

67 FLRA No. 86

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1858
(Union)

and

UNITED STATES
DEPARTMENT OF THE ARMY
U.S. ARMY AVIATION AND MISSILE COMMAND
REDSTONE ARSENAL, ALABAMA
(Agency)

0-AR-4860

ORDER DISMISSING EXCEPTIONS

March 27, 2014

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

I. Statement of the Case

Arbitrator Hoyt N. Wheeler found that although the Agency violated certain provisions of the parties' collective-bargaining agreement in its handling of multiple merit promotions under a single vacancy announcement, the Agency did not violate the parties' agreement as to the specific complaints raised by the individual grievants. The Arbitrator also found that the Agency did not violate merit-system principles, and that the Agency's process was fair and open and assured equal opportunity to the applicants.

The issue before us is whether the Union raises recognized grounds, or cites legal authority to support private-sector grounds not currently recognized by the Authority, to support its exceptions. We find that the Union fails to do so, and we therefore dismiss the Union's exceptions.

II. Background and Arbitrator's Award

The Union filed a grievance alleging that the Agency violated the parties' agreement by failing to follow the agreement's merit-promotion procedures in filling multiple positions under a single vacancy announcement. The grievance was unresolved and submitted to arbitration. Because the parties failed to

stipulate to an issue, the Arbitrator framed the issue as: "Whether the processes and selections with regard to [the General Schedule]-14 [v]acancy [a]nnouncement . . . were in violation of Article 30 of the [parties' agreement]? If so, what shall be the remedy?"¹ The relevant provisions of Article 30 are set forth in the appendix to this decision.

The Arbitrator found that the Agency did not violate the parties' agreement with respect to the "specific complaints by [the g]rievants."² He further found, more generally, that the Agency did not violate Article 30, Sections 1 and 2 of the parties' agreement, which requires the Agency to base promotions on merit-system principles and to select candidates solely on the basis of "relative ability, knowledge[,] and skills, after fair and open competition that assures equal opportunity."³

However, the Arbitrator found that the Agency did violate Article 30, Sections 4.c., 4.j., 5, and 8 of the parties' agreement. Those provisions require the Agency to refer a certain number of candidates as "best qualified" based on the number of available vacancies and the applicants' possession of required skills.⁴ The provisions also require the Agency to: (1) rank "best qualified" candidates under certain circumstances;⁵ (2) prepare and maintain selection matrices to document selections; and (3) debrief non-selected candidates upon request, providing specific information about the selection process as set forth in the parties' agreement.

Based on these findings, the Arbitrator directed the Agency to supplement its selection matrices with additional explanatory information and to make the matrices available at the request of non-selected candidates. He also directed the Agency to offer a new round of debriefs to non-selected candidates, offering those non-selected candidates all information required under the parties' agreement. As to the Agency's failure to follow Article 30 with respect to the number of candidates referred as "best qualified," the Arbitrator did not direct a remedy because he found that the Union failed to show that the grievants, or similarly situated applicants, suffered any harm as a result of the violation.

¹ Award at 11.

² *Id.* at 20.

³ *Id.*

⁴ *Id.* at 17.

⁵ *Id.* at 18.

III. Analysis and Conclusions

The Authority's Regulations specifically enumerate the grounds that the Authority currently recognizes for reviewing awards.⁶ 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 legal authority that establishes the grounds upon which the party filed its exceptions."⁷

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" a ground listed in § 2425.6(a)-(c), "or otherwise fails to demonstrate a legally recognized basis for setting aside the award."⁸ Thus, an exception that does not raise a recognized ground is subject to dismissal under the Regulations.⁹

Arguing the merits of its grievance, the Union contends that the Agency violated the parties' agreement and statutory merit-system principles when it processed the merit promotions of the individual grievants.¹⁰ The Union also contends that the Arbitrator "did not make a decision to resolve the issue of the promotions of the [g]rievants."¹¹ In accord with § 2425.6 of the Authority's Regulations, the Authority "no longer construe[s] parties' exceptions as raising grounds that the exceptions do not raise."¹² Because the Union's contentions do not raise a recognized ground for reviewing an award under 5 C.F.R. § 2425.6(a)-(b), or cite legal authority to support a ground not currently recognized by the Authority, we dismiss them.¹³

IV. Order

We dismiss the Union's exceptions.

⁶ 5 C.F.R. § 2425.6(a)-(b).

⁷ *Id.* § 2425.6(c).

⁸ *Id.* § 2425.6(e)(1).

⁹ *AFGE, Local 1858*, 66 FLRA 942, 943 (2012); *AFGE, Local 1738*, 65 FLRA 975, 975 (2011) (Member Beck concurring in the result); *AFGE, Local 738*, 65 FLRA 931, 932 (2011); *AFGE, Local 3955, Council of Prison Locals 33*, 65 FLRA 887, 889 (2011) (*Local 3955*) (Member Beck dissenting in part).

¹⁰ Exceptions at 3 (citing Article 30, §§ 1-4.h., 5 U.S.C. § 2301, and 5 C.F.R. § 335).

¹¹ *Id.*

¹² *AFGE, Local 3955*, 65 FLRA at 889.

¹³ 5 C.F.R. § 2425.6(a)-(c), (e)(1); *AFGE, Local 738*, 65 FLRA at 932; *NFFE, Local 1804*, 66 FLRA 512, 514 n.2 (2012).

APPENDIX

ARTICLE 30 MERIT PROMOTION

1. Promotions will be *based on merit system principles* except where specifically authorized by law and regulation (5 C.F.R. [§] 335).

2. *Selection for promotion and advancement will be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition* that assures that all receive equal opportunity.
....

4.c. *For each recruitment personnel action, the top [twenty-five] candidates who possess all required skills will be referred as "best qualified."* If there are less than [twenty-five] candidates who possess all required skills, all will be referred as "best qualified." *If there are more than [twenty-five] candidates who possess all required skills, candidates will be ranked based on possession of job[-]related desired skills. If there are other applicants who are tied with the [twenty-fifth] applicant, they will also be referred. If multiple vacancies are known at the time the list is issued, one additional candidate can be referred for each additional vacancy plus ties. For example, if there are [three] vacancies, [twenty-seven] names plus ties can be referred.*
....

4.j. *The selecting official will consider all referred candidates and provide job related reasons why the selectee is the best candidate for the position. Selection matrices will be prepared and maintained by the selecting official to respond to any inquires or complaints. Selection matrices will include names and analysis of all candidates along with weights/reasons for each factor used.*
....

5. *Selection matrices will be used to document all selections under formal competitive merit promotion or career referral procedures. The experience*

elements used must be based on the requirements of the specific position being filled

. . . .

8. *Upon request, selecting officials will debrief non-selected candidates. This will include sharing the selection criteria plus the scores given to the selectee and the non-selected candidate. If composite scores are used, all scores that comprise that composite score will also be provided. The information released will be sanitized and in accordance with the Privacy Act.*

Award at 11-12.

Member Pizzella, concurring:

I agree with my colleagues that the Union's exceptions fail to raise grounds that are recognized under § 2425.6(a)-(b) of the Authority's Regulations.

I write separately, however, to contrast the circumstances of this case from those in *AFGE, Local 1897 (Local 1897)*.¹ In that case, I noted that the Union's exception – that argued that the manner in which the arbitrator “appl[ie]d the *Douglas* factors” – provided “sufficient citation to legal authority” and “explain[ed] how” the award was deficient to meet the requirements of § 2425.6(e) of the Authority's Regulations.

As I recently noted in *AFGE, Local 1858*, merit-systems principles are important to ensure that selections and promotions are made through “fair and open competition which assures that all receive equal opportunity.”² Even though alleged violations of merit-systems principles must be taken seriously, the Union here made only vague assertions³ (unlike the union in *Local 1897*) as to how the Arbitrator failed to consider merit principles and thus failed to establish an exception that is recognized under § 2425.6(a)-(b).

Therefore, I agree with my colleagues to dismiss the exceptions under § 2425.6(e) of the Authority's Regulations.

Thank you.

¹ 67 FLRA 239, 243 (2014) (*AFGE, Local 1897*) (Member Pizzella concurring).

² 67 FLRA 327, 329 (2014) (Concurring Opinion of Member Pizzella).

³ See Majority at 3 (citing Exceptions at 3).