

Dear Director Kane:

We have read with great consternation the 3 October 2016 decision of the arbitrator in the case of the Master Agreement between AFGE and the BOP. Neither the US Public Health Service nor COA was a party to this action, so we do not know the arguments and positions put forward by the BOP's attorneys except as they are reflected in the arbitrator's decision. We believe that the decision was wrong, especially as the arbitrator applied the provisions of the Uniformed Services Employment and Reemployment Rights of 1995 (USERRA) to the case.

We believe that the arbitrator completely ignored the clear language of USERRA, which specifically addresses the issue of an agreement or contract such as the Master Agreement:

"38 U.S.C. 4301, Section 4302. Relation to other law

(b) This chapter supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit."

The arbitrator adopted what we consider to be the totally absurd reasoning put forth in an earlier Federal Labor Relations Authority decision that PHS officers are not being discriminated against because they are members of a uniformed service—which would clearly be illegal—but are being discriminated against because they are not members of the union, which they are forbidden by law from joining. We believe this reasoning is totally specious and does not meet the common sense test. USERRA forbids denial of any benefit of employment to a member of a uniformed service. Not being allowed to bid on shifts until all civilian union members have made their choices is clearly a benefit of employment.

As you might imagine, we have received numerous emails from our members as a result of this arbitration decision. Many of them are telling us that they will start to explore other employment opportunities as a result of it. If PHS officers do leave the BOP in large numbers, you know and I know that your staffing situation will only get worse, as BOP has a continuing problem recruiting civilian medical personnel. We don't like to see your staffing diminished, as BOP provides vital service to the country, but that will be the inevitable result of this decision unless it is appealed and reversed.

Jim

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