

65 FLRA No. 163

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

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 446
(Union)

0-AR-4550

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DECISION

April 29, 2011

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Before the Authority: Carol Waller Pope, Chairman,
and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This matter is before the Authority on an exception to an award of Arbitrator Richard H. Potter filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Union filed an opposition to the Agency's exception.

The Arbitrator issued an award ordering the Agency to reimburse the Union for dues that the Agency failed to deduct from a new employee's pay. The Arbitrator further ordered the Agency not to recover the amount paid to the Union from the employee.

For the reasons discussed below, we deny the Agency's exception.

II. Background and Arbitrator's Award

A newly-hired Agency employee signed an application to have union dues deducted from her pay. Award at 2. The Agency, however, failed to deduct the dues from the employee's pay and remit them to the Union for the employee's first two pay periods. *Id.* After the first two pay periods, the

Agency began withholding the employee's dues, but did not reimburse the Union for the dues it had failed to withhold. The Agency admitted that it was at fault in failing to withhold the dues. *Id.* To resolve the matter, the Union requested that the Agency reimburse the Union for the dues it failed to remit, and not to deduct the dues from the employee's pay. *Id.*

The Agency refused to remit the dues. *Id.* The Agency believed that it did not have the authority to remit the dues without deducting them from the employee's pay. *Id.* at 2-3. The matter was ultimately submitted to arbitration. *Id.* at 2. The Arbitrator framed the issues as follows: "1. Should the Union be reimbursed for dues mistakenly not deducted and remitted? 2. If dues are remitted, should they be deducted from the employee?" *Id.* at 1.

The Arbitrator found that by signing the application for dues deduction, the employee expected the dues to be deducted from her pay, and that by law and the parties' agreement, "the Agency has a fundamental obligation to collect dues from Union members and remit them to the Union." *Id.* at 2-3. The Arbitrator further found that a year had passed and the Agency had still not fulfilled its obligation to remit the dues to the Union for the employee's first two pay periods. *Id.* at 3. The Arbitrator concluded that the Agency "is absolutely obligated to pay the dues the Union is owed" and that the issue concerning deduction from the employee's pay could have been resolved separately after the Agency fulfilled this obligation. *Id.* at 2-3. Therefore, the Arbitrator sustained the Union's grievance and ordered the Agency to reimburse the Union the dues it failed to withhold. The Arbitrator further ordered the Agency not to deduct that amount from the employee's pay. *Id.* at 3.

III. Positions of the Parties**A. Agency's Exception**

The Agency claims that the award is contrary to law because it denies the Agency the right to recover the dues from the employee. Exception at 1. The Agency cites Comptroller General case law stating that after an agency reimburses a union for union dues an agency erroneously failed to collect, the agency "'must seek to recover the amount of the dues from the employees or exercise its power to waive collection from the employees under 5 U.S.C. § 5584[.]'" *Id.* at 3 (quoting *Hanley*, B-235386 (1989)).

B. Union's Opposition

The Union contends that the award is not contrary to law because the Agency has the authority to waive collection from the employee. Opp'n at 3-4 (citing *Dep't of Labor*, 60 Comp Gen. 93 (1980); *Hanley*, B-235386). The Union further argues that because the Agency has the authority to waive collection, such a waiver is properly required by the Arbitrator's award and past practice. *Id.* In the latter regard, the Union contends that the Agency has a past practice of waiving collection and reimbursing the Union when the Agency is at fault in failing to deduct and remit dues to the Union. *Id.* at 5. For these reasons, the Union argues, the Agency's exception should be denied. *Id.*

IV. Analysis and Conclusions

When an exception involves an award's consistency with law, the Authority reviews any question raised by the exception and the award de novo. *See NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)). In applying the standard, the Authority assesses whether an arbitrator's legal conclusions are consistent with the applicable standard of law. *See U.S. Dep't of Def., Dep'ts of the Army & the Air Force, Ala. Nat'l Guard, Northport, Ala.* 55 FLRA 37, 40 (1998). In making that assessment, the Authority defers to the arbitrator's underlying factual findings. *See id.*

The Arbitrator ordered the Agency to reimburse the Union for the dues it failed to withhold from the employee's pay. The Arbitrator further prohibited the Agency from recovering that amount from the employee. Award at 3. This amount represented an overpayment to the employee because the Agency failed to correctly deduct union dues from the employee's pay for the first two pay periods.

Claims by an agency against an employee for overpayment of pay and allowances are governed by 5 U.S.C. § 5584. *See U.S. Navy Public Works Ctr.*, 27 FLRA 156, 157-58 (1987) (*Navy Public Works*). Under § 5584(a), an agency may waive such a claim against an employee if: (1) collection "would be against equity and good conscience and not in the best interest of the United States"; (2) there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee; and (3) the amount of the claim is not more than \$1,500. 5 U.S.C. § 5584(a). Arbitrators' awards requiring an agency to waive such a claim against an employee are not contrary to law where the statutory criteria for

such a waiver are met. *See Navy Public Works*, 27 FLRA at 157-58 (award not contrary to law where arbitrator ordered agency to waive collection of overpayment to employee due to agency error).

The Agency's exception does not provide a basis for finding the award deficient. The award effectively orders the Agency to waive its claim against the employee for its overpayment of her pay. Although the Agency argues that such an order is contrary to § 5584, the Agency does not address § 5584's waiver criteria. Regarding those criteria, the Agency's claim is well within the \$1,500 statutory limit on the Agency's authority to waive the claim. Moreover, we defer to the Arbitrator's uncontested finding that the Agency, not the employee, was at fault. Therefore, because the Agency fails to show that it has no authority to waive its claim as required by the award, we find that the award is not contrary to law and deny the Agency's exception.

V. Decision

The Agency's exception is denied.