

**67 FLRA No. 111**

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
NATIONAL VETERANS AFFAIRS  
COUNCIL NO. 53  
(Union)

and

UNITED STATES  
DEPARTMENT OF VETERANS AFFAIRS  
VA MEDICAL CENTER  
RENO, NEVADA  
(Agency)

0-AR-5004

—  
DECISION

May 23, 2014

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Before the Authority: Carol Waller Pope, Chairman, and  
Ernest DuBester and Patrick Pizzella, Members

**I. Statement of the Case**

Arbitrator C. Allen Pool found that certain Agency representatives were required to follow the express language of the parties' agreement concerning an employee's right to representation under *NLRB v. J. Weingarten, Inc. (Weingarten)*.<sup>1</sup>

This case presents us with one question: whether the Arbitrator exceeded his authority by failing to resolve an issue before him. Because the issue that the Union claims the Arbitrator failed to resolve is not the issue that he framed, the answer is no.

**II. Background and Arbitrator's Award**

During a presentation about crime prevention and awareness, conducted by certain Agency representatives, a Union vice president interrupted the speaker and alleged that the speaker was misinforming the presentation participants about bargaining-unit employees' rights under the parties' agreement. Specifically, the Union vice president alleged that the speaker incorrectly advised participants that certain Agency representatives were not subject to the terms of the parties' agreement providing for representation rights as set forth in *Weingarten*. Subsequently, the Union filed a grievance, which went to arbitration.

At arbitration, the parties could not agree on a stipulated issue, and authorized the Arbitrator to "frame the issue as determined from the record."<sup>2</sup> The Union raised various arguments during the arbitration hearing, including arguments that the Agency: (1) violated the parties' agreement and applicable law by misinforming employees regarding their *Weingarten* rights; (2) violated the parties' agreement and § 7114(a)(2)(B)<sup>3</sup> of the Federal Service Labor-Management Relations Statute (the Statute) by failing to provide the Union with notice and an opportunity to be present during an alleged formal discussion; and (3) violated the parties' agreement and § 7114(a)(2)(A)<sup>4</sup> of the Statute by refusing to allow bargaining-unit employees Union representation during interviews conducted by certain Agency representatives.

The Arbitrator ultimately framed the issue as whether certain Agency representatives "are required to follow the expressed negotiated language in the [parties'] [a]greement with respect to an employee's right to representation as determined by [*Weingarten*]."<sup>5</sup> The Arbitrator found that they were required to do so.

The Union filed an exception to the award, and the Agency filed an opposition to the Union's exception.

**III. Analysis and Conclusion**

In its exception, the Union contends only that the Arbitrator exceeded his authority by failing to resolve a specific issue; namely, whether the Agency violated § 7114(a)(2)(A), the formal discussion provision of the Statute.<sup>6</sup>

An arbitrator exceeds his authority when he fails to resolve an issue submitted to arbitration, resolves an issue not submitted to arbitration, disregards specific

<sup>2</sup> Award at 1-2.

<sup>3</sup> 5 U.S.C. § 7114(a)(2)(B).

<sup>4</sup> *Id.* § 7114(a)(2)(A).

<sup>5</sup> *Id.* at 2.

<sup>6</sup> Exception Br. at 2-3.

<sup>1</sup> 420 U.S. 251, 260 (1975); Award at 2.

limitations on his authority, or awards relief to persons who are not encompassed by the grievance.<sup>7</sup> Where, as here, an arbitrator frames the issue absent a stipulation by the parties, his formulation receives substantial deference.<sup>8</sup>

According to the Union, the Arbitrator exceeded his authority by failing to resolve the issue of whether the Agency committed an unfair labor practice by failing to provide “*advance* notice to the [U]nion and an opportunity to be present and participate [during certain investigatory interviews], because the circumstances of [such interviews] also constitute . . . formal discussion[s]” under § 7114(a)(2)(A).<sup>9</sup> However, the parties did not agree upon the issues to be determined at arbitration and, instead, expressly authorized the Arbitrator to frame the issues “as determined from the record.”<sup>10</sup> By doing so, the parties limited the scope of the questions to be resolved to those identified by the Arbitrator.<sup>11</sup> And the Arbitrator did not determine that an issue to be resolved was whether the Agency committed a formal-discussion unfair labor practice.<sup>12</sup> Instead, he framed the issue, in pertinent part, as whether the parties are required to follow the “expressed negotiated language in the [parties’] [a]greement with respect to an employee’s right to representation.”<sup>13</sup> Absent a stipulation that included a formal-discussion issue, the Arbitrator was not obligated to address and resolve such an issue.<sup>14</sup>

Thus, as we defer to the Arbitrator’s formulation of the issue, and because the issue that the Union claims the Arbitrator failed to resolve is not the issue that he framed, we find that the Arbitrator did not exceed his authority, and we deny the Union’s exception.<sup>15</sup>

#### **IV. Decision**

We deny the Union’s exception.

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<sup>7</sup> *U.S. DOD, Army & Air Force Exch. Serv.*, 51 FLRA 1371, 1378 (1996).

<sup>8</sup> *AFGE, Local 3627*, 64 FLRA 547, 549 (2010); *SPORT Air Traffic Controllers Org.*, 55 FLRA 771, 774 (1999).

<sup>9</sup> Exception Br. at 3.

<sup>10</sup> Award at 1-2.

<sup>11</sup> See *United Power Trades Org.*, 62 FLRA 493, 496 (2008).

<sup>12</sup> Award at 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Ass’n of Civilian Technicians, N.Y. State Council*, 60 FLRA 890, 891 (2005) (where, in the absence of a stipulation of issues by the parties, an arbitrator frames the issue and resolves only the issue that he or she frames, the arbitrator does not exceed his or her authority).

<sup>15</sup> See *U.S. DOD, Def. Logistics Agency*, 66 FLRA 49, 50 (2011).