

73 FLRA No. 166

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
JOHN J. PERSHING
VETERANS' ADMINISTRATIVE CENTER
POPLAR BLUFF, MISSOURI
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2338
(Union)

0-AR-5945

—
DECISION

April 12, 2024

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

I. Statement of the Case

Arbitrator Ira S. Epstein issued an award finding the Union did not violate the parties' collective-bargaining agreement by filing its grievance at the third step of the negotiated grievance procedure. The Agency filed exceptions alleging the award fails to draw its essence from the parties' agreement, the Arbitrator exceeded his authority, and the award is incomplete, ambiguous, and contradictory, so as to make implementation of the award impossible. Because the Agency does not demonstrate the award is deficient on any of these grounds, we deny the exceptions.

II. Background and Arbitrator's Award

The Union filed a grievance at Step 3 of the parties' negotiated grievance procedure. The Agency then filed its own grievance, alleging the Union violated the parties' agreement by skipping Steps 1 and 2 of the grievance procedure when it filed its grievance. The Agency's grievance went to arbitration.¹

As relevant here, the issues before the Arbitrator were: "Did the Union fail to follow the Master Agreement Grievance Procedure as outlined in Article 43, Sections 6 and 7? If so, what is the appropriate remedy?"² The Agency argued that, by filing the grievance at Step 3, the Union violated: (1) Article 43, Section 6, which states that "every effort will be made to settle grievances at the lowest possible level";³ and (2) Article 43, Section 7, Note 5 (Note 5), which states that "grievances should normally be resolved at the lowest level possible."⁴

The Arbitrator interpreted the parties' agreement as stating, "as a general rule," that grievances should be resolved at the lowest possible level.⁵ However, he also observed that Note 5 permits filing a grievance at a higher step "when the supervisor at the lower level clearly has no authority to resolve the issue."⁶ The Arbitrator noted the Union's grievance alleged an unfair labor practice (ULP), an equal-employment-opportunity (EEO) violation, and "discrimination against [the] Union President . . . based on Union activity."⁷ The Arbitrator found those were "the type of assertions, if true, which would affect the entire bargaining unit," and that, "by their nature, . . . [were] not capable of being settled at the preliminary stages of the [grievance] procedure and must be resolved at a higher level of management."⁸ Therefore, "based on the specific allegations found in the Union's [g]rievance," the Arbitrator concluded the Union properly filed its grievance at Step 3.⁹ As such, he denied the Agency's grievance.

On January 10, 2024, the Agency filed exceptions to the award, and on February 6, 2024, the Union filed an opposition.

III. Analysis and Conclusions

A. The award is not deficient on essence grounds.

The Agency argues the award fails to draw its essence from Article 43, Sections 6 and 7 of the parties' agreement.¹⁰ When reviewing an arbitrator's interpretation of a collective-bargaining agreement, the Authority will find that an arbitration award is deficient as failing to draw its essence from the agreement when the appealing party establishes that the award: (1) cannot in any rational way be derived from the agreement; (2) is so unfounded in reason and fact and so unconnected with the wording and purposes of the agreement as to manifest an infidelity to the obligation of the arbitrator; (3) does not

¹ The merits of the Union's grievance were not before the Arbitrator.

² Award at 2-3.

³ Exceptions, Ex. 7, Art. 43 at 1.

⁴ *Id.* at 3.

⁵ Award at 11.

⁶ *Id.* (quoting Exceptions, Ex. 7, Art. 43 at 3).

⁷ *Id.* at 12.

⁸ *Id.*

⁹ *Id.*

¹⁰ Exceptions Br. at 5-6.

represent a plausible interpretation of the agreement; or (4) evidences a manifest disregard of the agreement.¹¹

The Agency contends the Arbitrator ignored Note 5's plain language that grievances must be initiated at Steps 1 and 2 unless they fall under one of the exceptions in Note 5.¹² According to the Agency, the Arbitrator "arbitrarily decide[d] that Step 1 and Step 2 supervisors can't resolve [g]rievances" alleging ULPs or EEO violations, or grievances that would affect the entire bargaining unit.¹³ The Agency asserts "[t]here is no evidence that such claims cannot be resolved at the lowest possible level,"¹⁴ and the agreement does not allow the Union to avoid the lower steps of the grievance procedure merely by including such claims in the grievance.¹⁵ As such, the Agency argues, the Arbitrator added "expansive new exceptions to Note 5" that "potentially swallow Article 43, Sections 6 and 7 in their entirety."¹⁶

As noted above, Note 5 states that "grievances should *normally* be resolved at the lowest level possible," but provides an exception where "the supervisor at the lower level clearly has no authority to resolve the issue."¹⁷ The Arbitrator found the grievance's EEO, ULP, and discrimination allegations are the types of allegations that must be resolved at a higher level of management.¹⁸ That finding – to which the Agency did not file a nonfact exception – supports the Arbitrator's conclusion that the above-quoted exception in Note 5 applies. As such, the Arbitrator was interpreting, not adding to, the parties' agreement.¹⁹ The Agency's arguments do not demonstrate the award is irrational, unfounded, implausible, or in manifest disregard of the parties' agreement. Therefore, we deny the essence exception.²⁰

B. The Arbitrator did not exceed his authority.

The Agency asserts the Arbitrator exceeded his authority.²¹ As relevant here, arbitrators exceed their authority when they fail to resolve an issue submitted to

arbitration or disregard specific limitations on their authority.²²

The Agency argues the Arbitrator "failed to resolve an issue submitted to arbitration."²³ 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).²⁴ The Agency does not explain what issue the Arbitrator failed to resolve. As such, we reject the Agency's argument as unsupported.²⁵

The Agency also argues the Arbitrator "exceed[ed] specific limits on his authority" by adding exceptions to Note 5.²⁶ This argument merely repeats one of the Agency's essence arguments we rejected above. Thus, we also reject this exceeded-authority argument.²⁷

We deny the exceeded-authority exceptions.

C. The award is not incomplete, ambiguous, or contradictory, so as to make implementation impossible.

The Agency argues the award is incomplete, ambiguous, or contradictory so as to make implementation of the award impossible.²⁸ In order to prevail on this ground, the appealing party must demonstrate that the award is impossible to implement because the meaning and effect of the award are too unclear or uncertain.²⁹

According to the Agency, the Arbitrator erred in finding ULP and EEO claims cannot be resolved at Step 1 of the grievance procedure, and the award allows the Union to merely allege ULP or EEO violations – regardless of merit – in order to avoid following the grievance procedure.³⁰ The Agency does not explain how the award – which merely found the Union did not violate the parties' agreement by filing its grievance at Step 3 – is

¹¹ *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Yazoo City, Miss.*, 73 FLRA 620, 622 (2023) (citing *NTEU, Chapter 149*, 73 FLRA 413, 416 (2023)).

¹² Exceptions Br. at 5-6.

¹³ *Id.* at 6 (citing Award at 12).

¹⁴ *Id.*

¹⁵ *Id.* at 6-7.

¹⁶ *Id.* at 6.

¹⁷ Exceptions, Ex. 7, Art. 43 at 3 (emphasis added).

¹⁸ Award at 12.

¹⁹ See, e.g., *NTEU, Chapter 46*, 73 FLRA 654, 657 (2023) (denying essence exception alleging the arbitrator added terms to the agreement).

²⁰ *AFGE, Loc. 2369*, 73 FLRA 772, 773 (2023) (denying essence exception that failed to demonstrate award was irrational,

unfounded, implausible, or in manifest disregard of the agreement).

²¹ Exceptions Br. at 7-8.

²² *NTEU*, 70 FLRA 57, 60 (2016).

²³ Exceptions Br. at 7; *id.* at 8.

²⁴ 5 C.F.R. § 2425.6(e)(1).

²⁵ *AFGE, Loc. 153*, 73 FLRA 792, 793 (2024).

²⁶ Exceptions Br. at 7, 8.

²⁷ *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Butner, N.C.*, 73 FLRA 334, 337 (2022) (then-Member Grundmann concurring on other grounds) (denying exceeded-authority exception that restated denied essence exception).

²⁸ Exceptions Br. at 8-10.

²⁹ *U.S. Dep't of VA, John J. Pershing VA Med. Ctr., Poplar Bluff, Mo.*, 73 FLRA 498, 505 (2023).

³⁰ Exceptions Br. at 8-10.

impossible to implement. Therefore, we deny this exception.³¹

IV. Decision

We deny the Agency's exceptions.

³¹ *U.S. Dep't of the Army, U.S. Army Garrison, Picatinny Arsenal, N.J.*, 73 FLRA 700, 702 (2023), *recons. denied*, 73 FLRA 827 (2024) (finding argument failed to demonstrate that award was impossible to implement).