

67 FLRA No. 79

UNITED STATES
DEPARTMENT OF THE AIR FORCE
GRISSOM AIR RESERVE BASE, INDIANA
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 3254
(Union)

0-AR-4917

DECISION

March 13, 2014

Before the Authority: Carol Waller Pope, Chairman, and
Ernest DuBester and Patrick Pizzella, Members
(Member Pizzella concurring)

I. Statement of the Case

Arbitrator Peter R. Meyers concluded that the Agency violated Article 19 of the parties' agreement when it denied Union officials administrative time to attend a Union-sponsored training event that was "mutually beneficial"¹ to both parties. As a remedy, the Arbitrator ordered the Agency "to afford the Union the opportunity to attend future training sessions in accordance with Article 19 of the parties' collective[-]bargaining agreement."²

As a preliminary matter, we must decide whether two of the Agency's claims are barred by §§ 2425.4(c) and 2429.5 of the Authority's Regulations³ because the Agency failed to make them before the Arbitrator. Specifically, the Agency contends that: (1) the Arbitrator exceeded his authority when he ordered the Agency to offer Union officials the opportunity to attend "future training sessions" in accordance with Article 19⁴ (first exceeds-authority exception); and (2) the prospective remedy is contrary to law because it interferes with the Agency's right to assign work under § 7106(a)(2)(B) of the Federal Service

Labor-Management Relations Statute (the Statute) (contrary-to-law exception).⁵ Because the Agency failed to make the contrary-to-law and first exceeds-authority exceptions before the Arbitrator, we dismiss them.

This leaves two substantive issues remaining before the Authority: (1) whether the Arbitrator exceeded his authority in the manner he interpreted the term "mutually beneficial," contained in Article 19 (second exceeds-authority exception); and (2) whether the award is so contradictory as to make its implementation impossible (impossible-to-implement exception). With regard to the second exceeds-authority exception, the Agency's claim provides no basis for finding the award deficient because the Agency fails to establish that the Arbitrator either addressed an issue not submitted to arbitration or disregarded specific limitations on his authority when he defined the term "mutually beneficial." Likewise, the impossible-to-implement exception fails because the Agency has not shown that it will be impossible to comply with the award. As such, we deny both exceptions.

II. Background and Arbitrator's Award

When the Agency denied Union officials' requests for administrative time to attend a training, the Union filed a grievance alleging that the Agency violated the parties' agreement. The grievance was unresolved and submitted to arbitration. Because the parties did not stipulate to the issues in dispute, the Arbitrator framed the issues as whether the Agency violated the parties' agreement by denying Union officials administrative time to attend the training, and if so, what would be the appropriate remedy.

With respect to the first issue, the Arbitrator concluded that, by denying Union officials' requests for administrative time to attend the training, the Agency violated Article 19 of the parties' agreement. That article provides that Union officials will be excused, for an unlimited amount of administrative time, to attend Union-sponsored training that benefits specific "labor-management objectives" or "any other training that is *mutually beneficial*" to both the Agency and the Union.⁶ The Arbitrator found that in order for training to be "mutually beneficial," it "must provide some benefits to both the Union and the [Agency]," but does not have to "provide an equal benefit to both sides" and that every element of the training does not have to be beneficial to both parties.⁷

¹ See Award at 3 (quoting Art. 19 of the parties' agreement).

² *Id.* at 19.

³ 5 C.F.R. §§ 2425.4(c), 2429.5.

⁴ Exceptions at 10 (quoting Award at 19) (internal quotation marks omitted).

⁵ *Id.* at 11 (citing 5 U.S.C. § 7106(a)(2)(B)).

⁶ Award at 3 (emphasis added).

⁷ *Id.* at 15.

The Arbitrator found that, contrary to the Agency's contention, the training at issue was mutually beneficial to the Union and the Agency. Based on the course descriptions, the Arbitrator concluded that the training benefitted both sides because it: (1) taught Union officials how to bargain in a more efficient manner and reach agreement on difficult issues; (2) addressed labor-management issues, such as workplace health and safety; and (3) taught Union officials how "to evaluate and process grievances more knowledgeably and efficiently."⁸ The Arbitrator, however, rejected the Agency's contention that the training was designed to teach Union officials how to "battle management"⁹ and presented "a hostile approach to labor-management relations."¹⁰ The Arbitrator further found that the Agency's claim that the training was not "mutually beneficial" was undercut by the fact that the Agency later approved training that was virtually identical to the training that was disapproved in this case.

As a remedy, the Arbitrator ordered the Agency "to afford the Union the opportunity to attend future training sessions in accordance with Article 19 of the parties' . . . agreement" and, as the losing party, to pay the Arbitrator's fees and costs.¹¹

The Agency filed exceptions to the Arbitrator's award.

III. Preliminary Matters: Sections 2425.4(c) and 2429.5 of the Authority's Regulations bar the Agency's contrary-to-law and first exceeds-authority exceptions.

The Agency claims that the award is contrary to law because the remedy that the Arbitrator awarded – specifically, directing the Agency to offer Union officials the opportunity to attend "future training sessions" – violates management's right to assign work under § 7106(a)(2) of the Statute.¹² In support of its claim, the Agency asserts that the remedy requires it to "approve" all future requests for training "notwithstanding the Agency's right to disapprove all such training requests" under the provisions of Article 19.¹³

The Agency also claims that the Arbitrator exceeded his authority by ordering a prospective remedy.¹⁴ Specifically, the Agency claims that the framed issues concern only whether the Agency violated

Article 19 by denying Union officials' requests for administrative time for the training at issue.¹⁵ Because the Arbitrator's remedy addresses disputes over Article 19 that might occur in the future, the Agency contends that the Arbitrator awarded a remedy for an issue that the parties did not submit to arbitration.¹⁶

The record demonstrates that the Union asked the Arbitrator to "put [the Agency] on notice" of its obligation to grant administrative time "in the future . . . in accordance with the contract."¹⁷ Because the remedy awarded by the Arbitrator is consistent with the Union's requested remedy,¹⁸ the Agency was on notice and had the opportunity to raise its management-rights and first exceeds-authority arguments to the Arbitrator. But the record does not demonstrate that the Agency raised these claims to the Arbitrator. Under §§ 2425.4(c) and 2429.5 of the Authority's Regulations, the Authority will not consider any evidence or arguments that could have been, but were not, presented before the Arbitrator.¹⁹ Consequently, because the Agency could have, but did not, make these claims to the Arbitrator, we dismiss the Agency's contrary-to-law exception and its first exceeds-authority exception.

IV. Analysis and Conclusions

A. The Arbitrator did not exceed his authority.

The Agency also argues that the Arbitrator exceeded his authority by interpreting the term "mutually beneficial," contained in Article 19 of the parties' agreement, too broadly.²⁰ According to the Agency, the Arbitrator found that only a "scintilla of mutuality"²¹ was necessary for the Agency to approve administrative leave for Union-sponsored training and, as a result, modified the language of Article 19 beyond what the parties intended.²² The Agency argues that by doing so the Arbitrator addressed an issue not submitted to arbitration.²³

Although the Agency contends that, by modifying the term "mutually beneficial," the Arbitrator addressed an issue not submitted to arbitration, the

⁸ *Id.* at 17.

⁹ *Id.* at 16 (internal quotation marks omitted).

¹⁰ *Id.*

¹¹ *Id.* at 19.

¹² Exceptions at 10-11.

¹³ *Id.* at 10.

¹⁴ *Id.* at 4.

¹⁵ *See, e.g., id.* at 10, 12-14.

¹⁶ *See id.* at 8, 12.

¹⁷ Exceptions, Attach. 3, Union's Post-Hr'g Br. at 4; *see also* Award at 11.

¹⁸ *See* Award at 19.

¹⁹ 5 C.F.R. §§ 2425.4(c), 2429.5; *see also* U.S. DOL, Bureau of Labor Statistics, 67 FLRA 77, 79-80 (2012); AFGE, Local 3627, 66 FLRA 207, 209 (2011).

²⁰ *E.g.*, Exceptions at 8.

²¹ *Id.* at 9.

²² *See, e.g., id.* at 8-10, 12.

²³ *See, e.g., id.* at 8, 12.

Arbitrator had the discretion to frame the issues because the parties failed to stipulate to those issues.²⁴ The Arbitrator framed the first issue as whether the Agency violated the parties' agreement by denying Union officials administrative time to attend the training.²⁵ The Arbitrator's findings concerning the contractual term "mutually beneficial" are directly responsive to that issue. Because the Arbitrator's findings are directly responsive to the issue that he framed, the Agency has failed to establish that the Arbitrator addressed an issue not submitted to arbitration.²⁶

Accordingly, we deny the Agency's second exceeds-authority exception.

- B. The award is not so contradictory as to make its implementation impossible.

The Authority will set aside an award that is "incomplete, ambiguous, or contradictory *as to make implementation of the award impossible*."²⁷ 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."²⁸

Here, the Agency does not explain how the award is contradictory on its face. Instead, it simply argues that the award is "completely contradictory"²⁹ and imposes "an utterly impossible requirement"³⁰ because it "requires the Agency to 'afford' the Union an opportunity 'to attend' future training events" and "arguably creates an affirmative requirement or obligation of the Agency to 'approve' future requests notwithstanding the Agency's right to disapprove all such training requests after an evaluation and application of the factors agreed to by the parties under the provisions of [Article 19]."³¹ Thus, the Agency has not established that that the award itself is so contradictory as to make its implementation impossible.

As such, we deny the Agency's impossible-to-implement exception.

V. Decision

We dismiss in part, and deny in part, the Agency's exceptions.

Member Pizzella, concurring:

This award concerns the degree to which the Agency was obligated to approve administrative time and travel for a Union official (stationed at Grissom Air Force Base, Indiana) to attend a five-day-long, Union-sponsored training at the Cheyenne Mountain Resort (a AAA Four Diamond resort in Colorado Springs, Colorado).¹

The Agency denied the Union official's request for travel and administrative time because it did not believe that the training was "mutually beneficial."² And based on the Arbitrator's failure to order restoration of annual leave, one can assume that the Union official did not believe the training was worthwhile enough to attend at the expense of the Union or on his own time.

To the extent the parties disagree over the question of what training is "mutually beneficial" to both the Union and the Agency, the dispute *could have* merit. But this claim, however, *does not*.

On one hand, the Agency made plainly incorrect arguments before the Arbitrator,³ and undermined its own position when it approved administrative time for another Union representative to attend a similar training a few months later.⁴ Furthermore, the Agency failed to make to the Arbitrator the only arguments upon which we could even consider setting aside the award – that the remedy awarded by the Arbitrator exceeded his authority, that the award was contrary to law because it interfered with its management rights, or that the award failed to draw its essence from the agreement – and its failure to do so precludes us from considering them now.⁵

On the other hand, the costs of attending a Union-sponsored conference, over 1000 miles distant from the Union official's duty station⁶ has surely been dwarfed by the cost of the human capital, taxpayer funds,

¹ Exceptions, Attach. 3, Union's Post-Hr'g Br. at 1.

² Award at 3.

³ E.g., Exceptions, Attach. 2, Agency's Post-Hr'g Br. at 5 (arguing Authority's essence review is standard for finding breach of collective-bargaining agreement).

⁴ Award at 14.

⁵ See 5 C.F.R. §§ 2425.4(c), 2429.5.

⁶ According to the conference flyer (available at http://www.afgedefcon.org/sites/default/files/resources/DEFC ON_Reg%20Broch_Feb14.pdf), the cost of lodging per night was \$83/night. And according to the to the General Services Administration's online search tool, in Fiscal Year 2013 (the earliest year searchable using the online tool), the federal contract rate for a round-trip flight from Indianapolis to Colorado Springs was \$402. GSA, Airline City Pairs – Search Awards, <http://cpsearch.fas.gsa.gov/cpsearch/search.do?method=enter> (last visited Feb. 12, 2014).

²⁴ See *AFGE, Local 1741*, 61 FLRA 118, 120 (2005) (*Local 1741*).

²⁵ Award at 2.

²⁶ *Local 1741*, 61 FLRA at 120.

²⁷ 5 C.F.R. § 2425.6(b)(2)(ii) (emphasis added).

²⁸ *U.S. DOD, Def. Logistics Agency*, 66 FLRA 49, 51 (2011) (citing *NATCA*, 55 FLRA 1025, 1027 (1999)).

²⁹ Exceptions at 10.

³⁰ *Id.* at 11.

³¹ *Id.* at 10.

and Union members' dues spent on the processing of this grievance, arbitration, and the filing of exceptions to the Authority.

On yet one more hand, the Arbitrator inexplicably does nothing to remedy the purported violation that was grieved – the Agency's refusal to approve the Union's attendance at the training in dispute – but instead directed the Agency to approve similar requests in the *future* – a matter that was not even grieved by the parties.⁷

I do not believe that any part of this case contributes to the “effective conduct of public business”⁸ or fosters “work practices [that] facilitate and improve . . . the efficient accomplishment of the operations of the Government.”⁹ All the parties involved in this case – the Agency, the Union, *and* the Arbitrator – contribute to a commonly held belief that, the federal government is unable to effectively manage its multitude of agencies, bureaus, and over two million employees. This belief is shared by many taxpayers, including well-known, former government executives. Recently, Fareed Zakaria, Time Magazine Editor-at-Large, reminded us that former Federal Reserve Chairman, Paul Volcker, has warned repeatedly that it is a “profound problem” that most Americans believe that the “government can no longer act effectively [and competently].”¹⁰ Similar concerns have been echoed by Harvard University Kennedy School of Government professor, Linda Bilmes, and former White House Chief of Staff and Commerce Secretary, William Daley, who have warned that “the absence of good management . . . is undermining public trust in our government.”¹¹

Under these circumstances, I am reluctant to lend my imprimatur to a decision that expends valuable Authority resources to resolve a claim that is clearly frivolous¹² and that impedes the Authority's ability to address in timely fashion those good-faith disputes that will actually promote more effective labor-management relations when they are adjudicated. But the parties here have pressed this vacuous dispute to the Authority for

resolution. I, therefore, join with my colleagues to deny the Agency's exceptions.

Thank you.

⁷ Award at 19.

⁸ *NTEU, Chapter 32*, 67 FLRA 174, 177 (2014) (*Chapter 32*) (Concurring Opinion of Member Pizzella) (quoting *U.S. DHS, CBP*, 67 FLRA 107, 112 (2013) (*CBP*) (Concurring Opinion of Member Pizzella)) (internal quotation marks omitted).

⁹ *CBP*, 67 FLRA at 112 (Concurring Opinion of Member Pizzella) (alteration in original) (quoting 5 U.S.C. § 7101(a)(2)) (internal quotation marks omitted).

¹⁰ Fareed Zakaria, Op-Ed., *Why We Hate Our Government*, Wash. Post, Nov. 21, 2013, at A23.

¹¹ Linda J. Bilmes & William M. Daley, *The Feds, Barely Managing*, Wash. Post, Dec. 1, 2013, at B2.

¹² See *Chapter 32*, 67 FLRA at 177 (Concurring Opinion of Member Pizzella); *CBP*, 67 FLRA at 112 (Concurring Opinion of Member Pizzella).