67 FLRA No. 35

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1858
(Union)

and

UNITED STATES
DEPARTMENT OF THE ARMY
U.S. ARMY GARRISON-REDSTONE AGENCY
HUNTSVILLE, ALABAMA
(Agency)

0-AR-4919

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ORDER DISMISSING EXCEPTIONS

December 19, 2013

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

I. Statement of the Case

Arbitrator William H. Holley, Jr. found that a grievance filed by the Union was not procedurally arbitrable. The question before us is whether we should dismiss the Union's exceptions to that award. Because the exceptions fail to cite a ground for reviewing the award, and exceptions that do not cite a ground for review are subject to dismissal under § 2425.6 of the Authority's Regulations,[1] the answer is yes.

II. Background and Arbitrator's Award

After the Agency suspended an employee, the Union filed a grievance, which was unresolved and submitted to arbitration. The Arbitrator framed the issue as whether the grievance was arbitrable. To resolve the issue, the Arbitrator considered whether the Union had met the requirements set forth in Article 52, Section 6(c) (Article 52-6(c)) of the parties' agreement, which requires a party to contact the Federal Mediation and Conciliation Service (FMCS) for a list of potential arbitrators "[n]o later than twenty workdays" after invoking arbitration.[2] The Arbitrator found that the Union had not met that requirement, so he determined that the grievance was "procedurally defective."[3] The Arbitrator further found that the "fact that the Agency did not pay its share" of the fees charged by FMCS was not relevant to determining whether the grievance was arbitrable.[4] Additionally, the Arbitrator stated that there was insufficient evidence to find that the parties had a past practice of ignoring the time limitation set forth in Article 52-6(c).[5] For these reasons, the Arbitrator concluded that the grievance was not arbitrable. The Union filed exceptions to the Arbitrator's award.

III. Analysis and Conclusions

The Union argues that there are a number of reasons why the award should be "rescinded."[6] Specifically, the Union argues that: (1) it timely invoked arbitration;[7] (2) it "proved [that there was a] past practice"[8] of the Union "paying the full" FMCS fees and contacting FMCS "just prior to" scheduling a hearing;[9] (3) there was "no way [for the Union] to timely . . . request . . . arbitrators and wait" for the Agency to pay its share of the FMCS fees;[10] (4) the Arbitrator erroneously found that contacting FMCS was a "condition precedent" to the Agency's obligation to pay its share of the FMCS fees;[11] and (5) the Arbitrator erroneously found that the Agency did not need to pay its share of the FMCS fees here.[12] Additionally, the Union asserts that the Agency has "unclean hands" because it failed to pay its share of the FMCS fees, but participated in the arbitrator-selection process and then alleged that the grievance was nonarbitrable.[13] In this connection, citing *Camp v. Jeffer, Mangels, Butler & Marmaro* (*Camp*),[14] the Union alleges that a person who "comes into equity must come with clean hands."[15]

The Authority's Regulations specifically enumerate the grounds that the Authority currently recognizes for reviewing awards.[16] In addition, the Regulations provide that, if exceptions argue that an arbitration award is deficient based on private-sector grounds not currently recognized by the Authority, then the excepting party "must provide sufficient citation to

[1] 5 C.F.R. § 2425.6.
[2] Award at 18.
[3] *Id.*
[4] *Id.*
[5] *Id.* at 19.
[6] Exceptions at 3.
[7] *Id.* at 1.
[8] *Id.* at 2.
[9] *Id.*
[10] *Id.*
[11] *Id.* at 3.
[12] *See id.*
[13] *Id.* at 1.
[14] 35 Cal. App. 4th 620, 638 (1995).
[15] Exceptions at 1.
[16] 5 C.F.R. § 2425.6(a)-(b).

legal authority that establishes the grounds upon which the party filed its exceptions."[17]

Further, § 2425.6(e)(1) of the Regulations provides that an exception "may be subject to dismissal or denial if: [t]he excepting party fails to raise and support" the grounds listed in § 2425.6(a)-(c), "or otherwise fails to demonstrate a legally recognized basis for setting aside the award."[18] Thus, an exception that does not raise a recognized ground is subject to dismissal under the Regulations.[19]

The Union, citing *Camp*,[20] argues that the Agency has "unclean hands" because it failed to pay its share of the FMCS fees.[21] The Arbitrator acknowledged the Union's claim regarding "unclean hands,"[22] but concluded that the Agency's failure to pay its share of the FMCS fees was not relevant to determining whether the grievance was arbitrable.[23] The Union neither argues that this conclusion is contrary to law nor cites any other ground for review currently recognized by the Authority under § 2425.6(a)-(b).[24] And the Union does not cite legal authority to support a ground not currently recognized by the Authority.[25] Therefore, consistent with § 2425.6(e), we dismiss the Union's exceptions.[26]

IV. Order

We dismiss the Union's exceptions.

[17] *Id.* § 2425.6(c).
[18] *Id.* § 2425.6(e)(1).
[19] *E.g.*, *AFGE, Local 1858*, 66 FLRA 942, 943 (2012).
[20] 35 Cal. App. 4th at 638.
[21] Exceptions at 1.
[22] Award at 10.
[23] *Id.* at 18.
[24] *See* Exceptions at 1-3.
[25] *See id.*
[26] We note that the Union is directly challenging the Arbitrator's determination that the grievance is not procedurally arbitrable, and that the Authority generally will not find an arbitrator's procedural-arbitrability determination deficient on grounds that directly challenge the determination itself. *See, e.g.*, *AFGE, Local 2823*, 64 FLRA 1144, 1146 (2010).