applicable statutes, rules and regulation. This conclusion was based on a careful comparison of the two position descriptions. The union grieved management's refusal to implement the alternative position description which it contended more accurately described the job.

RAYMOND F. HAYES March 18, 1981 United States Air Force - Williams Air Force Base, Arkansas and American Federation of Government Employees, Local 1776 55 pages

Cite Cases as LAIRS ____

GRIEVANCES -- APPEALS, EEO

13268 Did management improperly disregard the request of the grievant for an EEO hearing?

No. The union contended that management refused to request that a complaints examiner hold a hearing on an EEO sex discrimination complaint of the grievant. Verbal requests for such a hearing were made on several occasions but to no avail. The union viewed the denial as violative of the agreement relating to the fair and impartial treatment of employees. The arbitrator determined that the union had unduly placed the burden upon management to request the hearing when in actuality, it was the union's responsibility. The grievance was denied.

J. THOMAS KING March 16, 1981 United States Army, Warner Robins Air Logistics Center - Robins Air Force Base, Georgia and American Federation of Government Employees, Local 987 19 pages

PROMOTION -- NON-COMPETITIVE, FAILURE TO PROMOTE

13269 Did management violate the agreement when it non-competitively filled the position in question with the incumbent? If so, was the grievant entitled to any monetary relief?

No. Both the grievant and the incumbent had been placed on the best qualified list for the position. The vacancy was subsequently cancelled. Later, the incumbent was offered and accepted the position, non-competitively. The union contended that the applicable regulations required the agency to follow competitive procedures, that the failure to do so deprived the grievant of the right to compete and entitled him to back pay for the money lost. The arbitrator ruled that in order to be considered for back pay the grievant would have to show that there was a reasonable likelihood that the incumbent would not have been chosen had competitive standards prevailed. There was no evidence to support this. It was also clear from the regulations that no monetary remedy was permissible.

SINCLAIR KOSSOFF March 18, 1981 Department of Health and Human Services, Social Security Administration - Chicago, Illinois and American Federation of Government Employees, Local 1395 7 pages

Cite Cases as LAIRS _____

NEGOTIATION/CONSULTATION -- PROCEDURES, OFFICIAL TIME ALLOWANCE; OVERTIME -- ELIGIBILITY, EXEMPT, NON-EXEMPT; REPRESENTATION -- UNION OFFICIALS/STEWARDS, OFFICIAL TIME ALLOWANCE

13270 Did the employer violate the agreement or 5USC 7131 when it denied overtime and night differential to union negotiators for a night negotiating session?

No. Representatives of the employer and union met in negotiations between 8:30 am and 4:30 pm., per ground rules. The parties continued negotiating late into the night. The employer denied the union's request for overtime. The arbitrator held that under pertinent regulations the union officials were not entitled to overtime, because they were not otherwise in a duty status after 4:30 pm.

DANIEL E. MATTHEWS March 8, 1981 United States Army - Aberdeen Proving Ground Command, Maryland and International Association of Machinists and Aerospace Workers, Local 2424 8 pages

DISCIPLINE -- NEGLECTFUL CONDUCT, LEAVING JOB SITE

13271 Did management violate the agreement when it issued letters of reprimand to the grievants for leaving the job without proper permission?

No. Management solicited volunteers for an extended work assignment at another location. The grievants volunteered, but preferred commercial quarters to that provided by government and expected reimbursement if they did not avail themselves of government quarters. Upon arrival at the assignment they were informed that government quarters were indeed available; therefore, reimbursement could not be provided for commercial housing. Dissatisfied, the grievants ultimately did not report to work. The arbitrator held that the reprimands were justified because of the grievants' failure to comply with supervisory orders to report to work, as well as for leaving without permission.

THOMAS N. KESSEL March 24, 1981 United States Navy, Naval Air Rework Facility - Cherry Point, North Carolina and International Association of Machinists and Aerospace Workers, Local 2297 12 pages

Cite Cases as LAIRS _____

DISCIPLINE -- NON-PERFORMANCE, SLEEPING ON THE JOB; NEGLECTFUL CONDUCT -- ABSENTEEISM

13272 Did management properly impose a five-day suspension on the grievant for sleeping on the job and absences without explanation?

No. The grievant was observed with his eyes closed on the job, but contended that being a religious man, he was praying. Several months later the grievant was absent from work for several days without explanation and again one month later. The employer grouped the incidents together; ultimately, a letter proposing the five-day suspension was issued to the grievant a full five months after the first incident. The arbitrator ruled that although the suspension was justified on its merits it was not imposed in a procedurally acceptable manner. The delays between the incidents, letter of proposed disciplinary action, and final dispositive action violated the principles established in the government's disciplinary guide. Since the processing of the case was held untimely, the arbitrator ordered that the grievant be made whole for back pay.

JAMES C. OLDHAM March 23, 1981 General Services Administration - Washington, DC and American Federation of Government Employees, Local 2151 18 pages

PROMOTION -- PROCEDURES, POSTING, CRITERIA

13273 Did the agency act properly in requiring fifteen months of processing experience for the GS-9 level for the original vacancy in the announcement?

Yes. The employee, a GS-8, filed a grievance after he learned that he had been passed over for a GS-9 position in favor of a GS-7 employee. Three announcements were made for the position in question; the requirement of fifteen months of experience was listed on the first two but dropped for the third announcement. The union contended that the grievant was unable to qualify for the promotion due to this confusion. The arbitrator held that the agency did not violate the agreement in applying a qualification standard to the position. The grievance was denied.

HAROLD H. LEEPER March 25, 1981 Department of Agriculture, Food Safety and Quality Service - Dallas, Texas and American Federation of Government Employees, Local 3141 13 pages

Cite Cases as LAIRS _____

LEAVE -- HOLIDAY, EFFECT ON OVERTIME, EFFECT ON WORK SCHEDULE

13274 Did management violate the agreement when a supervisor worked a holiday shift, displacing another employee?

Yes. The agreement provides that supervisors will not be scheduled for any Sunday or holiday work. Several employees traded shifts on a holiday and as a result, a supervisor was assigned a holiday shift. A bargaining unit employee was available for the shift, but was not offered the assignment. The arbitrator held that under the terms of the agreement, the employee was entitled to work the shift. The agency was ordered to pay the employee holiday pay for the shift worked by the supervisor.

RALPH C. BARNHART March 26, 1981 Department of Commerce, National Weather Service - Memphis, Tennessee and National Weather Service Employees Organization 4 pages

REPRESENTATION -- UNION OFFICIALS/STEWARDS, OFFICIAL TIME ALLOWANCE

13275 Was management's denial of the grievant's request for official time violative of the agreement?

No. The grievant, chief steward for the union, received a request from an attorney to meet and discuss a worker's compensation claim. He set up the appointment and requested official time from his supervisor. The request for official time was denied, but the grievant was permitted to attend the appointment on leave without pay. The grievant contended that the denial was unjustified because it was a part of his representational duties. Upon reviewing the agreement, the arbitrator found that official time is only granted for representational functions which are mutually beneficial. Worker's compensation is not mutually beneficial since management is not a party to the claim. Therefore, the grievance was denied.

WILLIAM J. FALLON February 27, 1981 United States Navy, Portsmouth Naval Shipyard - Portsmouth, New Hampshire and Metal Trades Council 24 pages

Cite Cases as LAIRS _____

GRIEVANCE -- MANAGEMENT RIGHTS, UNILATERAL ADJUSTMENT; NEGOTIATION/ CONSULTATION -- SCOPE, REFUSAL TO; PERFORMANCE -- RECOGNITION, CASH AWARD

13276 Did the agency violate the agreement when it failed to notify or meet and confer with the union in adopting and applying new criteria for the issuance of sustained performance awards?

Yes. The agency issued awards to certain employees based on revised criteria. The union contended that the agency acted improperly when it unilaterally imposed changes without consultation. The arbitrator held that the agency did indeed violate pertinent provisions of the agreement which state that prior practices shall not be changed without affording the union the opportunity to meet and confer. The arbitrator ordered the parties to meet and confer with respect to the criteria.

GERALD D. MARCUS March 23, 1981 Department of the Treasury, Assay Office - San Francisco, California and American Federation of Government Employees, Local 51 30 pages

PAY PRACTICES -- DIFFERENTIAL, ENVIRONMENTAL

13277 Were the employees in question entitled to an environmental differential for working with aircraft fuel?

No. The arbitrator found that the employer provided a safe and healthful work environment. He noted that the agency provided protective devices and clothing which practically eliminated the hazard from handling jet fuel.

LEO V. KILLION March 23, 1981 Non-Appropriated Funds, United States Air Force, Sacramento Air Logistics Center - McClellan Air Force Base, California and American Federation of Government Employees, Local 1857 68 pages

Cite Cases as LAIRS _____

AGREEMENT -- PUBLICATION, PRINTING, DISTRIBUTION

13278 Did management violate the agreement by failing to print and distribute copies of the agreement?

Yes. Under the terms of the agreement, management was to print sufficient copies and distribute them to the bargaining unit. Because several negotiability issues were before the Federal Labor Relations Authority, the agency sought to delay printing the agreement until the issues were settled. Initially the union orally agreed to wait a few months, but after six months, sought to have the agreement printed. A grievance was filed. The arbitrator ruled that a binding agreement was not reached between the parties on the delay of printing. He ordered the agency to immediately begin printing and distributing the agreement.

FREDERICK U. REEL April 6, 1981 Department of Justice, Immigration and Naturalization Service - Washington, DC and American Federation of Government Employees 10 pages

GRIEVANCE -- SCOPE, EXCLUSIONS

13279 Were grievances concerning management's action taken under a disciplinary instruction subject to the negotiated grievance procedure of the agreement?

No. The agreement currently in effect between the parties became effective on May 12, 1978. Several days later the parties negotiated what they called an instruction entitled: "Procedures of Processing Disciplinary Actions Involving Civilian Employees." Subsequently, the union presented a grievance under the negotiated grievance procedure, which claimed that the employer had violated the instruction. The employer contended that the instruction was not subject to the negotiated grievance procedure. The arbitrator upheld this conclusion, rejecting the union's argument that the instruction constituted an amendment. He noted that under the agreement instructions were defined differently than amendments. Therefore, if the parties had intended an amendment they would have labeled it as such.

HERBERT N. BERNHARDT March 29, 1981 United States Navy, Naval Weapons Station - Yorktown, Virginia and National Association of Government Employees, Local R4-1 10 pages

Cite Cases as LAIRS _____

PERFORMANCE -- APPRAISAL, EMPLOYEE RIGHTS; EMPLOYER RIGHTS -- PERSONNEL RECORDS, INSERTIONS TO

13280 Did management violate the agreement in the manner in which it evaluated the grievant's performance?

Yes. The arbitrator determined from the record that several violations occurred. First, the grievant was not notified within fifteen working days about entries made in his informal file concerning his performance, as required by the agreement. The entries were made several months before the grievant was notified. Second, management improperly downgraded the grievant on the basis of written standards not yet fully identified. Therefore, the employee's right to due process was left unsatisfied because he had no written standards against which to be judged or questioned. The arbitrator directed management to invalidate the evaluation in contention, and make the previous year's rating the official one.

VERN E. HAUCK March 30, 1981 Department of Justice, Federal Bureau of Prisons - Morgantown, West Virginia and American Federation of Government Employees, Local 2441 11 pages

DISCIPLINE -- DISORDERLY CONDUCT, ABUSIVE/THREATENING LANGUAGE

13281 Did management have just cause to terminate the grievant for disorderly conduct, threatening to inflict bodily injury to another, and abusive language?

No. While engaged in a personal phone conversation the grievant became upset, used abusive language, and threatened his supervisor, who had attempted to calm him. The entire incident was based on the grievant's dealings with a hospital concerning his daughter's scheduled operation. The incident disrupted office activities for about an hour. The arbitrator ruled that the charges were supported, except for the implication that the actions of the grievant adversely affected the relations of the agency with the public. However, the arbitrator held that the episode did not warrant the ultimate penalty of removal. The arbitrator rejected the contention that a person who loses control of himself can never be trusted to act as a law enforcement officer again. The removal was reduced to a sixty-day suspension and the grievant was paid for the period between the end of the suspension and the date of return to duty.

WILLIAM M. HEARNE March 30, 1981 Department of Justice, Immigration and Naturalization Service - Dallas, Texas and American Federation of Government Employees, Local 3377 11 pages

Cite Cases as LAIRS ____

GRIEVANCE -- SCOPE, EXCLUSIONS

13282 Was the grievance a matter that could be properly considered under the grievance procedure of the agreement?

Yes. The grievant, in her capacity as steward, met with a coworker and his supervisor to discuss an accident that had occurred on the job. The meeting apparently got out of hand and both men used abusive language against the grievant to a degree that prompted her to file grievances. The grievance against the supervisor was handled through the grievance procedure. However, management refused to process the grievance against the coworker, stating that it was an intra-union matter. The arbitrator ruled that acts of disrespectful conduct by supervisors or employees are referable to the grievance procedure. The grievance was sustained.

C. ROBERT ROADLEY March 31, 1981 United States Navy, Norfolk Naval Supply Center - Norfolk, Virginia and International Association of Machinists and Aerospace Workers, Local 97 12 pages

DISCIPLINE -- NEGLECTFUL CONDUCT, ABSENTEEISM, DISHONESTY, MISAPPROPRIATION OF PROPERTY

13283 Did the agency have just cause to suspend the grievant for one week for: 1) failure to inform his supervisor upon absence from duty, and 2) concealing official tax returns?

Yes. The grievant, an internal revenue officer, was enroute to agency business when he witnessed a shooting. The resulting police investigation caused the grievant to miss his appointments, but he failed to notify his supervisor about his absence from duty in a timely fashion. The second charge stipulated that three taxpayer returns were found in the grievant's locked cabinet, against the rules, after he had been transferred to another work group and was no longer using that locker. The arbitrator held that the grievant violated the pertinent rules with respect to these charges. He found the grievant negligent in not reporting his absence from duty, as well as in misplacing and mishandling the returns.

WILLIAM J. FALLON March 27, 1981 Department of the Treasury, Internal Revenue Service - Pittsburgh, Pennsylvania and National Treasury Employees Union 17 pages

Cite Cases as LAIRS ____

PROMOTION -- PROCEDURES, FILLING VACANCIES

13284 Was management's decision to promote an employee as a resolution of his discrimination complaint a violation of the agreement?

In 1978 the employee applied for a supervisory position outside the bargaining unit. He was passed over for the promotion and filed a complaint alleging that he had been discriminated against because of race. In February 1980, in full settlement of the complaint, management entered into an agreement with the employee to promote him to a GS-9 position within the bargaining unit. At the time of the promotion there was a register established for that position. The employee had competed and received a rating; however, his position on the register did not entitle him to be considered as one of the qualified candidates. The union argued that the consent agreement between management and the employee bypassed the merit staffing procedures. Management tried to remedy a discriminatory act committed outside the bargaining unit by sacrificing the rights of employees within the bargaining unit. The arbitrator held that management violated the agreement by depriving other employees of the opportunity to be certified to a selecting official. As a remedy, management was ordered to determine who would have been promoted to the position but for the violation, and to temporarily promote that individual.

JOHN E. DUNSFORD April 6, 1981 United States Navy, Naval Ordnance Station - Louisville, Kentucky and International Association of Machinists and Aerospace Workers, Local 830 22 pages

DISCIPLINE -- NON-PERFORMANCE, INCOMPETENCE

13285 Did management have cause to terminate the grievant, a probationary employee, for unsatisfactory work performance?

No. No evidence was introduced by management which would support its decision to terminate the grievant for poor work performance. Evidence submitted by the union and the grievant showed that the grievant's performance was at a satisfactory level. The arbitrator ruled that the grievant should be reinstated to his position with back pay.

SEYMOUR STRONGIN April 20, 1981 Office of Personnel Management - Washington, DC and American Federation of Government Employees, Local 32 11 pages

Cite Cases as LAIRS _____

ARBITRATION -- OFFICIAL TIME, WITNESSES

13286 Did management violate the agreement by failing to reschedule the grievants' shifts to coincide with the arbitration hearing at which they were to be witnesses?

No. The union wanted to have four witnesses testify at an arbitration hearing. Two of the witnesses had work schedules which coincided with the hearing, while two did not. The union sought to have the assignments changed to coincide with the hearing. The agency did not change the grievant's shift, thus requiring the two employees to appear at the hearing on their own time. The arbitrator upheld the agency's action. The agreement provides that employee witnesses shall be in a pay status, "if otherwise on a duty status... while participating in the arbitration hearing." The arbitrator ruled that the agreement does not require the agency to reschedule the employees to place them in a duty status. The grievance was denied.

J. THOMAS RIMER April 3, 1981 Veterans Administration, Hospital - Birmingham, Alabama and American Federation of Government Employees, Local 2207 7 pages

OVERTIME -- SELECTION CRITERIA

13287 Did management violate the agreement by failing to call-in the grievant to work the overtime shift in question?

No. A night shift employee called in sick early in the day. As a result, management needed an employee to replace the absent employee, since it was necessary to have full staffing on the evening shift. The agency requested that a day-shift employee leave work early and report back later that day to work the shift. The employee agreed and was paid two hours overtime for his time on the morning shift. Another employee claimed he should have been offered the evening assignment and filed a grievance. He claimed it was a past practice for the agency to offer such assignments to employees on the shift following the vacancy, not to employees on the preceeding shift. The arbitrator ruled that no such past practice had been established by the agency. He noted that management had previously used many methods to reschedule employees and that the agreement had no provision which controlled such assignments. Hence, the grievance was denied.

ALAN WALT March 27, 1981 Department of Commerce, National Weather Service - Muskegon Heights, Michigan and National Weather Service Employees Organization, Local 3-21 17 pages

Cite Cases as LAIRS _____

DISCIPLINE -- DISORDERLY CONDUCT, MORAL TURPITUDE, NEGLECTFUL CONDUCT, HORSEPLAY

13288 Did management have just cause to issue the grievant a fourteen-day suspension for disrespectful and disgraceful conduct?

Yes. The grievant, a cemetery worker, was observed on serveral occasions opening caskets and engaging in undue liberties with various decedents. The arbitrator ruled that management succeeded in establishing a prima facie case of the grievant's guilt. The testimony of management's withnesses appeared to be credible in every respect, despite the fact that the charges were vague as to the exact time and date of the incidents. The arbitrator found that the agency had cause to suspend the grievant.

HERBERT L. HABER April 6, 1981 Veterans Administration, National Cemetery, Farmingdale - Long Island, New York and American Federation of Government Employees, Local 1919 7 pages

ARBITRATION -- SCOPE, ARBITRABLE MATTERS DEFINED

13289 Was the grievance concerning the use of special promotion procedures used in promoting a handicapped employee arbitrable?

No. The arbitrator agreed with management's argument that grievances dealing with merit promotion issues must be processed through the standard agency grievance procedure, as stipulated in the agreement, and not through the negotiated grievance procedure. The arbitrator also held that the right to contest arbitrability before the arbitrator was not waived by failure to raise the issue of arbitrability until the arbitration hearing itself.

DON J. HARR April 4, 1981 Veterans Administration, Hospital - Muskogee, Oklahoma and American Federation of Government Employees, Local 2250 4 pages

Cite Cases as LAIRS _____

DISCIPLINE -- ABUSIVE LANGUAGE

13290 Did management have cause to issue the grievant a written reprimand for using abusive language?

Yes. The grievant directed abusive language toward two supervisors. He claimed, however, that the supervisors first used the language toward him. The arbitrator found that the agency did have cause to issue the reprimand. He found that at no time did the supervisors use abusive language toward the grievant. He ruled that the penalty was not excessive, and denied the grievance.

EDWARD C. JOHNSON, JR. May 7, 1980 Non-Appropriated Funds, United States Air Force, Warner Robins Air Logistics Center - Warner Robins, Georgia and American Federation of Government Employees, Local 987 10 pages

DISCIPLINE -- ABSENTEEISM, LEAVING JOB SITE

13291 Did management have cause to suspend the grievant for five days for leaving the work site without permission?

Yes. The grievant was not at his work site during the course of the day. His supervisor found him outside the front gate during his shift. After an investigation, the agency suspended the grievant for five days for absenteeism. The arbitrator upheld the agency's action. He ruled that the agency had established beyond a reasonable doubt that the grievant was absent during his shift.

JASON M. BERKMAN December 9, 1980 United States Navy, Supervisor of Shipbuilding, Conversion and Repair - Yorktown, Virginia and National Association of Government Employees, Local R4-2 9 pages

Cite Cases as LAIRS _____

WORK ASSIGNMENT -- RESTRICTIONS, LIMITATION ON UNIT WORK, TEMPORARY, DETAILS, LOAN

13292 Did the agency violate the agreement when it temporarily assigned a group of investigators to another work unit?

No. A group of journeyman criminal investigators assigned to the New York district were temporarily reassigned to another investigative unit within the district. This was accomplished in order to rectify a staffing shortage. The union contended that the action violated appropriate provisions dealing with details. The arbitrator held that the temporary assignment was not a detail as defined by the Federal Personnel Manual or agency regulations. The evidence established that, unlike a detail, there was no change in positions involved in the reassignment. The investigators still performed investigative duties. The arbitrator ruled that management's action was taken in good faith to meet a manpower shortage, and did not violate the agreement or regulations.

SIDNEY A. WOLFF January 21, 1981 Department of Justice, Immigration and Naturalization - Burlington, Vermont and American Federation of Government Employees 4 pages

DISCIPLINE -- DISORDERLY CONDUCT; OVERTIME -- ELIGIBILITY

13293 1. Did management have cause to issue the grievant a reprimand for disrupting training sessions? 2. Did management violate the agreement by not paying the grievant overtime for the day in question? 3. Did management have cause to issue the grievant a reprimand for bringing his son to work?

The arbitrator heard three arbitrations. 1. Yes. The grievant protested and disrupted a training session when a fellow employee was ordered not to tape the session. The protests delayed the training session. The arbitrator found that the agency had cause to suspend the grievant for disrupting the training session. 2. No. The grievant was ordered to report to a training session, which was held on his regularly assigned day off. The grievant refused to attend, holding that he was unable to get a babysitter for his infant son. The agency insisted that he report, and the grievant came to his session with his infant. The agency dismissed the grievant for the day. The grievant alleged that under the terms of the agreement the agency was required to pay him eight hours overtime for attending the session. The arbitrator ruled that the grievant was not entitled to overtime. Agency regulations require that an employee must arrive at work in a condition which will permit him to perform his assigned duties. The arbitrator held that the presence of the grievant's infant son made him unable to perform his duties. Hence, the grievance was denied. 3. No. The grievant violated his supervisor's

order not to bring his son to the training session. No mention was made of possible disciplinary action for failure to comply. The arbitrator held that management did not have cause to issue a reprimand, since it did not make it clear that discipline would follow upon failure to obey the order.

MARK SANTER unknown Department of Transportation, Federal Aviation Administration - Boston, Massachusetts and Professional Air Traffic Controllers Organization 13 pages

Cite Cases as LAIRS _____

PERFORMANCE -- APPRAISAL; PROMOTION -- PROCEDURES, PERFORMANCE RATING, EVALUATION

13294 Was the grievant provided with a fair and objective performance appraisal for the annual rating period in question?

Yes. The grievant received a rating of 74% on her most recent annual appraisal; on three previous appraisals her rating in a different position by a different supervisor was 100%. The arbitrator found that the current supervisor's rationale for the lower ratings was very persuasive. He noted that the grievant's current secretarial position placed significantly greater demands on her which she could not meet. There was no evidence of any animosity on the part of the supervisor toward the grievant.

ROBERT M. RYBOLT April 15, 1981 United States Air Force, Air Force Logistics Command - Wright-Patterson Air Force Base, Ohio and American Federation of Government Employees, Local 214 14 pages

DISCIPLINE -- NON-PERFORMANCE, INCOMPETENCE

13295 Did the employer's treatment and ultimate termination of the grievant violate the contractual provisions between the parties governing probationary employees?

Yes. The grievant was hired as a clerk-typist with probationary status. She displayed a questionable work performance and, ten months after appointment, she received an unsatisfactory performance rating. For the final two months of her probationary period she was transferred to another division and was finally terminated. The union contended, however, that the grievant was not given a full and fair trial during her probationary period. It argued that the grievant's supervisors failed to meet their obligations to advise and counsel a probationary employee in accordance with a plan for remedying any employee deficiencies. The arbitrator held that although the grievant did not meet the standards of the position, the agency violated contractual commitments regarding probationary employees when it followed the course of conduct resulting in the grievant's discharge. The arbitrator directed that the discharge be set aside, the grievant be made whole for lost earnings, and that she be given a formal warning notice.

ARNOLD ORDMAN April 11, 1981 General Services Administration, National Archives and Records Service - Washington, DC and American Federation of Government Employees, Local 2578 17 pages

Cite Cases as LAIRS ____

DISCIPLINE -- NEGLECTFUL CONDUCT, ABSENTEEISM; JUST CAUSE

13296 Was the reprimand of the grievant for being absent without leave (AWOL) based on just cause?

No. The grievant's automobile broke down while he was on his way to work. He tried repeatedly to call his department, but was unable to contact anyone and returned home. Management claimed that a phone call had not been received, nor had the grievant reported to work that day. Subsequently, he was charged with AWOL and given a letter of reprimand. The arbitrator determined that management failed to establish evidence in the form of a telephone log and therefore did not meet its burden of proof. The grievance was sustained. The reprimand was removed from the grievant's file.

HENRY L. SISK April 6, 1981 United States Air Force - Tinker Air Force Base, Oklahoma and American Federation of Government Employees, Local 916 5 pages

WORK ASSIGNMENT -- TEMPORARY, DISABILITY

13297 Did the employer violate the agreement by its failure to assign the grievant to light duty?

No. The grievant reported to work and requested a light duty assignment after he had been on sick leave due to an injury. The employer denied the request. The arbitrator noted that the contract permits the reassignment of an employee returning from injury at the discretion of the employer. Therefore, the agreement was not violated when the employer refused to assign the grievant to a light duty position.

JULIUS REZLER April 3, 1981 United States Navy, Naval Training Center - Great Lakes, Illinois and American Federation of Government Employees, Local 2326 5 pages

Cite Cases as LAIRS ____

WORK ASSIGNMENT -- TEMPORARY, DETAILS; NON-DISCRIMINATION -- OTHER

13298 Did the employer violate the agreement when it detailed the employee in question?

No. The union grieved the detail of an employee, alleging that it was based on personalfavoritism and prompted by the personal friendship that existed between the detailee and an employee where she was detailed. The union also argued that there was no indication that the selection was based on either merit or experience. It was noted that details to the office in question were eagerly sought positions, in that they give an individual a distinct advantage for future selection to permanent positions in that office. The evidence presented at the hearing failed to support the charge of favoritism. However, the arbitrator noted that the method of selection needed improvement. The grievance was denied.

BERTRAM T. KUPSINEL April 13, 1981 Department of Justice, Immigration and Naturalization Service - Washington, DC and American Federation of Government Employees, Local 1917 16 pages

ARBITRATION -- SCOPE, ARBITRABLE MATTERS DEFINED; PROMOTION -- PROCEDURES, FILLING VACANCIES

13299 Was the grievance concerning the manner in which the employer filled a vacancy arbitrable on its merits?

No. The employer decided to fill a GS-7, 9, or 11 position with an employee from another station. After initiating the transfer the employer went ahead and posted the vacancy announcement for the position. The announcement, however, stated that the position would not be filled under the merit promotion plan. Thus, the people who applied for it were ineligible since it was being filled on a reassignment basis, and not on a merit promotion basis. The arbitrator ruled, however, that he did not have the authority to decide whether improper procedures were followed, since the position in the dispute was not part of the bargaining unit.

J. D. DUNN April 13, 1981 Veterans Administration, Hospital - Muskogee, Oklahoma and American Federation of Government Employees, Local 2250 19 pages

Cite Cases as LAIRS ____

PROMOTION -- PROCEDURES, CRITERIA

13300 Did the promotion panel fail to give the grievant proper credit for training courses?

No. The grievant applied for a vacant position, but was not chosen as highly qualified. The single factor that precluded his inclusion in the best qualified group was his failure to receive credit for three training courses. The arbitrator found that the panel gave the grievant proper credit for the training courses. Therefore, the grievance was denied.

SHERMAN DALLAS April 5, 1981 United States Army, Army Missile Command - Redstone Arsenal, Alabama and American Federation of Government Employees, Local 1858 7 pages

PAY PRACTICES -- DIFFERENTIALS, ENVIRONMENTAL

13301 Were the grievants entitled to receive environmental differential pay for exposure to certain hazards?

No. The grievants were employed as OSHA compliance officers. In the course of inspecting various coke oven installations, they contended that they were exposed to abnormal hazards. After a review of the position descriptions and the evidence, the arbitrator ruled that exposure to toxic substances including carcinogens was a routine part of the grievants' jobs. Therefore, inspections did not qualify the grievants for hazard pay differential.

LEWIS R. AMIS April 8, 1981 Department of Labor - Washington, DC and American Federation of Government Employees, Local 644 25 pages

Cite Cases as LAIRS ____

LEAVE -- SICK, CALL-IN REQUIREMENTS

13302 Was the AWOL charge for the grievant's absences from work proper, given that she failed to comply with the call-in requirement?

Yes. The grievant was absent from work on Monday and Tuesday, and failed to report her absences to management. Because of a phone conversation she had with her supervisor on the previous Friday, the grievant was under the impression that a call was not required on Monday. The arbitrator ruled that since the grievant was unsure of when she would return to work, she was obligated to notify management of her continued leave status. The grievance was denied.

ROBERT J. MUELLER April 7, 1981 Department of Health and Human Services, Social Security Administration - Milwaukee, Wisconsin and American Federation of Government Employees, Local 1346 14 pages

GRIEVANCE -- PROCEDURES, ORAL

13303 Did management violate the agreement when an immediate supervisor refused to meet informally with a grievant without the presence of another management official?

No. A grievant requested a meeting with his supervisor to discuss a grievance informally. The supervisor insisted that no meeting take place without the presence of another management official who could provide needed technical assistance. The union argued that at the informal step, management can only be represented by the immediate supervisor and can not demand the presence of additional management personnel. The arbitrator disagreed with the union's contention, and noted that management was seeking a prompt and acceptable resolution of the grievance.

DONALD DAUGHTON April 8, 1981 Veterans Administration, Medical Center - Phoenix, Arizona and American Federation of Government Employees, Local 2382 8 pages

Cite Cases as LAIRS _____

DISCIPLINE -- NEGLECTFUL CONDUCT, PATIENT ABUSE

13304 Did management have just cause to reprimand the grievant for verbal abuse of a patient?

No. Management issued the grievant a written reprimand for verbal abuse of a patient on the basis of statements by the patient, his wife and a witness. The union contended that management did not really prove the charge and followed improper disciplinary procedures and that the patient and his wife were known troublemakers. The arbitrator noted the deficiencies with respect to the disciplinary investigation and lack of a complete evidence file. He also faulted management for relying solely upon the statements of a patient/witness in concluding the grievant was guilty. Finally, the arbitrator noted that the staff had a history of being abused by this patient and his wife. The arbitrator ruled that given deficiencies in this investigation, procedural problems, questions regarding guilt, and the problem with the patient and his wife, the reprimand was not for just cause.

J. EARL WILLIAMS April 7, 1981 Veterans Administration, Medical Center - Montgomery, Alabama and American Federation of Government Employees, Local 997 15 pages

DISCIPLINE -- DISHONESTY, FALSIFICATION OF RECORDS

13305 Was the suspension of the grievant for fourteen days for falsifying records taken for just cause?

Yes. The grievant was given permission by her supervisor to leave her work place and go to the personnel office. While she was at the personnel office, she looked briefly at certain job vacancy books, but only for a few minutes. She then went to the cafeteria, had coffee, voted in a union officer election, and visited with other employees there. The grievant then went to the medical section and while there, she had a clerk initial her administrative permit slip covering the entire two hour period she was away from work. After the supervisor received the permit slip, he became suspicious and starting investigating the incident. The grievant was suspended.

ROYCE S. WEISENBERGER, JR. April 16, 1981 United States Air Force, Oklahoma City Air Logistics Center - Tinker Air Force Base, Oklahoma and American Federation of Government Employees, Local 916 pages

Cite Cases as LAIRS ____

DISCIPLINE -- DISORDERLY CONDUCT, INSUBORDINATION

13306 Did the employer have just cause to reprimand the grievant for refusal to carry out an order?

Yes. On the date in question the grievant, a nurse, had the duty of taking temperatures. She failed to report an elevated temperature to the nursing supervisor. The supervisor then instructed the grievant to provide her with a written list of any elevated temperatures from the next round. The grievant refused to comply with the request. The arbitrator found that the supervisor's request was reasonable, and held that the weight of arbitral authority supported the basic labor relations principle that an employee must work now and grieve later. Therefore, the grievant had an obligation to carry out the order and then file a grievance.

JOHN F. CARAWAY April 7, 1981 Veterans Administration, Hospital-Houston, Texas and American Federation of Government Employees, Local 1633 7 pages

LEAVE -- ANNUAL, MISUSE, ADVANCE, APPROVAL; OVERTIME -- ELIGIBILITY, EXEMPT/NON-EXEMPT

13307 1. Was the grievant entitled to have any of the five days of absence without leave (AWOL) charged against her converted to annual leave? 2. Was the grievant entitled to overtime pay under the Fair Labor Standards Act (FLSA)?

1. Yes. The grievant contended that she told her supervisor of her vacation plans and that she placed her leave request on his desk for signature in accordance with his instructions for handling priority items. The supervisor denied that the grievant told him of her plans or that there was any leave request form on his desk. He ultimately charged the grievant with five days of AWOL. The arbitrator ruled that the circumstances of the case warranted retroactive approval for two days of annual leave. The arbitrator noted that, although the grievant had no right to take time off absent explicit approval, the employer failed to comply with the annual leave provisions of the contract in regard to establishing annual leave schedules. Therefore, the burden of the infraction should be shared by both the grievant and employer. 2. No. The grievant requested overtime pay under the FLSA on the basis of overtime worked over several months. The arbitrator found, however, that due to taking long lunch periods the grievant had not worked beyond forty hours per week and therefore was not entitled to overtime pay under the Act.

SINCLAIR KOSSOFF March 25, 1981 United States Navy, Naval Air Station - Glenview, Illinois and American Federation of Government Employees, Local 1641 11 pages

Cite Cases as LAIRS _____

REPRESENTATION -- UNION OFFICIALS/STEWARDS, OFFICIAL TIME ALLOWANCE

13308 Did management unreasonably deny the grievant's request for four additional hours of official time?

No. The grievant, a union steward, was representing an employee in a relatively simple case. He used two hours of official time preparing a step-2 grievance, but later requested four additional hours to process it at this step. The arbitrator made no conclusion regarding the necessity of the extra time. However, the grievance was denied on the ground that the grievant failed to advise his supervisor in writing regarding the necessity of additional time, as the supervisor advised him to do.

PRESTON J. MOORE April 20, 1981 United States Air Force - Tinker Air Force Base, Oklahoma and American Federation of Government Employees, Local 916 5 pages

POSITION CLASSIFICATION -- POSITION ELIMINATION; REDUCTION-IN-FORCE -- PROCEDURES, NOTIFICATION- EMPLOYEES, REVIEW-EMPLOYEE; WORK ASSIGNMENT -- TEMPORARY, DETAILS, CONDITIONAL, UNDESIRABLE

13309 Did management violate the contract by allegedly denying the grievant: 1) permission to see the Inspector General, or 2) contractual rights to which he may have been entitled as a result of the abolishment of his job? Was the grievant the victim of reprisals or improperly detailed?

No. The arbitrator considered each of the complaints individually and denied them on the basis of the evidence. He held that management did not desire to deny the grievant any legal rights when it refused him permission to see the IG concerning the detail, but rather intended to seek resolution of the matter before such a step. Despite the fact that the grievant's job was abolished none of the grievant's rights were violated (e.g., notice), because an actual reduction-in-force had not occurred. Therefore, the arbitrator held that these provisions could not be relied upon. Finally, the arbitrator held that the grievant had not been on a detail, as he contended, but rather had been assigned as additional duties some functions of a vacated position.

CHARLES F. IPAVEC September 9, 1980 United States Air Force - Newark Air Force Station, Ohio and American Federation of Government Employees, Local 2221 18 pages

Cite Cases as LAIRS ____

PROMOTION -- PROCEDURES, TIMELINESS, FAILURE TO PROMOTE

13310 Which was the proper effective date of the grievant's promotion?

The grievant became eligible for promotion on November 2, 1980, and a request for personnel action was completed to grant her the promotion effective on that date. The form was lost in transit to the regional office; a duplicate form was then transmitted and the promotion was made effective on January 11, 1981. Apparently the appointingofficial had changed the original date set by the selecting authority. The arbitrator agreed with the union's contention that the appointing official had no authority or discretion to change the effective date as stipulated by the selecting official. The arbitrator stipulated that the promotion be effective as of November 2, 1980 and awarded the grievant back pay for the period between the two dates.

LIONEL RICHMAN May 11, 1981 Department of Health and Human Services, Social Security Administration - San Francisco, California and American Federation of Government Employees 12 pages

PROMOTION -- PROCEDURES, ANTI-UNION ANIMUS

13311 Did management violate the agreement by refusing to grant a promotion to the grievant for alleged anti-union animus?

Yes. The grievant was employed as a WG-8 electrician for over two years. The position was considered to be a temporary, intermediate step to the WG-10 journeyman level. The grievant contended that management was discriminating against him due to his union activities. He further claimed that on the most recent performance evaluation he was rated satisfactorily, which was sufficient for promotion. The arbitrator ruled that the grievant had shown fitness to perform the tasks of the job after serving satisfactorily for over two years in a position which was intended to be temporary. Therefore, the arbitrator ordered that the grievant be promoted.

HERBERT M. ANSELL January 2, 1981 United States Air Force - March Air Force Base, California and International Association of Machinists and Aerospace Workers, Local 726 10 pages

Cite Cases as LAIRS _____

ARBITRATION -- SCOPE, ARBITRABLE MATTERS DEFINED

13312 Was the grievance over the appointment of a particular employee as a second-line supervisor arbitrable?

No. The issue in the grievance concerned whether or not it was proper to appoint an employee as second-line supervisor who had several duty stations, rather than promote one of the eligible employees remaining at the station in question. The arbitrator agreed with management's argument that the grievance was inarbitrable because it concerned a position not subject to the agreement.

LARRY V. LUNT December 23, 1980 United States Air Force - Hill Air Force Base, Utah and American Federation of Government Employees 4 pages

LEAVE -- SICK, APPROVAL, DENIAL ADVANCE; NEGOTIATION/CONSULTATION -- PROCEDURES, FAILURE TO BARGAIN

13313 Did management violate the agreement by denying the grievant's sick leave request or allegedly establishing a new policy regarding approval of sick leave without consulting or negotiating with the union?

Yes. The chief of the division told his supervisor that all requests for sick leave for more than four hours for medical appointments would now be reviewed by him personally for his approval. Subsequently, he approved only seven hours of the grievant's request for eight hours of sick leave to keep two medical appointments scheduled on the same day. The chief had denied the extra hour on the basis that there was ample time for the grievant to work one hour before leaving for the first appointment. The employer contended the agreement limited sick leave travel time to that which was needed to go directly from work to the appointment. The grievant, however, contended that this forced him to take annual leave. The arbitrator sustained the grievance. He found the denial of the remaining hour of sick leave to be arbitrary and capricious. The agreement did not limit sick leave travel time in the manner which management claimed. Also, there was not enough time to work one hour before the appointment. Finally, the arbitrator noted that authority for approval of sick leave is vested exclusively in first line supervisors. Therefore, the chief had no right to assume this authority. The arbitrator ordered the employer to restore the grievant's annual leave, charging the absence to sick leave.

SAMUEL ROSS April 22, 1981 United States Army - Aberdeen Proving Ground, Maryland and International Association of Machinists and Aerospace Workers, Local 2424 19 pages

EMPLOYEE RIGHTS -- REPRESENTATION, FREEDOM FROM COERSION; DISCIPLINE--NON-PERFORMANCE, RESIGNATION; GRIEVANCE -- INDIVIDUAL RIGHTS, UNION REPRESENTATION

13314 Was the grievant's termination of employment involuntary and in violation of his rights under the agreement? If so, what is an appropriate remedy?

The grievant was employed as an engineer intern at the GS-5 level. After a series of meetings with the grievant on his performance, management gave the grievant two options: resign, or face removal action. Management contended that the grievant had not demonstrated satisfactory potential for growth, and that his performance at the GS-5 level was marginal. In its letter of proposed termination management noted that the grievant had no appeal rights under the agreement since he was a probationary employee, and that he was not entitled to union representation since he was not a unit member. The grievant resigned. The arbitrator found no language in the agreement that specifically excluded probationers from coverage; therefore, the grievant was entitled to contractual protection. The arbitrator ruled that the resignation was not a voluntary act because it was not based on a full knowledge of available rights. To remedy the contractual violation, the arbitrator ruled that since the grievant had found other employment and did not want to be reinstated, he should receive compensation equivalent to that which he would have earned for the period when he left the agency to the starting date of his new employment.

JONAS AARONS April 15, 1981 United States Army, ARRADCOM - Dover, New Jersey and National Federation of Federal Employees, Local 1437
32 pages

DISCIPLINE -- DISORDERLY CONDUCT, FIGHTING; NEGLECTFUL CONDUCT, INTOXICATION

13315 Did the employer violate the grievant's rights to fair treatment and due process under the agreement when it imposed a two-day suspension for disorderly conduct?

No. The grievant attended a union picnic on work premises and was observed by his non-immediate supervisor drinking excessively and threatening a fellow employee. The grievant was suspended for two days. The union contended that the due process rights of the grievant were transgressed in that there was no fact-finding inquiry by the immediate supervisor as required by the agreement. Also, the union charged that the grievant was not informed of his right to union representation. The arbitrator noted that the word supervisor in the agreement was capable of being interpreted to apply to a member of supervision other than the grievant's first-level supervisor. Therefore, the requirement for fact-finding inquiry was met when the grievant's behavior was observed by his non-immediate supervisor. The arbitrator also ruled that there was no obligation to advise the grievant of his right to union representation since a formal discussion had not occurred.

JOSEPH J. NITKA May 11, 1981 Defense Mapping Agency - St. Louis, Missouri and National Federation of Federal Employees, Local 1827 9 pages

Cite Cases as LAIRS _____

PROMOTION -- PROCEDURES, POSTING, FILLING VACANCIES

13316 Did management violate the agreement through the procedures it followed in filling a position vacancy by transfer?

A vacant position in the bargaining unit was filled by transfer; no vacancy was posted nor was the union sent a notice. The parties utilized the hearing as an opportunity to reach a settlement with the arbitrator's assistance. The following consent award was reached: 1) management will notify the union of all vacancies occurring within the unit; 2) the union will receive advance notice if the position is to be filled by a procedure other than promotion; 3) in cases other than (2), all vacancies will be posted.

THEODORE H. LANG April 30, 1981 Veterans Administration, FDR Medical Center - Montrose, New York and American Federation of Government Employees, Local 2440 6 pages

DISCIPLINE -- DISHONESTY, FALSIFICATION OF RECORDS, PROCEDURES, INVESTIGATION

13317 Did management have just cause to suspend the grievant for five days for attempting to obstruct an authorized investigation and falsification of a travel voucher?

The grievant presented a travel voucher for payment of two claims on TDY which management alleged were false. The falsification offense concerned two separate entries for reimbursement of parking fees and vicinity travel. After the employer commenced an investigation into the validity of these claims the grievant asked an individual knowledgeable about the work assignment not to say anything about his activities outside of business hours. Management contended that this constituted obstruction of an authorized investigation. The arbitrator held that although the grievant may have used poor judgment in making the request, there was no evidence supporting management's charge. The grievant's request seemed to be intended only to protect his privacy. The grievant admitted during the hearing that he did not pay the parking fees in question; however, there was not a preponderance of evidence supporting a finding of falsification of vicinity travel. The arbitrator therefore reduced the suspension to two days and ordered that the grievant be made whole.

PETER R. BLUM April 16, 1981 United States Air Force - Hanscom Air Force Base, Massachusetts and National Association of Government Employees, Local R1-8 27 pages

Cite Cases as LAIRS ____

DISCIPLINE -- DISORDERLY CONDUCT, INSUBORDINATION

13318 Was the five day suspension of the grievant for insubordination justified?

Yes. The supervisor called the grievant at home and requested that she come to work early due to the illness of another employee. She did not report for work until her regular starting time. The grievant subsequently filed a grievance against her supervisor, alleging harrassment in the method of requesting her to come in early. As a result of the same incident, management proposed a five day suspension for insubordination. The arbitrator ruled that the grievant had not complied with a proper order by supervisor. She should have obeyed the order and then grieved. Therefore, the grievance was denied.

D. L. HOWELL May 5, 1981 Veterans Administration, Medical Center - Houston, Texas and American Federation of Government Employees, Local 1633 16 pages

GRIEVANCE -- PROCEDURES, WRITTEN; DISCIPLINE -- DISORDERLY CONDUCT, ABUSIVE

13319 Was the three day suspension of the grievant justified?

No. The grievant had an altercation with his supervisor in which he threatened to inflict bodily harm. After an investigation of the incident, a determination was made to suspend the grievant for three days for his conduct. While the issue was being processed through the grievance procedure, a procedural issue arose. The union contended that management violated the agreement by refusing to make available at the third-step grievance hearing the supervisor who was allegedly threatened. The arbitrator found that the grievance procedure mandates the appearance of certain individuals at the grievance meeting. Because of management's non-compliance, the arbitrator determined that the grievant was denied due process and the action taken against him was procedurally defective. Management was directed to remove all documents relating to the incident from the grievant's records and compensate him for lost earnings.

STANLEY H. SERGENT May 5, 1981 United States Navy, Norfolk Naval Shipyard - Portsmouth, Virginia and Metal Trades Council 14 pages

Cite Cases as LAIRS ____

PERFORMANCE -- APPRAISAL

13320 Did management violate the terms of the agreement through its evaluation and appraisal of the grievant?

The grievant claimed that he was not properly appraised and that he was downgraded because he was a union steward. In considering management's evidence on the grades awarded to the grievant, the arbitrator noted that management consistently had no objective reasons for the assigned grades. Furthermore, there was no evidence of counseling or warnings to correct the deficiencies. The grievance was sustained. The arbitrator reviewed each element and rendered an appropriate grade based upon the record.

EDMUND W. SCHEDLER May 6, 1981 United States Air Force - Kelly Air Force Base, Texas and American Federation of Government Employees, Local 1617 21 pages

TRAINING -- PROCEDURES

13321 Did management violate the provisions of its upward mobility program by not selecting the grievant?

Yes. The grievant applied for a training position but was not selected. Because he had previously completed a course which was a prerequisite for admission, he felt he should have been awarded the position. Furthermore, he was the only one of ten applicants who had taken the prerequisite. The arbitrator concluded that the grievant was wrongfully denied the training position. Management was ordered to reimburse the grievant for costs he incurred while participating in the program at his own expense.

ALBERT V. CARTER May 4, 1981 Veterans Administration, Audie L. Murphy Memorial Hospital - San Antonio, Texas and American Federation of Government Employees, Local 3511 9 pages

Cite Cases as LAIRS _____

POSITION CLASSIFICATION -- POSITION EVALUATION

13322 Were the personnel actions which converted inspectors from wage grade to general schedule classes promotions or adjustments in pay?

In December 1975, notification of personnel actions were issued to approximately 175 WG-12 inspectors, transferring them to quality inspection specialist GS-8. The union argued that the duties of the inspectors were in fact gradually increased by management over a period of time between 1975 and 1980 and that the conversion from WG to GS did in fact represent a promotion. The union further argued that requirements for considerable additional training indicated a higher level of duties and responsibilities in the GS positions. After reviewing the evidence the arbitrator found that there were true distinctions and differences between WG-12 and the GS-8 positions. He directed management to treat the conversions as promotions.

HUGH R. CATHERWOOD May 4, 1981 United States Air Force - Hill Air Force Base, Utah and American Federation of Government Employees, Local 1592 8 pages

DISCIPLINE -- DISORDERLY CONDUCT, FIGHTING

13323 Did the employer have just cause to remove the grievant for threatening another employee and attempting to inflict bodily injury?

Yes. The grievant, a nursing assistant, demanded that another assistant remove herself from a chair which the grievant viewed as her favorite. The other assistant, busy with paperwork, refused to vacate the chair. The grievant proceeded to forcibly push the chair into a hallway with the assistant in it. The grievant refused to stop these actions until another nurse went to get the supervisor. The arbitrator held that the employer's evidence - based upon eyewitness testimony - met the test of preponderance. The grievant was removed for just cause.

BRUNO STEIN May 8, 1981 Veterans Administration - Bronx Medical Center, New York and American Federation of Government Employees, Local 1168 15 pages

Cite Cases as LAIRS _____

DISCIPLINE -- NEGLECTFUL CONDUCT, ABSENTEEISM, LEAVING JOB SITE

13324 Did management have just cause to issue the grievant a five-day suspension for unauthorized absences?

Yes. The grievant requested and received approval for eight hours of annual leave, but shortly after granting the request the supervisor withdrew the approval. The grievant did not report to work on the day for which she had requested leave. Several days later the grievant was absent from her official duty station for an entire afternoon. The agency argued that the employee clearly absented herself without permission, and noted that the grievant had a letter of reprimand in her file for a similar incident. The arbitrator denied the grievance, noting that employees who exercise self-help under these circumstances must be prepared to face the consequences of their actions.

JOSEPH F. GENTILE May 13, 1981 Department of Commerce, Immigration and Naturalization Service - Los Angeles, California and American Federation of Government Employees, Local 2805 6 pages

PAY PRACTICES -- INCREASES, WITHIN GRADE; PERFORMANCE -- APPRAISAL

13325 Was the warning notice of the proposed withholding of a step increase a violation of the agreement?

The grievant was given a written notice stating that unless his production increased during the sixty day period to at least 100% of expectancy, his within grade increase would be denied. The union argued that the notice was a disciplinary action taken without just cause. Upon review of the agreement, the arbitrator found that 75% achievement of an assigned goal constituted evidence of an acceptable level of competence for purposes of granting a within grade increase. In the arbitrator's view, the notice was in violation of the agreement. Since management certified the grievant for the within grade increase 60 days after the notice had been issued, the only relief which the union requested was that all copies of the notice be accounted for and destroyed. The arbitrator granted the requested relief.

FREDERICK U. REEL May 11, 1981 Department of Commerce, United States Patent and Trademark Office - Washington, DC and Patent Office Professional Association 11 pages

Cite Cases as LAIRS _____

DISCIPLINE -- INSUBORDINATION; EMPLOYEE RIGHTS -- PERSONAL, APPAREL

13326 Did management have just cause to suspend the grievant for five days for insubordination and wearing inappropriate attire?

No. The facility chief became concerned about his controllers wearing T-shirts which had inappropriate printing and/or pictures on them. A supervisor responded to this concern by notifying the grievant and other controllers about inappropriate T-shirts. Several days later the grievant wore a T-shirt deemed inappropriate. He was told by the supervisor not to wear shirts with writing or pictures that were obscene or derogatory to the government. He was also warned that he would be disciplined if he continued to disobey the order. The grievant was sent home several times for wearing inappropriate T-shirts, and was finally suspended for five days. The arbitrator determined that the suspension was not for just cause because management's action was inconsistent with less severe treatment accorded other controllers who wore inappropriate T-shirts. Also, the arbitrator noted that, in each instance, the grievant had been cooperative with his supervisor about the dress code matter, and had been exercising his judgment as to what was appropriate. The agency was directed to make the grievant whole for lost pay.

GEORGE W. HARDBECK May 18, 1981 Department of Transportation - Oakland Air Route Traffic Control Center, California and Professional Air Traffic Controllers Organization 11 pages

DISCIPLINE -- DISORDERLY CONDUCT, INSUBORDINATION, NEGLECTFUL CONDUCT, LEAVING JOB SITE

13327 Was management justified in giving a letter of reprimand to the grievant for an alleged AWOL charge?

The grievant was charged with AWOL and issued a reprimand for leaving the work site for fifteen minutes without first notifying her supervisor. She was told that because there was no restroom for women employees in her building, she would have to go over to the next building to use the restroom until one could be provided. On several occasions, she left the work site without informing the supervisor. The grievant contended that management was discriminating against her because she was required to inform the supervisor when she went to the restroom where as the male employees were not. The arbitrator ruled that the grievant's violation of the rule against leaving the work area without notifying her supervisor was insubordinate. However, he concluded that the AWOL charge was improper. Management was directed to remove the charge and reimburse the grievant for the time lost.

WILLIAM D. FERGUSON June 17, 1981 United States Army, Anniston Army Depot - Atlanta, Georgia and American Federation of Government Employees, Local 1945 8 pages

Cite Cases as LAIRS ____

PROMOTION -- PROCEDURES, PERFORMANCE, RATING/EVALUATION; RANKING OF CANDIDATES

13328 Did the procedures used by the ranking official violate the agreement?

Yes. The arbitrator found that the ranking was not systematic and equitable. The grievant was rated totally unsatisfactory on two important criteria. Before the ranking official's rating, the grievant had received an above average appraisal. The evidence clearly supported the conclusion that the grievant deserved at least a satisfactory rating on the two criteria rather than unsatisfactory ones. The arbitrator ruled that because management violated the ranking procedures, the grievant should receive priority consideration for the next appropriate vacancy.

WILLIAM E. RENTFRO April 10, 1981 Department of Treasury, Internal Revenue Service - San Francisco, California and National Treasury Employees Union, Local 20 42 pages

WORK ASSIGNMENT -- TRANSFER, REASSIGNMENT; DISCIPLINE -- NON-PERFORMANCE, CONFLICT OF INTEREST

13329 Did the agency improperly reassign the grievant in lieu of discipline, thereby violating the agreement?

Yes. The grievant, an internal revenue agent, audited a large corporation at a post of duty for five years. After the conclusion of the audit he was issued a written reprimand for accepting minor favors from the corporation. The grievant was then reassigned to another post of duty because management contended that there was no work at the previous station which he could perform with impartiality. The grievant refused the reassignment and elected to take discontinued service retirement. A grievance was filed, which contended that the reassignment action was in lieu of discipline and violated the agreement. The arbitrator determined from the evidence that the grievant had not involved himself with the corporation in a way that had impaired his impartiality. Management failed to show the existence of a purpose independent of discipline in reassigning the grievant. The arbitrator ordered the agency to retroactively reinstate the grievant from the date of his resignation to the date he would have been eligible for optional retirement, and give him backpay. It was further directed to recompute the annuity of the grievant based on his increased length of service.

RAYMOND L. BRITTON February 27, 1981 Department of Treasury, Internal Revenue Service - Austin, Texas and National Treasury Employees Union, Local 52 19 pages

Cite Cases as LAIRS _____

ARBITRATION -- SCOPE, ARBITRABLE MATTERS DEFINED

13330 Was the issue of promotion to supervisory (non-unit) positions arbitrable under the grievance procedure?

No. The union contended that the government maintained an unwritten policy which precluded or reduced in-house promotions, thereby violating the Merit Promotion provisions which contain no such limitation. The arbitrator agreed with the employer's contention that promotions to supervisory positions were a non-negotiable subject of collective bargaining and, therefore, were outside the scope of the grievance and arbitration procedure.

C. ALLEN FOSTER May 16, 1981 Department of Justice, Bureau of Prisons - Durham, North Carolina and American Federation of Government Employees, Local 3696 18 pages

PROMOTION -- RANKING OF CANDIDATES, PERFORMANCE RATING, EVALUATION

13331 Was the grievant given a fair and equitable ranking for the promotion in question?

No. Several other employees who had been ranked for the position were reevaluated by the rankings panel after these employees presented a rebuttal, and given higher scores. The grievant contended that he had no opportunity to effectively rebut his manager's evaluation of him, and as a consequence his rating suffered in comparison. The arbitrator held that although the grievant could have availed himself of the opportunity to rebut, it was the responsibility of management to rank all candidates on similar criteria. Since the evaluations of the other employees were raised because of their rebuttals - but the grievant's ranking was not reevaluated - the rating was deemed unfair.

JOHN E. DROTNING April 20, 1981 Department of Treasury, Internal Revenue Service - Detroit, Michigan and National Treasury Employees Union, Local 24 22 pages

Cite Cases as LAIRS ____

DISCIPLINE -- DISORDERLY CONDUCT, ABUSIVE/THREATENING LANGUAGE

13332 Did management's reprimand of the grievant for use of abusive language promote the efficiency of the agency?

Yes. The grievant was issued a letter of reprimand for directing abusive remarks at his supervisor. Although the grievant did not deny making the statements, he argued that the discipline was not for just cause. He contended that his actions caused neither dissension nor discord among the other employees. The arbitrator concluded that the grievant acted in an unreasonable manner when he made the remarks to his supervisor; the subsequent letter of reprimand was issued for just cause. Therefore, the grievance was denied.

NEIL M. GUNDERMANN May 8, 1981 Department of Treasury, Internal Revenue Service - Madison, Wisconsin and National Treasury Employees Union, Local 24 11 pages

EMPLOYEE RIGHTS -- REPRESENTATION, UNDER EXECUTIVE ORDER/STATUTE

13333 Did the employer violate the agreement when it failed to advise the grievant of his right to union representation when it conducted an interview which led to disciplinary action?

Yes. The grievant was questioned by his supervisor regarding his use of alcohol after he was observed by the supervisor under suspicion of intoxication. The grievant was not first informed of his right to have a union representative present. Subsequently the grievant, who had previous alcohol problems, was terminated, but later reinstated by the Merit Systems Protection Board. With respect to the right to representation the arbitrator held that the employer clearly violated the agreement. He noted that the right of each employee to be notified concerning union representation during a disciplinary interview is an important one. The arbitrator ordered the employer to inform each supervisor, both orally and in writing, to adhere to the rule.

ROBERT C. SCHUBERT April 28, 1981 United States Navy, Naval Weapons Station - Concord, California and American Federation of Government Employees, Local 1931 11 pages

Cite Cases as LAIRS _____

DISCIPLINE -- DISORDERLY CONDUCT, INSUBORDINATION, ABUSIVE LANGUAGE

13334 Did the agency have just cause to suspend the grievant for three days for insubordination and disruptive behavior?

The grievant responded to work-related criticism from her team leader with abusive language and behavior that disrupted the office. The arbitrator noted the credibility issue between the grievant and the team leader, and on the basis of the testimony credited that of the team leader. However, the arbitrator concluded that the three day suspension was too severe a penalty. The arbitrator stated that discipline should be no greater than that which is needed to correct the employee's errors. The suspension was reduced to one day and the grievant was made whole for the loss of two days pay.

BERTRAM T. KUPSINEL May 14, 1981 Department of Health and Human Services, Social Security Administration - Flushing, New York and American Federation of Government Employees, Local 1760 19 pages

SAFETY -- PROCEDURES, REGULATIONS, INSPECTION, ASSIGNMENT, HAZARDOUS WORK

13335 Did management commit health and safety violations by failing to follow the procedural requirements of the agreement?

No. The arbitration involved a number of health and safety complaints which the union alleged against management. The complaints involved were a refusal by management to answer a complaint without a written recommendation from the safety committee; management's issuance of an official memorandum on the procedures to be used for unsecured weapons; traffic checkpoint safety equipment and devices; union representation on inspections; and safety training. Based on the evidence the arbitrator denied the grievances based on these issues. The remaining dispute involved a border patrol agent who was told to drive a bus to bring aliens to the station. The agent had never driven a bus before and did not have a license to operate the vehicle. The arbitrator found the order to be in violation of the agreement.

ERNEST E. MARLATT May 14, 1981 Department of Justice, Immigration and Naturalization Service - Dallas, Texas and American Federation of Government Employees, Local 2455 15 pages

Cite Cases as LAIRS _____

LEAVE -- MISCELLANEOUS PAID, ADMINISTRATIVE

13336 Did management violate the agreement by denying administrative leave to employees who failed to report to work because of a public transportation strike?

Yes. Because of a public transportation strike which occurred in December 1979, the grievants were unable to report to work. Subsequently, each grievant applied for administrative leave but management denied the requests. Instead, the grievants' absences were charged against their accumulated annual leave balances. The grievants protested, claiming that under the agreement they should have been given administrative leave. The arbitrator ruled that emergency conditions existed which prevented the grievants from reporting to work. Management was ordered to credit the day in question as administrative leave and restore the annual leave charged against the grievants.

DONALD J. PETERSEN April 21, 1981 Department of Treasury, Bureau of Alcohol, Tobacco and Firearms - Washington, DC and National Treasury Employees Union, Local 94 10 pages

DISCIPLINE -- DISORDERLY CONDUCT, INSUBORDINATION

13337 Was the written reprimand issued to the grievant for failure to attend a meeting taken for just cause?

No. The grievant was given a reprimand for her failure to attend a required meeting. She refused to attend because it concerned her transfer and demotion. The arbitrator determined that under the circumstances no necessary purpose would have been served if the grievant had attended the meeting to accept her reduction in status and responsibility. The situation could have been handled in a more considerate manner. Therefore, the reprimand was not issued for just cause.

ROBERT J. ABLES May 27, 1981 United States Army, Material Development and Readiness Command - Washington, DC and National Federation of Federal Employees, Local 1332 17 pages

Cite Cases as LAIRS _____

PROMOTION -- PROCEDURES, FAILURE TO PROMOTE, CRITERIA; NON-DISCRIMINATION -- RACE, SEX

13338 Were the grievants denied promotion because of either race or sex discrimination or management's failure to comply with the Merit Promotion procedures?

In response to two vacancy announcements, the grievants were denied promotions, despite the fact that on both occasions the grievants had been rated among the best qualified. Management contended that the reason it had not promoted the grievants was that they had not been consistently meeting production quotas. However, shortly before the first arbitration hearing was held the grievants were indeed promoted. The arbitrator ruled that the evidence was inconclusive regarding the charge of discrimination. The arbitrator also ruled that the grievants had been denied promotion because of management's failure to fairly administer the promotion procedures. He noted that management introduced no evidence to show what specific productivity failings the grievants had been guilty of. The arbitrator also held that the production standards allegedly used by management to judge the productivity of the grievants were not an accurate measure of the application of their skills and abilities. He ordered that the grievant's promotions be made retroactive and that they be made whole for the difference.

DANIEL HOUSE June 1, 1981 United States Army, Military Traffic Management Command - Bayonne, New Jersey and American Federation of Government Employees, Local 2855 12 pages

PROMOTION -- TYPES, RETROACTIVE, NON-COMPETITIVE

13339 Did an administrative error cause the grievant's career ladder promotion to be delayed? If so, what is an appropriate remedy?

Yes. During the processing stages of the grievant's career ladder promotion the standard form 52 was submitted on the grievant's behalf and the promotion was ultimately implemented. The union argued that the proposed effective date should have been the date of the beginning of the grievant's anniversary pay period. It was the union's view that the grievant was the victim of an administrative error and therefore was entitled to redress. The arbitrator ruled that an administrative error had indeed occurred. He directed that the effective date of the promotion be the one proposed by the union.

HILLARD KREIMER June 3, 1981 Department of Health and Human Services, Social Security Administration - Philadelphia, Pennsylvania and American Federation of Government Employees, Local 3231 7 pages

Cite Cases as LAIRS ____

ARBITRATION -- OFFICIAL TIME, UNION REPRESENTATIVES

13340 Did management violate the agreement when it refused to grant union representatives official time to prepare for arbitration cases?

No. In refusing to grant official time, management relied on the literal language of the agreement, which contained no provisions for preparation time. The arbitrator concluded that since the parties omitted the word preparation, they did not intend that official time be authorized for this function. Therefore, the grievance was denied.

ADOLPH M. KOVEN May 20, 1981 Non-Appropriated Funds, Air Force, Sacramento Air Logistics Center - McClellan Air Force Base, California and American Federation of Government Employees, Local 1857 7 pages

DISCIPLINE -- NEGLECTFUL CONDUCT

13341 Did management have just cause to suspend the grievant for her failure to answer questions forthrightly?

Yes. The grievant was suspended for fourteen days for her failure to answer questions on a drug-related matter. She had been observed by a security officer placing a plant resembling marijuana in her car. The security officer verified that the plant was marijuana and subsequently questioned the grievant about the plant. The grievant claimed she did not know what kind of plant it was or who had put it in her car. The arbitrator concluded that the grievant was less than candid and withheld information which management was entitled to have. However, the evidence indicated that management's investigation of the event was less vigorous than should be expected. Its failure to question three possible suspects and its decision not to contact the police were two notable omissions. Because of management's neglect of other avenues of investigation, the arbitrator ruled that the fourteen day suspension was too severe a penalty. Therefore, the suspension was reduced to three days and the grievant made whole for lost wages.

ADOLPH M. KOVEN May 29, 1981 Department of Treasury, Bureau of the Mint - San Francisco, California and American Federation of Government Employees, Local 51 11 pages

Cite Cases as LAIRS _____

PAY PRACTICES -- DIFFERENTIALS, ENVIRONMENTAL; NEGOTIATION/CONSULTATION -- PROCEDURES, FAILURE TO BARGAIN

13342 1) Did management violate the agreement by failing to consult with the union when it eliminated environmental differential pay for pest controllers? 2) Are the pest controllers exposed to any unusually severe hazard in the handling and application of pesticides? If so, should the environmental differential be reinstated?

1) In October 1979, management conducted an annual review of the unit employing the pest controllers. It was recommended that the four percent environmental pay be terminated because hazards associated with the handling of pesticides had been practically eliminated. In November 1979, the pay differential was terminated. The union alleged that it was not informed of management's intention to terminate the pay until after the decision was made. Furthermore, the union argued that the agreement was violated because no consultation occurred before the change in policy. The arbitrator ruled that management's failure to consult with the union violated the agreement. As redress management was directed to pay each pest controller a sum of money equal to four percent of pay for the period from October 1979 to the date of the hearing. 2) Based on the annual review, the arbitrator determined that the pest controllers were not exposed to any unusually severe hazard in the handling of pesticides. Therefore, they were not entitled to environmental pay after the date of the hearing.

DALE S. BEACH May 7, 1981 United States Air Force, Griffiss Air Force Base - Rome, New York and American Federation of Government Employees, Local 2612 11 pages

PROMOTION -- TEMPORARY; POSITION CLASSIFICATION -- POSITION DESCRIPTION

13343 Was the grievant entitled to backpay and a temporary promotion for allegedly performing duties of a higher-graded position?

No. The grievant, a GS-12 Computer System Analyst, alleged that he had been performing the duties established for the GS-13 Computer System Analyst. On the basis of the evidence and testimony the arbitrator determined that the grievant had not performed with the same independence as is required of a GS-13. Further, management had not imposed the same performance requirements that it had placed on the higher level analysts. The grievance was denied.

DANIEL E. MATTHEWS March 11, 1981 Department of Health and Human Services, Social Security Administration - Baltimore, Maryland and American Federation of Government Employees, Local 1923 7 pages

Cite Cases as LAIRS _____

LEAVE -- ANNUAL, DENIAL

13344 Was the denial of the grievant's request for annual leave in violation of the agreement?

No. The grievant volunteered for a special overtime assignment scheduled for Sunday, and worked a total of sixteen hours. Late Sunday evening he advised someone at the group dispatch desk that he wanted eight hours annual leave the following day. The grievant did not report for work the following day, nor did he call his supervisor to request leave. When he returned to work, he gave his supervisor a written request for the leave. His supervisor denied the request, stating that tiredness was insufficient reason for eight hours emergency leave. The arbitrator ruled that the grievant did not comply with the procedures for requesting leave. Therefore, the grievance was denied.

W. W. WARD May 12, 1981 United States Navy, Mare Island Naval Shipyard - Vallejo, California and Metal Trades Council, Local T-21 10 pages

HOURS OF WORK -- GUARANTEE, WORKWEEK

13345 Was the rescheduling of employees to work on a non-overtime basis a violation of the agreement?

Yes. The employees were normally scheduled to work four weekdays of ten hours each with Saturday, Sunday and one weekday off. Management posted a two week work schedule which assigned the employees to work Saturday and Sunday, for which they were given days off in lieu of the weekend work. The employees were not paid overtime and thus the union argued that management violated the agreement by changing the normal workweek of the employees. The arbitrator concluded that the rescheduling violated the agreement. Management was directed to pay the applicable overtime rate to employees in accordance with the agreement.

MILLARD CASS May 8, 1981 General Services Administration - Washington, DC and Plumbing and Pipefitting Industry of the United States and Canada, Local 602 12 pages

Cite Cases as LAIRS _____

OVERTIME -- RESTRICTION, NOTIFICATION REQUIREMENTS

13346 Were the grievants entitled to receive back pay for management's failure to assign them to overtime work?

Yes. This dispute arose out of management's failure to notify the grievants of an overtime assignment. The union maintained that the weekend work was anticipated overtime and that it had been decided the preceding Thursday that the work would be performed. However, management did not attempt to contact the grievants until Saturday. Since they could not be reached, other employees were assigned to the weekend overtime work. The arbitrator was persuaded by the evidence that a decision had been made earlier in the week to schedule the overtime assignment. He ruled that management violated the agreement by not notifying the grievants of the overtime before they left work on Friday. Therefore, the grievants were entitled to compensation for the overtime they lost as a result of management's failure to notify them in a timely fashion.

ALEXANDER B. PORTER December 9, 1980 United States Navy, Norfolk Naval Shipyard - Portsmouth, Virginia and Metal Trades Council 7 pages

NEGOTIATION/CONSULTATION -- PROCEDURES, MULTI-UNIT BARGAINING; EMPLOYEE RIGHTS -- SENIORITY

13347 Did two articles of the local agreement survive as supplements to the master agreement?

No. The arbitrator determined that the local agreement was superseded by the multi-unit contract. If the union wished to modify the new contract language, such modification must be accomplished through negotiations, or upon the termination of the master agreement. The grievance was denied.

CHARLES R. MILENTZ April 14, 1980 United States Air Force, San Antonio Air Logistics Center - Kelly Air Force Base, Texas and American Federation of Government Employees, Local 1617 13 pages

Cite Cases as LAIRS _____

REPRESENTATION -- UNION OFFICIALS/STEWARDS, ASSIGNMENT; GRIEVANCE -- REPRESENTATION, UNION RIGHTS, LIMITATIONS

13348 Did the union violate the agreement when it submitted a list of stewards to the employer of whom a substantial percentage had been appointed from outside their respective work areas?

Yes. The agreement stipulates that, normally, stewards appointed to represent an area should be drawn from employees in that work area. The arbitrator held that the union violated the limitation imposed upon it by the contract which it had negotiated. He noted that the union was still free to select its stewards subject only to the noted requirement. The case was remanded to the parties for settlement.

A. A. WHITE May 10, 1980 United States Air Force, San Antonio Air Logistics Center - Kelly Air Force Base, Texas and American Federation of Government Employees, Local 1617 10 pages

LAW/REGULATIONS -- STATUTE, FLRA; ULP PROCEDURES -- FILING OF CHARGE

13349 Was the union obligated under the agreement to submit unfair labor practice charges (ULPs) to management for possible resolution before filing such charges with the Federal Labor Relations Authority (FLRA)?

No. The union changed its policy of submitting unresolved disputes to management for a final attempt at settlement, as required by the agreement, before filing a ULP charge. Instead, in cases in which the dispute was not resolved at the immediate supervisory level charges were directly filed with the FLRA. The arbitrator found that the agreement provision requiring preliminary consideration of the charges of the agency level violated the Civil Service Reform Act. The arbitrator noted that an agency and a union may not by contract impose a limitation on the free access of employees to the FLRA. Such a mandatory dispute resolution at the agency level could act to the detriment of federal employees in their exercise of rights under the law. Management's grievance was denied.

ERNEST E. MARLATT June 6, 1980 United States Army, Fort Sam Houston - Houston, Texas and American Federation of Government Employees, Local 2154 9 pages

Cite Cases as LAIRS ____

ARBITRATION -- SCOPE, ARBITRABLE MATTERS DEFINED

13350 Was the grievance which protested a performance evaluation arbitrable?

Yes. Management's objection to its arbitration was based on its contention that the grievant was not a unit employee. The arbitrator held the grievance to be arbitrable. Regarding the issue of whether the grievant was a unit employee the arbitrator noted that an arbitrator could review the facts and the agreement and make an interpretation. Should that determination violate the law, and thus go beyond the parameters established for arbitration, it could be set aside by the Federal Labor Relations Authority.

WILLIAM M. EDGETT August 5, 1980 General Services Administration, National Archives and Record Service - Washington, DC and American Federation of Government Employees, Local 2578 6 pages

LEAVE -- CALL-IN REQUIREMENT; DISCIPLINE -- NEGLECTFUL CONDUCT, ABSENTEEISM

13351 Did the employer have just cause to suspend the grievant for ten days for failure to adhere to the call-in requirement?

Yes. The grievant was absent without leave for the period June 6th through July 27th, having disregarded instructions and a work rule requiring notification of her department concerning absences. The arbitrator, noting the rationale for the call-in requirement, ruled that the grievant clearly violated this provision. The arbitrator upheld the suspension as a classic application of progressive discipline.

ERIC J. SCHMERTZ August 20, 1980 Department of Health and Human Services, Social Security Administration - New York, New York and American Federation of Government Employees, Local 1760 4 pages

Cite Cases as LAIRS _____

PROMOTION -- TYPES, OUTSIDE UNIT OF RECOGNITION; PROCEDURE -- PERFORMANCE RATING/EVALUATION

13352 Were the grievant's rights violated through the manner in which management considered him for a vacancy?

The grievant had applied for a vacancy as a supervisory officer. In connection with the opening, the grievant's most recent performance evaluation was submitted to the merit review panel. He had grieved that evaluation and had asked that a previous evaluation be submitted rather than the most recent one. The grievant also alleged that there should have been three members on the merit panel instead of two. The arbitrator ruled that the position the grievant sought was outside the bargaining unit and that the contract did not give employees rights to the application of contractual procedures in applying for supervisory positions. Therefore, the grievance was denied.

FREDERIC MEYERS September 26, 1979 Department of Labor, Labor Management Services Administration - Los Angeles, California and National Union of Compliance Officers 9 pages

PAY PRACTICES -- REPORTING; HOURS OF WORK -- REPORTING, NON-WORK PERIODS; SAFETY -- CLOTHING

13353 1) Does the requirement that employees pick up keys and detail pouches constitute work that should be compensated as duty time? 2) Did the employer violate the agreement by failing to provide foul weather gear?

1) No. Employees were required to be at their work areas by the time the duty hour officially began. However, they had to report early on their own time to check out keys and detail pouches. The union contended that the employees' official duty hours should begin when the employee reports to check out the keys, and that a past practice had been established to this effect. Management argued that the minutes involved in these duties were de minimus. The arbitrator noted the past practice but held that as an oral agreement it was not binding upon the parties. Furthermore, he noted that OPM regulations require employees to be at their assigned work areas at the start of their tours of duty. This issue was denied. 2) The arbitrator ordered the employer to comply with the agreement and provide foul weather gear.

PRESTON J. MOORE March 21, 1980 Department of Justice, Federal Prison System - Texarkana, Texas and American Federation of Government Employees, Local 2459 8 pages

PROMOTION -- PROCEDURES, FILLING VACANCIES,PERFORMANCE RATING, ASSESSMENT OF POTENTIAL, RANKING OF CANDIDATES

13354 Were the grievants evaluated and ranked properly during the promotion action in question? Were their promotion applications fairly and objectively processed?

No. The arbitrator found multiple deficiencies in management's ranking of the three grievants and its processing of their promotion applications. The grievants had not been ranked sufficiently high to be identified as best qualified under a vacancy announcement or under another announcement with an expanded area of consideration. Among the deficiencies in management's action the arbitrator noted that the supervisory appraisals were prepared by individuals with little experience with the grievants' work. The arbitrator held that the grievants did evidence a clear potential to perform more than competently in the position sought. The arbitrator ordered that the grievants be deemed best qualified and their names submitted to the selecting official for the next vacancy.

SAMUEL EDES March 25, 1980 Department of the Treasury, Internal Revenue Service - Chicago, Illinois and National Treasury Employees Union, Local 12 22 pages

PROMOTION -- REPROMOTION, PRIORITY CONSIDERATION

13355 Was the grievant entitled to have been repromoted to the position identified by the announcement in question?

Yes. The grievant had been previously demoted from a GS-8 position in the same agency without personal cause, and therefore possessed repromotion rights with special consideration. She applied for a vacancy and included a request for repromotion consideration, but her application was screened out for procedural reasons. The arbitrator agreed with the union's contention that the grievant was not given the special consideration to which she was entitled. The arbitrator directed the agency to consider the grievant with priority consideration for the next suitable vacancy, or to reaccomplish the selection procedures. He retained jurisdiction over the matter pending satisfactory outcome.

JOHN HUNTER March 27, 1980 United States Army, Material Development and Readiness Command Headquarters - Washington, DC and National Federation of Federal Employees, Local 1332 14 pages

Cite Cases as LAIRS ____

ARBITRATION -- ARBITRABLE MATTERS DEFINED; EMPLOYER RIGHTS -- ASSIGN WORK

13356 Was the union's grievance concerning an assignment of work issue arbitrable?

Yes. The agreement stipulates that the employer will retain selected cases of individual employees when the caseload becomes unmanageable. Grievances were filed over management's failure to adhere to this provision. Management contended that the grievances were not arbitrable because the determination of manageable inventory workloads is a right inherently reserved to management, which may not be infringed upon by arbitration. Management also contended that since the provision was non-negotiable, the union was attempting to obtain through arbitration what it could not obtain through negotiation. To the contrary, the arbitrator held that management, having negotiated the express terms of the promotions, now sought to avoid arbitration on that basis. He stated that the dispute was subject to the grievance/arbitration procedure as defined in the parties' agreement.

RICHARD I. BLOCH September 18, 1979 Department of Treasury, Internal Revenue Service - Chicago, Illinois and National Treasury Employees Union, Local 10 8 pages

DISCIPLINE -- CONFLICT OF INTEREST, ABUSE OF AUTHORITY

13357 Was the three-day suspension of the grievant for conflict of interest and abuse of authority taken for just cause?

Yes. The grievant, an employee of the Internal Revenue Service, had accessed her own tax account through the data retrieval system, in violations of the rules. The suspension was based upon a definitive special activity report which tracks such violations. In light of this evidence, together with the fact that the grievant was aware of the rules against accessing her own account, the arbitrator upheld the suspension. The arbitrator also rejected the union's contention that the suspension be overturned or reduced because of the length of the delay involved in processing the disciplinary action. The arbitrator noted the cases management offered in support of its view, and held that the delay was not to the detriment of the service.

JOHN KAGEL September 19, 1980 Department of Treasury, Internal Revenue Service - San Francisco, California and National Treasury Employees Union 16 pages

Cite Cases as LAIRS ____

PROMOTION -- TYPES, NON-COMPETITIVE, PROCEDURES, PRIORITY CONSIDERATION, FILLING VACANCIES; LAW/REGULATION -- OFFICE OF PERSONNEL MANAGEMENT (FPM)

13358 Did the agency violate the agreement when it failed to comply with Merit Promotion Procedures in filling Schedule A positions? Was a grievant entitled to veteran's preference when he was considered for the positions?

No. The agency utilized Schedule A authority to hire the staff needed for a temporary program. It bypassed the competitive promotion procedures, and selected three outside applicants for several of the positions. The arbitrator agreed with the agency's observation that under the Federal Personnel Manual (FPM), Schedule A positions are excepted from the competitive service. The arbitrator also held that in filling these positions the agency did not have to grant an employee veteran's preference. Such preference does not extend to the filling of the temporary, emergency-type positions involved here, when an individual is not seeking new employment but rather a promotion.

SEYMOUR STRONGIN September 23, 1980 Community Services Administration - Washington, DC and American Federation of Government Employees 8 pages

DISCIPLINE -- DISORDERLY CONDUCT, INSUBORDINATION, PROCEDURES, UNION REPRESENTATION

13359 Was the grievant insubordinate for refusing to meet with his supervisor without union representation?

No. The supervisor asked the grievant to meet with her concerning his request for emergency annual leave. The grievant refused to do so unless a union representative could be present, because he had been counselled about leave usage before, and felt the meeting would lead to disciplinary action. The arbitrator held that there was a real chance that disciplinary action could have resulted from the meeting. Therefore, the grievant's refusal to meet alone with his supervisor was not insubordinate. Management was directed to remove the letter of reprimand and all references thereto from the grievant's personnel folder.

CLAIR V. DUFF September 17, 1980 Department of Treasury, Internal Revenue Service - Martinsburg, West Virginia and National Treasury Employees Union 13 pages

Cite Cases as LAIRS ____

PERFORMANCE -- APPRAISAL

13360 Was the grievant properly rated against the performance standards for his position?

Yes. The grievant contended that he was unfairly and improperly underrated on six items of his performance rating. The arbitrator, therefore, reviewed the evidence upon which the six ratings were based and determined that the ratings were fair and proper. The arbitrator denied the grievance, noting that the union did not meet its burden of showing with specific and convincing evidence that a given rating was not accurate.

HENRY B. WELCH September 3, 1980 Department of Health and Human Services, Social Security Administration - Birmingham, Alabama and American Federation of Government Employees, Local 2206 16 pages

PAY PRACTICES -- CALL-BACK; HOURS OF WORK -- CALL-BACK

13361 May the employer schedule call-back duty without compensating employees an additional amount for that status and with the right to discipline employees if they refuse to be available for call-back?

Yes. The job description of the grievant's position specifies that one of his major duties is to participate in a call-back emergency service program. The union maintained that these employees should be considered on stand-by, or, alternately, that call-back should be strictly voluntary. The arbitrator denied the grievance, noting that under stand-by duty an employee's freedom is restricted, whereas employees on call-back enjoy relative freedom of movement. The arbitrator also held that since the call-back duty was not voluntary it was possible to discipline an employee for failure to respond to a call.

ELLIOT I. BEITNER May 7, 1979 United States Army, Corps of Engineers - Detroit, Michigan and American Federation of Government Employees, Local 830 9 pages

Cite Cases as LAIRS _____

ARBITRATION -- SCOPE, ARBITRABLE MATTERS DEFINED

13362 Was the grievance concerning whether the grievant was denied her repromotion rights when she was considered for the position in question arbitrable?

Yes. The arbitrator noted that under the Merit Promotion Plan employees who believe that the terms of the plan were not followed have a right to utilize the provisions of the negotiated grievance procedure in seeking redress.

ROBERT A. O'NEILL July 16, 1980 United States Air Force - McChord Air Force Base, Washington and American Federation of Government Employees, Local 1501 4 pages

DISCIPLINE -- PROCEDURES, NOTIFICATION-EMPLOYEE

13363 Did management fail to give proper advance notice of the suspension as required by the agreement?

Yes. Management proposed to suspend the grievant for allegedly removing and holding records from an official file without approval. In addition to denying the alleged offense, the union argued that management made a procedural error by failing to give proper advance notice of the suspension. The notice of proposed disciplinary action was issued April 27th. The notice of suspension was dated September 25th, and the suspension was set for October 4th. The union contended that the fifteen day period of advance notification prescribed by the agreement ran from September 25th. Management contended, however, that the period ran from April 27th. The arbitrator agreed with the union's interpretation. Therefore, the grievance was sustained.

HERBERT FISHGOLD December 12, 1980 Department of Treasury, Internal Revenue Service - Washington, DC and National Treasury Employees Union, Local 22 3 pages

Cite Cases as LAIRS ____

PROMOTION -- TYPES, REPROMOTION

13364 Did management violate the grievant's repromotion rights by not selecting him for any of the positions in question?

Yes. The grievant was employed as a GS-13 engineer. As a result of a reduction-in-force in September, 1974, he was downgraded to a GS-12. The downgrading made him eligible for repromotion to positions at his former grade and series. Since April, 1977, the grievant was a candidate for approximately eighty announced vacancies, but he failed to be selected for appointment. Upon submission of the grievances to the arbitration stage, the union chose three examples from among the eighty positions for review and resolution. The arbitrator found that the grievant was not given special consideration for two of the positions in question. The grievant was given immediate restoration to his former grade, and backpay for his non-selection in the second vacancy. The grievant's grade and compensation were to continue at GS-13 in his present position or any other position assigned until he had been promoted to a position graded at GS-13.

OGDEN W. FIELDS November 26, 1980 United States Army, Armament Research and Development Command - Dover, New Jersey and National Federation of Federal Employees, Local 1437 34 pages

DISCIPLINE -- DISORDERLY CONDUCT, INSUBORDINATION, PROCEDURES, INVESTIGATION

13365 Did management have just cause to suspend the grievant for insubordination and noncompliance with instructions?

The grievant refused to give management a complete written report of his actions in connection with his refusal to allow entry of a foreign citizen into the United States. The citizen filed a complaint against the agency and, in its investigation, the agency required the grievant to complete a written report. Management assured the grievant orally that he would not be disciplined as a result of his report, but refused to put this assurance in writing. The arbitrator determined that management had no authority to order the grievant to give a written report without first giving him complete immunity. The second charge referred to the fact that the grievant had violated an instructional memorandum stating that an employee may not close his lane of traffic and withdraw from his post without consulting the supervisor. The arbitrator determined that the memo was unilaterally implemented by management and violated the standard rotational procedure outlined in the agreement. The arbitrator held that the suspension was not for just cause. Therefore, management was ordered to compensate the grievant for lost pay which resulted from the suspension.

BARNETT M. GOODSTEIN October 7, 1980 Department of Justice, Immigration and Naturalization Service - Dallas, Texas and American Federation of Government Employees 15 pages

PERFORMANCE -- APPRAISAL

13366 Did the grievant's appraisal properly reflect his work performance?

Yes. The grievant contended that his supervisor's attitude towards him prevented a fair appraisal from being made. Specifically, he claimed that the ratings did not reflect his performance with respect to the quantity and quality of work and job knowledge. Based on the testimony, the arbitrator was not persuaded that the grades given to the grievant for these elements did not represent with reasonable accuracy the quality of his performance during the rating period. Therefore, the grievance was denied.

JAMES J. ODOM, JR. May 14, 1980 Department of Health and Human Services, Southeastern Program Services Center - Birmingham, Alabama and American Federation of Government Employees, Local 2206 3 pages

DISCIPLINE -- NON-PERFORMANCE, CONFLICT OF INTEREST

13367 Was the thirty-day suspension of the grievant for allegedly engaging in outside employment justified?

No. In the past the grievant had received formal approval from management to work in a general store as a sales clerk. Recently, the district manager disapproved the grievant's reapplication for this outside employment, stating that there might be a conflict of interest. The grievant did not pursue the matter and did not thereafter work as a sales clerk. The suspension stemmed from a later observation by a special agent that the grievant was waiting on a customer and otherwise acting as a sales clerk. The grievant denied the allegation and testified that he was in the store for his own purposes. The arbitrator concluded that there was no evidence that the grievant had engaged in any activity as a sales clerk. The grievance was sustained, and the grievant made whole for all lost pay.

HERBERT FISHGOLD December 17, 1980 Department of Treasury, Internal Revenue Service - Pittsburgh, Pennsylvania and National Treasury Employees Union, Local 71 8 pages

Cite Cases as LAIRS ____

PAY PRACTICES -- PROCEDURES, OVERPAYMENT; HOURS OF WORK -- NON-WORK PERIODS, REST

13368 Did the calculation of the number of hours worked for the purposes of determining the hourly rate for the 1981 wage survey require the exclusion of contractually paid rest breaks?

Yes. The parties disputed the intent and implementation of the contract language regarding the definition of hours of work. The agency argued that neither party ever intended or agreed to subtract anything other than lunch periods from the calculation of hours worked. Up to and including the 1978 wage survey the actual practice the parties adhered to was to exclude lunch periods only. In 1979, 1980 and 1981 rest breaks were also excluded from the calculation of the hours worked, and the results were accepted and implemented by the agency. The arbitrator held that regardless of what the initial intent of the parties was, there was now an established record of three consecutive surveys in which rest periods were deducted. She also noted that the new application of the language was not challenged by the agency during an intervening contract negotiation. The arbitrator sustained the union's position and ordered that the pay schedule be retroactively adjusted, despite the considerable cost to the agency.

MOLLIE HEATH BOWERS June 17, 1981 International Communications Agency, Voice of America - Washington, DC and National Federation of Federal Employees, Local 1418 27 pages

PAY PRACTICES -- PROCEDURES, WAGE SURVEY, PAY LEVELS, RATES

13369 Did the employer violate the agreement when it failed to compensate its wage marine electronic employees in accordance with prevailing rates and practices in the maritime industry?

Yes. A study done in 1971 remained the basis for pay setting and for annual adjustments for the employees in question. Since these rates were established in 1971 no further studies had been done to determine the propriety of these rates as related to those paid by other departments or industry. The employer asserted that the differences between its pay rates and those of the other department employees in the study (and also private industry) were justified by differences in mission, staffing, size of ship, and locale of performing work. The employer contended that it properly exercised its discretion within the public interest standard provided in 5 USC 5348, which was referenced in the parties' agreement. The arbitrator found that the employer's justifications for the pay differences were not valid, and therefore the employer did not properly apply the public interest standard. The agreement was violated when the employer failed to conduct subsequent studies. The arbitrator ordered the parties to negotiate on the mechanics for determining pay and benefits for the employees. Any changes in the pay would be retroactive to June 16, 1980.

LOUIS ARONIN June 12, 1981 Department of Commerce, National Oceanic and Atmospheric Administration - Rockville, Maryland and National Marine Engineers Beneficial Association 37 pages

REPRESENTATION -- UNION OFFICIALS/STEWARDS, OFFICIAL TIME ALLOWANCE; GRIEVANCE -- REPRESENTATION, UNION RIGHTS, LIMITATIONS

13370 Did the agency violate the agreement when it denied the use of official time to the union's arbitration specialist to prepare for an arbitration , or required the union to supply the name of the grievant when requesting official time?

No. A union official was appointed to the position of arbitration specialist, for the specific purpose of representing the union in an arbitration. This official requested and was granted thirty-two hours of official time to prepare for the arbitration. After the arbitration, the request was retroactively disallowed, with all but five hours charged to annual leave and leave without pay. Management contended that the title of arbitration specialist was not covered by the official time provisions of the agreement. The arbitrator agreed that the use of the term union officials in the agreement referred to local stewards, and not an arbitration specialist. The arbitrator also held that the agency did not violate the agreement by requiring the union representative to supply the grievant's name when requesting official time for arbitration. He noted that the issue of confidentiality was beside the point, since the grievant's name had obviously been disclosed by the fact of filing the original grievance.

WILLIAM EATON June 8, 1981 Department of Justice, Immigration and Naturalization Service - San Pedro, California and American Federation of Government Employees 20 pages

OVERTIME -- SELECTION CRITERIA

13371 Did the employer violate the agreement by denying the aggrieved employees their rights for equitable distribution of overtime under the agreement?

Yes. The agreement states that the employer will distribute overtime "...equitably among all employees according to their shift, job title and grade within their shop." The union contended that the employer unfairly assigned overtime when it implemented a new procedure based on a new definition of the term shop. The arbitrator found merit in the union's contentions. He ordered the employer to compensate the aggrieved employees for all overtime hours lost had the hours been properly assigned.

JOSEPH DI STEFANO May 26, 1981 United States Army, Aberdeen Proving Ground Command - Aberdeen, Maryland and International Association of Machinists and Aerospace Workers, Local 2424 32 pages

DISCIPLINE -- LEAVING JOB SITE, FALSIFICATION OF RECORDS

13372 Did the employer have just cause to reprimand the grievant for staying away from his job without permission and changing the supervisor's designation on an irregular hour pass?

Yes. The arbitrator sustained the employer's testimony with respect to the occurrences which prompted the reprimand. The grievant, a union steward, had received his supervisor's permission to be off on union business after lunch, but was told to check back beforehand. He was given a signed pass. Later, the grievant could not locate the supervisor but spoke with the next highest supervisor. This official signed a pass which authorized an absence for lunch only , which the grievant later changed. The disciplinary action was upheld.

EDWIN R. RENDER March 5, 1981 United States Navy, Naval Ordnance Station - Louisville, Kentucky and International Association of Machinists and Aerospace Workers, Local 830 10 pages

UNION RIGHTS -- COMMUNICATION, BULLETIN BOARDS

13373 Did management violate the agreement when it removed some union materials posted on a bulletin board?

Yes. Certain employees at the work station were offended by the nature of some material posted by the union involving definitions of the word scab. A management official removed the offending material , scizzored out certain words, and then returned it to the bulletin board. The union contended that management had no right to remove any union material from the bulletin boards provided it in the agreement, and also that the material in question constituted official union business. Management disagreed, and also argued that it had the right of prior review. The arbitrator found that the material constituted pertinent local information concerning the promotion of its organizing interests, which was a matter for the union to determine. The arbitrator noted that the management right of prior review in the contract was confined to materials for distribution, not for materials for posting. The arbitrator ordered management to repost the material.

GEORGE H. HILDEBRAND May 20, 1981 United States Air Force - Williams Air Force Base, Arizona and American Federation of Government Employees, Local 1776 11 pages

Cite Cases as LAIRS ____

HOURS OF WORK -- GUARANTEE, REPORTING, OVERTIME

13374 Were the grievants entitled to overtime for performing work prior to the beginning of their work shift?

Yes. The grievances were filed because the employees believed they should have been paid overtime for the time they spent receiving instructions or picking up supplies prior to the start of their shift. Instructions were given on an average of two days a week, ordinarily taking ten to fifteen minutes; supplies were picked up on an average of three days a week, taking fifteen to twenty minutes on such occasions. The arbitrator determined that the grievants were entitled to overtime for work they performed prior to the start of their shift. Management was directed to pay each grievant one hour of overtime at the applicable rate of pay each week for a period of thirteen weeks.

ROBERT L. GIBSON June 3, 1981 United States Navy, Naval Air Rework Facility - Cherry Point, North Carolina and International Association of Machinists and Aerospace Workers, Local 1859 10 pages

DISCIPLINE -- NON-PERFORMANCE, ARREST

13375 Was the grievant's indefinite suspension pending determination of a legal action against him taken for just cause?

Yes. The grievant was arrested on a charge that he was a party to the crime of possession of marijuana, and was later indicted by a grand jury. Management suspended him from his job as air traffic controller on the basis that retention on active duty pending determination of the charges against him would not be in the interest of the public. Management determined that the suspension was necessary because air traffic controllers routinely monitor the movement of planes suspected of participation in drug traffic. The grievant testified to the fact that information as to surveillance of such aircraft would be of value to those involved in the drug trade. The arbitrator concluded that a preponderance of the evidence supported the suspension. Therefore, the grievance was denied.

ALFRED J. GOODMAN May 12, 1981 Department of Transportation, Federal Aviation Administration - Chamblee, Georgia and Professional Air Traffic Controllers Organization 13 pages

Cite Cases as LAIRS ____

LEAVE -- MISCELLANEOUS PAID, VOTING; NEGOTIATION -- SCOPE, REFUSAL TO, PAST PRACTICE

13376 Was management obligated to renegotiate the voting leave provision when the polls began to stay open an hour longer in the evening?

No. The arbitrator determined that the change in polling time did not affect the voting leave policy. Management's policy was to allow a half hour leave at either the start or the end of the work shift for voting purposes. The union was concerned that employees who usually left a half hour early would be denied leave since the polls were staying open an hour longer. Management did not change their policy or violate the agreement. In fact, the arbitrator stated that the agency gave the greatest benefit to the employees.

JAMES P. MARTIN October 27, 1980 Department of Health and Human Services, Social Security Administration - Chicago, Illinois and American Federation of Government Employees, Local 1395 10 pages

DISCIPLINE -- NEGLECTFUL CONDUCT, TARDINESS

13377 Did the employer have just cause to reprimand the grievant for unauthorized absences from duty?

Yes. The reprimand was issued because the grievant had reported late for work due to oversleeping. The grievant asked that the written reprimand be removed, claiming his oversleeping resulted from prescription drugs he was taking. The arbitrator upheld the suspension. He noted that the discipline occurred after the grievant had been taken off of the medication and the oversleeping persisted.

FRANCIS W. FLANNAGAN May 20, 1981 United States Navy, Naval Air Rework Facility - Norfolk, Virginia and International Machinists and Aerospace Workers, Local 39 13 pages

Cite Cases as LAIRS ____

PROMOTION -- PROCEDURES, POSTING, PRESELECTION, CRITERIA

13378 1) Was the agency's action of withdrawing the GS-6 vacancy announcement and reissuing a vacancy announcement at the GS-5 level a change in qualification requirements, thereby violating the agreement? 2) Was the final selection in the second posting a preselection?

The union charged that a withdrawal of the first vacancy announcement under which a certain employee was ineligible and the posting of the position at a lower grade level was a change in qualification requirements which adversely affected the two grievants. Both of the grievants had been on the first certificate of best qualified candidates, but were passed over in favor of the other employee. The union maintained that these changes were made to specifically accommodate the other employee, who thereby became fully eligible to apply and was finally chosen for the position. The arbitrator held that the non-selection of the grievants and withdrawal of the vacancy, by themselves, violated no agency obligation. The change in grade did constitute a change in qualification requirements but was not found to have adversely affected the grievant's eligibility. With regard to the charge of preselection, the arbitrator noted that on its face the circumstances suggested the union's charge. However, a detailed examination of the testimony and evidence provided no proof of the charge.

FRED W. McCULLOCH June 2, 1981 Agency for International Development - Washington, DC and American Federation of Government Employees, Local 1534 27 pages

PROMOTION -- PROCEDURES, FILLING VACANCIES, NON-COMPETITIVE

13379 Did the agency violate the agreement when it failed to announce a vacancy and fill the position by competitive bidding?

The agency filled a vacancy in the position of supervisory clerk through a reassignment. From an examination of the Merit Promotion Plan the arbitrator determined that the position in question was covered by the plan and therefore the position should have been filled by competitive procedures. Also federal regulations require that reassignments to positions with known promotion potential must be made competitively. The arbitrator directed the agency to immediately announce the job and place it up for competition in accordance with the agreement.

JOHN F. CARAWAY June 5, 1981 Veterans Administration, Audie L. Murphy Memorial Veterans Hospital - New Orleans, Louisiana and American Federation of Government Employees, Local 3511 pages

EMPLOYEE RIGHTS -- REPRESENTATION; REPRESENTATION -- UNION OFFICIALS/ STEWARDS, PRESENCE AT MEETINGS

13380 Did management improperly deny the grievant union representation during a meeting with a second-level supervisor?

No. The grievant wished to register a complaint about a work assignment with his second level supervisor, but did not have the intention of filing a grievance at that time. The arbitrator stated that the agreement does not contain any provision which allows an employee to have the assistance of a shop steward when meeting with supervisors on matters other than the filing or discussion of a grievance. The arbitrator denied the grievance, noting that, in any event, a grievance could not be filed with the second level of supervision.

JOHN J. SARACINO June 5, 1981 United States Air Force (NAF), Warner Robins Air Logistics Center - Warner Robins, Georgia and American Federation of Government Employees, Local 987 10 pages

SAFETY -- PROCEDURES, COMMITTEE

13381 Did the employer breach the agreement concerning the Joint Union-Management Safety and Health Committee when it: 1) discontinued committee meetings in excess of one per month and eliminated monthly walk-in inspections; or 2) downplayed the importance of the committee?

1) No. The arbitrator noted that the agreement authorizes the committee, through a majority decision, to determine the frequency of its meetings as well as its functions and duties. Therefore, the agreement was not breached when management, through a majority vote cast by its committee members, discontinued these practices. 2) Yes. The arbitrator ruled that the employer evidenced disinterest in the committee by its failure to nominate a chairperson of the committee. The arbitrator ordered the employer to comply with this provision.

ROBERT BENNETT LUBIC May 26, 1981 General Services Administration, Region 3 - Washington, DC and American Federation of Government Employees, Local 2151 11 pages

Cite Cases as LAIRS _____

PROMOTION -- PROCEDURES, PERFORMANCE RATING/EVALUATION

13382 Was management's rating of the grievant for a promotion improper?

Yes. The grievant applied for a promotion vacancy, but since she was graded as only highly qualified she was not referred for promotion. In order to be referred, she would have needed a rating of best qualified, which required an outstanding score in seven elements of the crediting plan. The grievant was rated as outstanding in five of the elements and received above average scores on the other two. She argued that the panel erred in the rating procedures because she had met the requirements to be considered outstanding. The arbitrator reviewed the evidence and found that the grievant did meet the requirements and that she was not given proper consideration. As a remedy, the grievant was given special consideration for an appropriate vacancy as provided for in the agreement.

J. REESE JOHNSTON, JR. April 7, 1981 United States Army - Redstone Arsenal, Alabama and American Federation of Government Employees, Local 1858 18 pages

GRIEVANCE -- PROCEDURES, TIME LIMITS; DISCIPLINE -- NEGLECTFUL CONDUCT

13383 Did the grievant violate the grievance procedure with respect to the time limits?

Yes. The grievant was suspended for three days for violating a regulation of tower duty. During the hearing, the issue of timeliness of the grievance was raised. The arbitrator discussed the timeliness issue before turning to the merits of the case. The second step of the grievance procedure requires an employee to reduce the matter to writing and submit it to the division head within five days. The grievant was aware of the requirement and filed a response. However, the response was prepared several months after the five day deadline. The grievant's failure to comply with the agreement caused him to surrender his rights to continue the grievance procedure. Therefore, the grievance was denied.

E. C. GRIFFITH June 10, 1981 District of Columbia Government, Department of Corrections - Washington, DC and American Federation of Government Employees, Local 1550 8 pages

Cite Cases as LAIRS ____

SAFETY -- EQUIPMENT

13384 Did a past practice require the employer to furnish prescription safety eyeglasses to employees performing hazardous duties?

Yes. The union alleged that the employer violated a long standing past practice when it refused to honor a voucher issued to an employee for safety eyeglasses. It presented evidence that the practice continued through five collective bargaining agreements over the years, and had never been returned to the bargaining tables. The arbitrator found that an accepted practice existed that could not be changed unilaterally. The arbitrator directed the parties to promptly initiate negotiations concerning whether to resume the past practice or to provide a different kind of protective device.

HOWARD F. LeBARON June 11, 1981 United States Air Force - Dyess Air Force Base, Texas and American Federation of Government Employees, Local 2356 14 pages

PROMOTION -- TEMPORARY, FILLING VACANCIES

13385 Was the grievant entitled to be temporarily promoted to the position of Foreman Carpenter?

No. The union contended that the employer removed the grievant from a temporary foreman position rightfully assigned to him by his supervisor. It noted that the agreement allows for such promotions on a rotated and equitable basis where promotion registers have not been established. It maintained that no promotion register existed at the time because the ratings of several eligible employees had not been completed. The arbitrator accepted the employer's position that to argue that a register did not exist simply because the candidates had not been rated would eliminate the heart of the competitive process. The arbitrator noted that the other individuals had clearly expressed their wish to be considered for any promotions to the position. He stated that the sensible approach to the situation was the one taken by management. in rating all the unrated applicants and ranking them, when a vacancy arose.

SHERMAN DALLAS June 6, 1981 United States Navy, Naval Air Station - Cecil Field, Florida and International Association of Machinists and Aerospace Workers, Local 1630 6 pages

Cite Cases as LAIRS ____

DISCIPLINE -- DISHONESTY, THEFT

13386 Did the agency have just cause to suspend the grievant for three days for theft of government property?

Yes. The grievant, after being advised of his rights, signed a statement attesting to the fact that on several occasions he took items such as lumber for his personal use. The grievant maintained that most of the items were scrap and that he took them in open view of others, not secretly. The arbitrator noted the abundant evidence and upheld the suspension. He directed that the record of discipline be expunged from the grievant's record if after one year there is no reoccurrence.

MITCHELL M. SHIPMAN May 20, 1981 United States Navy, Navy Public Works Center - Pensacola, Florida and International Association of Machinists and Aerospace Workers, Local 192 8 pages

WORK ASSIGNMENT -- CONDITIONAL, STAND-BY; HOURS OF WORK -- GUARANTEE, CALL-BACK, OVERTIME; EMPLOYER RIGHTS -- ASSIGN WORK

13387 Was the exemption of certain physicians from extra-hours duties an arbitrary and discriminatory application of management rights?

Yes. The bargaining unit includes staff physicians at two facilities. The physicians at one of these facilities were exempt from certain duties performed and shared by physicians at the other location after normal duty hours. The union contended that this resulted in an inequitable and unjust division of work, and that the practice violated relevant regulations and a hospital memorandum. The arbitrator stated that there can be no question that the right to assign physicians and/or extra-hours duties is reserved exclusively to management. However, management may not abuse its discretion in exercising its exclusive rights. The arbitrator held that the employer's justification did not explain why the conduct of operations at the other facility required that the physicians there be excluded from extra-duty hours. Finding this practice discriminatory, the arbitrator directed that it cease.

A. M. FREUND June 10, 1981 Veterans Administration, Hospital - Lebanon, Pennsylvania and American Federation of Government Employees, Local 1966 19 pages

Cite Cases as LAIRS ____

LEAVE -- SICK, DENIAL, CALL-IN REQUIREMENT

13388 Did the employer improperly deny the grievant's request for six hours of sick leave to cover his absence?

No. The grievant, away visiting friends for the weekend, became seriously ill and incapacitated on Sunday and was not able to return to work until late Monday. At his request his friend attempted to telephone the supervisor about the matter but was unable to reach him. However, the grievant's friend was able to reach a fellow employee of the grievant, who in turn notified the supervisor early that Monday morning that the grievant would be late. The supervisor concluded that the grievant failed to call him personally, as required by the agreement and charged the absence to absence without leave. The arbitrator found that the evidence supported the employer's application of the rule in denying the requested leave pay, on the ground that the grievant failed to utilize his best efforts to telephone the supervisor.

DANIEL G. JACOBOWSKI June 5, 1981 United States Army, 88th Army Reserve Command - St. Paul, Minnesota and American Federation of Government Employees, Local 3330 7 pages

ARBITRATION -- SCOPE, ARBITRABLE MATTERS DEFINED

13389 Were the grievances concerning an alleged detail arbitrable?

Yes. The agency alleged that the issue was one of classification and thus not arbitrable under the terms of the agreement, because the matter of classification is covered by statutory procedures. The union asserted that it was not arguing the classification, title or grade of the position, but rather it was contending that the agency breached the agreement by assigning employees to a detail of duties in excess of 120 days. The arbitrator found the matter arbitrable. He noted that the grievants were assigned to a cluster of duties which constituted a detail in excess of the prescribed time period.

JACOE SEIDENBERG June 13, 1981 United States Navy, Tidewater Virginia Federal Employees - Portsmouth, Virginia and Metal Trades Council 8 pages

Cite Cases as LAIRS _____

DISCIPLINE -- DISORDERLY CONDUCT, FIGHTING

13390 Did management have just cause to suspend the grievant for five days for fighting?

No. Management suspended the grievant as the result of a series of harassing incidents by the grievant toward another employee. The grievant was pushing a cart when the wheels locked. He pushed it again and it moved, striking the other employee in the legs. The grievant made an apology of sorts, and later contended it was an accident. The other employee hit the grievant. Both were given five day suspensions. In separate grievance actions management upheld the grievant's suspension but not that of the other employee, thinking he had been provoked. The arbitrator ruled that the evidence was not at all convincing that the grievant had been the instigator of the incident. He ordered management to clear the grievant's record and make him whole for lost wages.

ROBERT L. GIBSON June 5, 1981 United States Navy, Naval Air Rework Facility - Cherry Point, North Carolina and International Association of Machinists and Aerospace Workers, Local 2316 9 pages

PAY PRACTICES -- SUPPLEMENTARY, DISABILITY

13391 Did the agency fail to comply with the requirements concerning the grievant's work injury compensation benefits?

Yes. The grievant injured his right hand and wrist while on the job, and was subsequently on disability for several months. He became concerned when the agency had not completed the paperwork so he could receive compensation. It was undisputed that his claim forms were not processed as required by statute. Management admitted the delay but argued that its neglect was due to unusual circumstances and understaffing. The arbitrator held that management had been negligent in the matter and had followed poor procedures. The arbitrator ordered management to provide the grievant with a cash advance if he still had not received all the monies due him. The advance was to be repaid over six months without interest. Management was ordered to provide the union with a written statement as to how it will comply with the Handbook of Work Injury Treatment and Compensation Benefits.

DONALD P. ROTHSCHILD May 29, 1981 General Services Administration - Washington, DC and American Federation of Government Employees, Local 2151

PROMOTION -- PANEL, RANKING OF CANDIDATES, USE OF OTHER PROCEDURES

13392 Was the grievant's name omitted from a certificate of eligibles as a result of procedural errors?

No. The union contended that the panel which assembled the certificate was inadequately trained in the requirements of the agreement. It also asserted that the panel considered an evaluation report of the grievant that had not been submitted by him, and therefore should not have been considered. The arbitrator found no evidence to support the union's allegation that the certification was procedurally improper. The charge that the panel lacked expertise was also unsupported. Evidence indicated that the evaluation report had indeed been submitted by the grievant. The grievance was dismissed.

FRANCIS J. ROBERTSON April 10, 1981 Department of Labor - Washington, DC and American Federation of Government Employees, Local 12 10 pages

PROMOTION -- PROCEDURES, SPECIAL CONSIDERATION

13393 Did the grievant's right to special consideration for the next appropriate vacancy mean for the next vacancy in her field?

Yes. Management admitted it had mistakenly overlooked pertinent information in the grievant's file when it considered her for a position. As a result of the error, the grievant - who was fully qualified - was given special consideration for the next appropriate vacancy. The union asked for clarification of this consideration; the grievant wanted this to mean the next vacancy in her field. Management granted the remedy specified by the grievant, and the arbitrator so noted.

H. ELLSWORTH STEELE May 18, 1981 United States Army, Aviation Center - Fort Rucker, Alabama and American Federation of Government Employees, Local 1815 3 pages

Cite Cases as LAIRS _____

DISCIPLINE -- NEGLECTFUL CONDUCT, UNSAFE WORK METHODS; SAFETY -- REPORTING HAZARDS

13394 Did the agency have just cause to suspend the grievant for ten days for failing to follow proper reporting requirements and carelessness in performance of duty?

The grievant, an air traffic controller, failed to report three suspected system errors/deviations. The requirement to report suspected system errors immediately is clearly specified in agency regulations, but the reporting instructions for system deviations is less clear. A review of the evidence indicated that the suspected errors were of the former category and therefore the grievant violated regulations by not reporting them immediately. The arbitrator noted that a persuasive case had not been made that fear of retaliation was a significant factor in the decision of the grievant not to report the suspected errors. However, under the regulations the penalty administered was too severe. The arbitrator ordered the grievant to be reimbursed for nine of the ten days.

JAMES A. MORRIS June 17, 1981 Department of Transportation, Federal Aviation Administration - Montgomery, Alabama and Professional Air Traffic Controllers Organization 6 pages

DISCIPLINE -- NEGLECTFUL CONDUCT, UNSAFE WORK METHODS

13395 Was the grievant's three day suspension for careless use of a firearm taken for just cause? Was the action timely?

Yes. The grievant, a border patrol agent, slightly wounded a suspected alien he was attempting to subdue physically. The grievant had drawn his revolver upon approaching the suspect because he believed the suspect to be armed. During the struggle he attempted to holster his weapon but was unable to do so before it discharged. The arbitrator agreed with management's contention that the grievant had drawn his weapon without justification. The arbitrator found the action timely, noting that the agency was obligated to refer the case to the Civil Rights Division of the Department of Justice.

ELVIS C. STEPHENS May 16, 1981 Department of Justice, Immigration and Naturalization Service - El Paso, Texas and American Federation of Government Employees, Local 1929 6 pages

Cite Cases as LAIRS _____

DISCIPLINE -- PROCEDURES, NOTIFICATION-EMPLOYEE, INVESTIGATION; DESTRUCTION OF PROPERTY, MISAPPROPRIATION

13396 Was a government vehicle improperly used by the grievant and, if so, was the discipline proper and timely?

The arbitrator found that the grievant's actions were contrary to published rules and regulations, and that the agency had no choice but to administer a thirty-day suspension. Having determined this, however, the arbitrator directed that the discipline be set aside. He noted that the investigation and announcement of the discipline were not carried out in a timely manner; over five months had elapsed before disciplinary action was taken and the grievant was notified. The discipline was issued because the grievant utilized a government vehicle on an unauthorized trip, during which he had been drinking and caused an accident in which injuries were sustained. The agency was ordered to make the grievant whole for any losses resulting from the discipline.

HAROLD C. WHITE March 25, 1981 Department of Justice, Immigration and Naturalization Service - El Paso, Texas and American Federation of Government Employees, Local 1929 7 pages

PAY PRACTICES -- CALL-BACK; OVERTIME -- OTHER

13397 Did management violate the agreement when it released the grievant after two hours of overtime work?

Yes. The agreement provides that an employee performing overtime work in his regularly scheduled day off shall be guaranteed eight hours of work. The record indicated the agency ordered the grievant to report for the overtime and the grievant complied, although he declared himself sick. Management contended that the grievant asked to be allowed to go home. However, the record showed that the grievant was instructed to go home after two hours. The arbitrator held that the agency, by its exercise of discretion in recalling the grievant for overtime work, incurred a liability for the guaranteed eight hours of work, as stipulated in the agreement. The agency was directed to compensate the grievant for the remaining six hours.

THOMAS F. CAREY October 10, 1981 Department of Transportation, Federal Aviation Administration - Essington, Pennsylvania and Professional Air Traffic Controllers Organization 13 pages

Cite Cases as LAIRS _____

LEAVE -- SICK, IMPOSED

13398 Did management violate the agreement when it placed the grievant on involuntary sick leave on several occasions?

The grievant was placed on sick leave for several periods because management determined him to be medically disqualified for his position. The union contended that there was no basis for placing the grievant on involuntary sick leave, and that the agency did not follow the proper procedural requirements. With respect to the first period the arbitrator concluded that the grievant was entitled to have his sick leave restored because the agency did not follow proper procedures. The arbitrator found that the second period of medical disqualification was not unreasonable and was administered properly.

SANFORD COHEN June 16, 1981 Department of Transportation, Federal Aviation Administration - Houston, Texas and Federal Aviation Science Technological Administration 15 pages

DISCIPLINE -- DISORDERLY CONDUCT, ABUSIVE LANGUAGE

13399 Did the agency have just cause to issue the grievant a letter of reprimand for disrespectful conduct?

Yes. The foreman had gathered the employees of his crew to talk about improvement of job performance, to boost morale, and to improve working conditions. When asked if there were any questions, the grievant responded with negative remarks about the supervisor's work record when he was a crew member. The arbitrator stated that the heart of the issue was one of intent on the part of the grievant concerning the remarks he made. He found the statements derogatory and disrespectful. However, the arbitrator also found that the grievant's remarks were also an attempt to inform the supervisor of a problem he saw. He reduced the time the letter was to remain in the grievant's file to one year.

WILLIAM EATON June 15, 1981 United States Navy, Mare Island Naval Shipyard - Vallejo, California and Metal Trades Council 9 pages

Cite Cases as LAIRS ____

DISCIPLINE -- NEGLECTFUL CONDUCT, ABSENTEEISM; LEAVE -- ANNUAL, MISUSE

13400 Did management have just cause to suspend the grievant for three days for unauthorized absences?

The grievant did not report to work on two consecutive days, but sent word to his supervisor on each of the days that he was working on his car heater. Management contended that this did not constitute an emergency and was not a reasonable justification for a request for annual leave. The union contended that a precedent had been established by past practice to accept car problems as an emergency to justify annual leave. The arbitrator noted that the evidence indicated that the usual practice justified one-day leaves for car repair. She held that management was only justified in not approving the second day of leave. The arbitrator ordered the first day to be approved as annual leave, and that the suspension be reduced to two days.

EVA C. GALAMBOS June 15, 1981 United States Navy, Naval Air Rework Facility - Cherry Point, North Carolina and International Association of Machinists and Aerospace Workers, Local 2297 17 pages

REPRESENTATION -- UNION OFFICIALS/STEWARDS, ASSIGNMENT

13401 Did the union fail to comply with the terms of the agreement regarding the appointment and number of stewards?

Yes. Since the agreement's inception in 1976, the union had never submitted names of stewards as provided for in the agreement. The union contended that past practice controlled and the issue was now moot. The arbitrator found that the agreement language was clear and that no evidence supported the union's contention that it had been modified by past practice. Management's grievance was sustained.

DON J. HARR June 14, 1981 United States Army, Headquarters - Fort Sam Houston, Texas and American Federation of Government Employees, Local 2154 6 pages

Cite Cases as LAIRS _____

DISCIPLINE -- NEGLECTFUL CONDUCT, LEAVING JOB SITE; NEGOTIATION/ CONSULTATION -- SCOPE, PAST PRACTICE

13402 Was management justified in issuing the grievant a reprimand for wasting time?

No. The grievant and a fellow employee took an afternoon break to use the restroom facilities and to get a soft drink from a machine. The restroom and the soda machine were located in adjacent buildings. Both employees were issued reprimands for wasting time during working hours. Thereafter, the grievance procedure was initiated and at the second formal step of the procedure, the grievance of the other employee was sustained and the notice of reprimand dismissed. However, the decision in the grievant's case was denied and the matter was submitted to arbitration. The union contended that the taking of informal breaks was an accepted and recognized practice. The union further asserted that sustaining one grievance and denying the other under identical factual circumstances was a violation of the agreement. The arbitrator found that an established past practice existed and that the grievant was entitled to an afternoon break. He further found that the disparate results reached in the disposition of the two grievances was not fair or equitable. The grievance was sustained. Management was instructed to remove the letter of reprimand from the grievant's file.

ERIC B. LINDAUER April 15, 1981 United States Navy, Puget Sound Naval Shipyard - Bremerton, Washington and Metal Trades Council 14 pages

ARBITRATION -- SCOPE, ARBITRABLE MATTERS DEFINED; DISCIPLINE -- NEGLECTFUL CONDUCT

13403 Was the admonishment given to the grievant arbitrable? If so, was the admonishment given for just cause? Were the reprimands given to the grievant for just cause?

The arbitrator determined that the grievance of the admonishment was not arbitrable because the union failed to process the grievance within the time limits specified in the agreement. Because the grievance was inarbitrable, he failed to consider the merits of the issue. The grievant was given two reprimands. One cited her failure to follow operating procedures in ordering an ambulance for a disabled patient. The other reprimand was issued for her failure to properly carry out her duties with respect to maintaining accountability records. The arbitrator ruled that the reprimand was for just cause for deficiencies in carrying out her assigned duties. He ruled that the reprimand for not scheduling an ambulance on a timely basis was not justified.

HARRY FRUMERMAN May 20, 1981 Veterans Administration, Medical Center - New York, New York and American Federation of Government Employees, Local 2094 25 pages

Cite Cases as LAIRS _____

TRAINING -- PROGRAMS, LABOR RELATIONS

13404 Did management violate the agreement when it limited the number of trainees allowed to attend a Federal Labor Relations Authority training session?

No. The union contended that management violated the agreement when it limited the number of trainees to a FLRA training session to five members for four hours, instead of the union's requested number of seventy-five members for eight hours. The arbitrator ruled that management had a right to determine the reasonable number of employees that could be administratively excused to attend the training session. He found no indication that management acted irresponsibly or arbitrarily in its interpretation of the agreement. Therefore, the grievance was denied.

J. HARVEY DALY June 17, 1981 United States Navy, Norfolk Naval Shipyard - Portsmouth, Virginia and Metal Trades Council 19 pages

TRAINING -- PROGRAMS, ORIENTATION

13405 Was a telephone introduction for new employees to the union representative sufficient?

The union representing employees in fourteen offices in the Washington, DC, metropolitan area had been virtually inactive until October 1980. An acting president was designated and an effort was made to reactivate the union. Presently, more than half of the offices have on-site stewards. The president notified management that in those offices where no steward had been appointed, she would act in that capacity until a permanent on-site steward was appointed. She desired to meet each new employee personally and indicated that she could get to the offices involved within her schedule and without cost to management. Management contended, however, that an introduction by telephone would be sufficient. The arbitrator determined that the acting president had made a good faith effort to appoint stewards for each location since the reactivation of the union. Since she has indicated a willingness to travel to each location to be introduced to new employees, and since no claim was made for travel expenses, there was no valid reason why personal introductions should not be allowed. The grievance was sustained.

J. SCOTT THARP June 18, 1981 Department of Health and Human Services, Social Security Administration - Philadelphia, Pennsylvania and American Federation of Government Employees, Local 3186 6 pages

Cite Cases as LAIRS _____

DISCIPLINE -- DISORDERLY CONDUCT, INSUBORDINATION

13406 Was the written reprimand issued to the grievant for failure to comply with instructions warranted?

Yes. The supervisor instituted a checklist whereby employees were required to initial the duties they had performed that day. The grievant objected to this practice because he had always had latitude to function with a minimum of supervision. He refused to initial the checklist and subsequently management issued the reprimand. The arbitrator ruled that the grievant's refusal to comply with the request concerning the initialing of the daily housekeeping checklist was unwarranted.

SAMUEL EDES June 19, 1981 Veterans Administration, Hospital, Danville, Illinois and American Federation of Government Employees, Local 1963 8 pages

DISCIPLINE -- NON-PERFORMANCE, INCOMPETENCE

13407 Was the grievant appropriately terminated for failure to perform his duties as assigned?

Yes. The decision to remove was based on a series of errors of commission and ommission over a period of eighteen months, amounting to over eighty specifications. The problems included illegible handwriting, the omission of critical items on various forms, and poor interviewing techniques. He was repeatedly informed and counseled by his supervisor, and for several review periods he was given deficient performance appraisals and denied periodic merit increases. Based upon the substantial amount of evidence presented, the arbitrator found that the termination was appropriate. The grievance was denied.

W. C. STONEHOUSE June 17, 1981 Department of Health and Human Services, Social Security Administration - Pittsburgh, Pennsylvania and American Federation of Government Employees, Local 3231 7 pages

Cite Cases as LAIRS ____

PROMOTION -- PROCEDURES, FILLING VACANCIES

13408 Did management violate the agreement by not interviewing the grievant in conjunction with the filling of a position? If so, what shall be the appropriate remedy?

Yes. The grievant had applied for a vacant position. Since she had been rated as highly qualified, a certificate containing her name among five was sent to the selecting official. An official contacted individuals on the list to arrange for an interview; however, no attempt was made to contact the grievant. After interviewing the other candidates, the decision was made that same day to select a certain candidate. The grievance was filed contesting management's failure to interview the grievant for the vacant position. Management denied the grievance but indicated that since the timing was of such short notice, the grievant would receive priority consideration for an upcoming vacancy. The grievant was later given priority consideration for a vacancy but was not selected. The arbitrator ruled that management's failure to interview the grievant violated the agreement. Although the grievant was given priority consideration for another vacancy, it was not a good faith effort because she had no reasonable opportunity to be selected. Therefore, management was ordered to grant priority consideration for the next available vacancy for which the grievant has a reasonable opportunity to be considered.

JERRY R. ANDERSEN June 15, 1981 United States Air Force (NAF), Ogden Air Logistics Center - Hill Air Force Base, Utah and American Federation of Government Employees, Local 1592 12 pages

DISCIPLINE -- NEGLECTFUL CONDUCT, PATIENT ABUSE

13409 Was the ten day suspension issued to the grievant for just cause?

No. Management issued the grievant a ten day suspension for her alleged verbal abuse of a patient and depriving him of a prescribed food serving. The patient abuse charge stemmed from management's assumption that the patient was shaken up by having overheard the grievant use abusive language toward another employee in reference to the patient. The arbitrator concluded that the exact events surrounding the incident were uncertain, but even if it could have been concluded that the grievant was shown to have spoken about the patient in a loud and profane manner, the circumstances did not support a conclusion that she was guilty of intentional patient abuse. The ten day suspension was not for just cause. Therefore, management was ordered to make the grievant whole for all lost wages and benefits.

JAMES C. OLDHAM June 12, 1981 Veterans Administration, Medical Center - Perry Point, Maryland and American Federation of Government Employees, Local 331 13 pages

PROMOTION -- PROCEDURES, PRESELECTION

13410 Did management violate the agreement in the filling of a program analyst position?

No. The grievant applied for a vacancy as a program analyst, but he failed to be selected. The union contended that the reason the grievant did not receive the position was that the successful candidate had been preselected by management. The arbitrator determined that all of the candidates received equal consideration for the position. The selection of the successful candidate was based on merit principles and not due to any favorable treatment during the merit staffing processes. Therefore, the grievance was denied.

FRANCIS X. QUINN June 15, 1981 Department of Labor, Region III - Philadelphia, Pennsylvania and American Federation of Government Employees, Local 2948 8 pages

ARBITRATION -- PROCEDURES; OVERTIME -- OTHER

13411 Did management violate the agreement when it unilaterally changed an overtime practice?

The arbitrator denied the grievance because nowhere in the pre-arbitration phases of the case did the union raise the issue in question. Failure to consult with the union on the overtime practice did not surface until the arbitration. The arbitrator stated that he could not decide an issue that had not been properly agreed upon and submitted to him.

A. A. WHITE June 18, 1981 Department of Agriculture, Federal Grain Inspection Service - Washington, DC and American Federation of Government Employees, Local 3157 6 pages

Cite Cases as LAIRS ____

DISCIPLINE -- NEGLECTFUL CONDUCT, UNSAFE WORK METHODS

13412 Did the agency have just cause to issue the grievant a three-day suspension for negligence in performance of duty?

Management contended that the grievant, an air traffic controller, violated regulations by failing to report a suspected operational error. The union contended that the grievant did not think that an error had occurred, and that he was also concerned about the possibility of reprisals if he reported the error. The arbitrator found that the circumstances required that the grievant report the error. However at the same time the arbitrator found that there was reason to doubt the existence of the suspected system error. Therefore, the arbitrator ruled that the disciplinary action was warranted but that the penalty too severe. The written warning was upheld but the suspension removed from the records and the grievant made whole.

JAMES A. MORRIS June 17, 1981 Department of Transportation, Federal Aviation Administration - Columbia, South Carolina and Professional Air Traffic Controllers Organization 4 pages

DISCIPLINE -- DISORDERLY CONDUCT, JOB ACTION

13413 Was management justified in disciplining the grievants for failure to report for work?

Yes. The four grievants were given reprimands and charged with AWOL for failing to report for duty on the 7:00 am shift; the grievants had called in sick on the previous night. Only one employee who was scheduled for the shift appeared for work. Management believed that it was dealing with an employee sick-out, which is an illegal action. Management gave the grievants the opportunity to establish the legitimacy of their absences, but they failed to do so. The arbitrator concluded that the circumstantial evidence presented was sufficient to establish that the grievants did engage in a sick-out. Therefore, management was justified in denying the grievant sick leave and applying the discipline in question.

JOHN PHILLIP LINN June 18, 1981 Veterans Administration, Medical Center - Denver, Colorado and American Federation of Government Employees, Local 2241 12 pages

Cite Cases as LAIRS ____

FACILITIES/SERVICES -- HEALTH, BLOOD DONATION

13414 Did management violate the agreement by not granting the grievant six hours of excused leave for giving blood?

The union contended that the employer's action of giving the grievant four hours of excused absence and four hours of annual leave was inconsistent with the past practice of granting six hours of excused absence and two hours of annual leave whenever an employee misses his entire work day due to donating blood. The arbitrator agreed with management's contention that under the agreement and applicable regulations the employer has the authority to decide how much excused absence to grant for blood donations within the parameters established in the agreement. The arbitrator held that there was no binding past practice which required management to grant an excused absence of a particular length of time.

ROGER C. WILLIAMS June 16, 1981 United States Army, Anniston Army Depot - Anniston, Alabama and American Federation of Government Employees, Local 1945 11 pages

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