73 FLRA No. 80

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 446
(Union)

and

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
MEDICAL CENTER
ASHEVILLE, NORTH CAROLINA
(Agency)

0-AR-5828

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DECISION

January 19, 2023

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

I. Statement of the Case

Arbitrator Clifton F. Guest found that the Agency did not violate the parties' collective-bargaining agreement by only considering certain employees for a temporary detail to a supervisory position. The Union filed an exception alleging that the award fails to draw its essence from the agreement. Because the Union does not demonstrate that the award is deficient, we deny the exception.

II. Background and Arbitrator's Award

As relevant here, employees in the Agency's facility management service perform duties on shifts. When a supervisory position (the position) became available on the second shift, the Agency only considered employees already assigned to that shift for a detail to fill the position.

The Union filed a grievance alleging that the Agency violated Article 12, Section 1(D) of the parties' agreement (Article 12) by not allowing employees assigned to all shifts to apply for the detail.[1] The grievance went to arbitration.

The Arbitrator found that Article 12 is "silent" as to whether the Agency was required to allow employees on all shifts to apply for the detail.[2] The Arbitrator further found that the Agency has "a strong past practice" of only considering employees on the affected shift for available details and that the practice "has been occurring for a long time."[3] On this point, the Arbitrator noted that the Agency has "[a]pparently" never allowed employees to apply for a temporary position on a different shift, and that there was no history of that practice being challenged through the parties' negotiated grievance procedure.[4] Consequently, the Arbitrator found that the Agency did not violate the agreement, and he denied the grievance.

The Union filed exceptions on July 28, 2022, and the Agency filed an opposition on August 22, 2022.

III. Analysis and Conclusions: The Union does not demonstrate that the award fails to draw its essence from the parties' agreement.

The Union argues that the award fails to draw its essence from Article 12 of the agreement. Specifically, the Union claims that the Arbitrator should have found that the Agency improperly limited detail eligibility to employees working the same shift as the affected position because "there is no provision in the [parties' agreement] for imposing a limit by shift."[5]

The Authority will find that an award fails to draw its essence from an 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 represent a plausible interpretation of the agreement; or (4) evidences a manifest disregard of the agreement.[6]

Article 12 states, in relevant part, that when offering noncompetitive details of ten consecutive workdays or more to both classified and unclassified positions, the Agency "will canvass the qualified employees to determine if anyone wishes to be detailed."[7] Here, the Arbitrator found that Article 12 is "silent" as to whether the Agency was required to offer the detail to

[1] The pertinent wording of Article 12 is set forth below.
[2] Award at 7; *see also id.* at 8 (finding that while the Union argued the Agency is required to "allow for equal opportunity for all the [a]ffected employees" to bid on a temporary supervisory position, there "is nothing in the [parties' agreement] and especially Article 12 that . . . supports the Union['s] position").
[3] *Id.* at 9.
[4] *Id.* at 7.
[5] Exceptions Br. at 3.
[6] *U.S. Dep't of VA, John J. Pershing VA Med. Ctr., Poplar Bluff, Mo.*, 73 FLRA 67, 69 (2022) (*VA Pershing*) (Member Kiko concurring on other grounds) (citing *SSA, Off. of the Gen. Couns.*, 72 FLRA 554, 555 (2021)).
[7] Exceptions, Attach. 1 (Art. 12) at 42.

employees on all shifts.[8] Therefore, in interpreting Article 12, the Arbitrator considered that the Agency had "a strong past practice" of only offering details to employees who work on the same shift as the vacancy, and that this practice "has been occurring for a long time" without challenge.[9] On this basis, the Arbitrator concluded that Article 12 did not prohibit the Agency from limiting the detail opportunity to employees on the same shift as the vacancy.

The Union's essence argument provides no basis upon which to disturb the Arbitrator's conclusion. As noted, Article 12 requires the Agency to "canvass the qualified employees to determine if anyone wishes to be detailed," but does not specifically limit how the Agency may determine whether an employee is "qualified."[10] Nothing in Article 12 prohibits the Agency from considering an employee's shift assignment to make that determination. The Union's arguments do not demonstrate that the Arbitrator's interpretation of Article 12 is irrational, implausible, unfounded, or in manifest disregard of the agreement.[11]

As part of its essence exception, the Union also argues that the Arbitrator erred by finding that Article 12 "did not apply because the position [at issue in the grievance] was a supervisory one."[12] However, the Union fails to point to any part of the Arbitrator's analysis indicating that the award was based upon such a finding. Because this argument is based upon a misunderstanding of the award, it provides no basis for granting the Union's exception.[13]

Accordingly, we deny the Union's essence exception.

IV. Decision

We deny the Union's exception.

[8] Award at 7.
[9] *Id.* at 7, 9.
[10] Art. 12 at 42.
[11] *See, e.g.*, *NTEU*, 73 FLRA 315, 320-21 (2022) (Chairman DuBester concurring) (denying essence exception where arbitrator determined that agreement's wording did not, on its face, "strongly support" the excepting party's contention); *VA Pershing*, 73 FLRA at 70 (denying essence exception where no wording in cited provision contradicted arbitrator's interpretation).
[12] Exceptions Br. at 5.
[13] *NTEU*, 72 FLRA 182, 184 (2021) (citing *U.S. Dep't of HHS, Substance Abuse & Mental Health Servs. Admin.*, 65 FLRA 568, 572 (2011)).