**73 FLRA No. 155**

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 153
(Union)

and

UNITED STATES
DEPARTMENT OF THE AIR FORCE
MACDILL AIR FORCE BASE
AVON PARK AIR FORCE RANGE
TAMPA, FLORIDA
(Agency)

0-AR-5917

_____

DECISION

February 1, 2024

_____

Before the Authority: Susan Tsui Grundmann, Chairman, and Colleen Duffy Kiko, Member

## I. Statement of the Case

Arbitrator Mark M. Grossman issued an award finding the Agency did not violate the parties' collective-bargaining agreement or § 7106(b) of the Federal Service Labor-Management Relations Statute (Statute) by (1) requiring the grievant to complete certain trainings, and (2) issuing the grievant an oral admonishment for failing to complete one of the trainings. The Union filed exceptions to the award on contrary-to-law, contrary-to-public policy, exceeded-authority, and "other" grounds.[1] For the reasons explained below, we partially dismiss, and partially deny, the exceptions.

## II. Background and Arbitrator's Award

The grievant works as an Agency firefighter. Agency firefighters perform both firefighter and dispatcher duties. In November 2021, the Agency enrolled the grievant and other firefighters in training courses for the dispatcher duties (the trainings). The grievant failed to complete one of the trainings within the assigned year. He was the only firefighter who did not successfully complete the training. The Agency issued the grievant an oral admonishment.

The Union filed a grievance challenging the training requirements and the oral admonishment. The Agency denied the grievance, and the parties proceeded to arbitration. The parties stipulated the issues as whether the grievant was required to take the trainings, and whether the oral admonishment should stand.

The Arbitrator found neither party disputed that "the Agency can assign dispatch duties to [f]irefighters," and that the firefighters' "job announcement and . . . description authorize the assignment of dispatcher duties to [f]irefighters."[2] He determined that the trainings were "relevant and appropriate for an employee performing dispatcher duties."[3] While he acknowledged the Agency's reliance on a "[Department of Defense] directive that requires all dispatcher[s]" to take the trainings, the Arbitrator found that, regardless of the directive, the Agency has the right to determine employee training requirements under Article 29, Section 3 of the parties' agreement.[4] He further determined that, because the Agency gave the grievant a year to complete the first training, it did not apply the training requirement "in an unjust and inequitable manner."[5] On this basis, the Arbitrator concluded the Agency did not violate the parties' agreement by requiring the grievant to complete the trainings.

The Arbitrator also rejected the Union's argument that the Agency failed to provide appropriate arrangements, under § 7106(b)(3) of the Statute, to enable the grievant to successfully complete the training.[6] The Arbitrator construed the Union's claim as suggesting "that the Agency violated [the grievant's] rights by not accommodating whatever issue he had in successfully completing the training" and instead issuing the oral admonishment.[7] However, the Arbitrator found the Agency was not aware the grievant was having any issue because the grievant did not inform the Agency he had "trouble completing the first stage of the training" until "around one year after being given the assignment."[8] The Arbitrator concluded the Agency could not "be faulted for not providing an accommodation when it had no reason to conclude that one was necessary."[9]

Based on these findings, the Arbitrator found the grievant was required to take the trainings, and he concluded that the oral admonishment "should stand."[10]

[1] Exceptions at 6-7.
[2] Award at 7.
[3] *Id.*
[4] *Id.* at 7-8; *see also id.* at 6 (Art. 29, § 3 states, in relevant part, that "[t]he [e]mployer will determine employee training requirements").
[5] *Id.* at 8.
[6] 5 U.S.C. § 7106(b)(3).
[7] Award at 8.
[8] *Id.*
[9] *Id.* at 8-9.
[10] *Id.* at 9.

On September 15, 2023, the Union filed exceptions to the award. The Agency did not file an opposition.

## III. Preliminary Matter: We dismiss the Union's arguments related to the Classification Act of 1949.

Under §§ 2425.4(c) and 2429.5 of the Authority's Regulations, the Authority will not consider any evidence or arguments that could have been, but were not, presented to the arbitrator.[11] The Union argues: (1) the award is contrary to law, contrary to public policy, and deficient on "other" grounds; and (2) the Arbitrator exceeded his authority by issuing the award, because the "Department of Defense Manual . . . 6055.06 [(Manual)] does not supersede" the Classification Act of 1949 (the Act).[12]

One issue before the Arbitrator was whether the grievant was required to take the trainings.[13] In its post-hearing brief to the Arbitrator, the Union argued that the Agency could not require the trainings,[14] but that brief does not include any arguments regarding the Act.[15] In its exceptions, the Union claims it raised its statutory arguments at arbitration when the Union President testified that, "prior to filing a grievance[, the Union] brought this to the Labor Liaison[']s attention and requested to meet."[16] The Union also suggests it cited these arguments in the "invocation of [a]rbitration."[17] However, other than its post-hearing brief, the Union has not provided us with any documents from the arbitration proceedings – including the relevant testimony (or other parts of the hearing transcripts) or the invocation of arbitration. Thus, nothing in the record before us demonstrates that the Union raised any argument concerning the Act to the Arbitrator.[18] As the Union could have done so, but did not, it cannot raise its Act-related arguments now.[19] Therefore, we dismiss those arguments.[20]

## IV. Analysis and Conclusion: The Union fails to establish the award is deficient.

To support its contrary-to-public-policy, exceeded-authority, and "other" exceptions, the Union cites § 7106 of the Statute, and contends that the Manual "does not supersede" the Statute.[21] Section 2425.6(e)(1) of the Authority's Regulations provides that an exception "may be subject to . . . denial if . . . [t]he excepting party fails to . . . support a ground" listed in § 2425.6(a)-(c).[22] Other than citing § 7106, the Union does not explain how the award violates that provision under any of the relevant standards for the grounds that the Union raises.[23] Nor does the Union explain its argument that the Manual "does not supersede" the Statute.[24] Because the Union failed to explain how the award is deficient under any of the listed grounds for review, we deny these exceptions as unsupported.[25]

## V. Decision

We partially dismiss, and partially deny, the Union's exceptions.

---

[11] 5 C.F.R. §§ 2425.4(c), 2429.5; *AFGE, Loc. 2344*, 73 FLRA 765, 766 (2023) (*Local 2344*) (citing 5 C.F.R. §§ 2425.4(c), 2429.5; *U.S. DHS, Citizenship Immigr. Servs.*, 73 FLRA 82, 83-84 (2022)).

[12] Exceptions at 4-6 (citing 5 U.S.C. §§ 5101-5115).

[13] Award at 1.

[14] Exceptions, Attach., Union's Post-Hr'g Br. at 7-11.

[15] *See id.* at 1-11.

[16] *See* Exceptions at 4-6 (describing all of its exceptions as "Statutory Bases: 5 [U.S.C. §] 7106 and Chapter 51 of Title 5 [U.S.C.]" and responding to exception-form questions about whether it raised its argument(s) to the Arbitrator).

[17] *Id.*

[18] *See* 5 C.F.R. § 2425.4(a) (requiring excepting party to ensure that its exceptions are "self-contained" and include "legible copies of any documents . . . that you reference . . . and that the Authority cannot easily access").

[19] *Local 2344*, 73 FLRA at 766 (citing *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Mendota, Cal.*, 73 FLRA 474, 475-76 (2023)).

[20] *Id.*

[21] Exceptions at 5-6.

[22] 5 C.F.R. § 2425.6(e)(1).

[23] *See* Exceptions at 5-6.

[24] *Id.* at 5.

[25] *See, e.g.*, *U.S. Dep't of VA, Gulf Coast Med. Ctr., Biloxi, Miss.*, 70 FLRA 175, 176-77 (2017) (denying exception as unsupported where excepting party alleged award was contrary to 5 U.S.C. § 7106(a)(2) but failed to provide supporting arguments); *NAIL, Loc. 5*, 70 FLRA 550, 552 (2018) (Member DuBester concurring) (denying public-policy and exceeded-authority exceptions as unsupported where excepting party failed to explain how award was deficient under the standard for either ground). We note that the Authority recently revised its test for assessing management-rights exceptions in cases "where the arbitrator has found a [collective-bargaining-agreement] violation." *Consumer Fin. Prot. Bureau*, 73 FLRA 670, 676 (2023). As the Arbitrator did not find such a violation, that revised test does not apply here.