

**67 FLRA No. 87**

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 31  
(Union)

and

UNITED STATES  
DEPARTMENT OF VETERANS AFFAIRS  
LOUIS STOKES MEDICAL CENTER  
CLEVELAND, OHIO  
(Agency)

0-AR-4896

DECISION

March 27, 2014

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

**I. Statement of the Case**

Arbitrator Mark Scarr denied a grievance claiming that the Agency violated the parties' agreement when it selected a candidate for a position without following the procedures outlined in the Agency's upward-mobility policy.

The question before us is whether the Union's exceptions raise and support recognized grounds for review under the Authority's Regulations. Because we find that they do not, the answer is no. Thus, we dismiss in part, and deny in part, the Union's exceptions.

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

The Agency selected an applicant to fill a position in its engineering service. The Union filed a grievance claiming that the Agency violated the parties' agreement when it did not follow the Agency's upward-mobility policy to fill the position. The Arbitrator found that the Agency did not violate the parties' agreement. The Union filed exceptions to the award. The Agency did not file an opposition.

**III. Analysis and Conclusions**

Section 2425.6(e)(1) of the Authority's 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."<sup>1</sup> In addition, under § 2425.6(b), a party arguing that an award is deficient on private-sector grounds has an express duty to "explain how, under standards set forth in the decisional law of the Authority or federal courts," the award is deficient.<sup>2</sup> Under § 2425.6(e)(1), an exception that fails to raise a recognized ground is subject to dismissal; an exception that fails to support a properly raised ground is subject to denial.<sup>3</sup> The Authority no longer construes exceptions as raising recognized grounds for review when parties fail to state such grounds.<sup>4</sup>

A. We dismiss the Union's exceptions that fail to raise a recognized ground for review under § 2425.6(e)(1) of the Authority's Regulations.

The Union cites "(b)(ii)" of § 2425.6 as a ground for review, claiming that the Arbitrator erred when he stated that both parties omitted opening statements at the hearing.<sup>5</sup> However, there is no § 2425.6(b)(ii) in the Authority's Regulations, and the Union fails to specify whether its claim is under § 2425.6(b)(1)(ii) or (2)(ii). Further, without reference to any regulatory ground for review, the Union argues that the award is deficient because the Agency: failed to obtain a transcript of the proceedings;<sup>6</sup> failed to submit evidence to support its position;<sup>7</sup> misstated the Union's issue before the Arbitrator;<sup>8</sup> failed to provide the Union with a copy of its post-hearing brief;<sup>9</sup> and committed a harmful procedural error when it failed to follow the upward-mobility policy in filling the position at issue.<sup>10</sup>

None of the stated exceptions raises a ground currently recognized by the Authority for reviewing awards.<sup>11</sup> Further, the Union does not cite legal authority to support a ground not currently recognized by the Authority.<sup>12</sup> As the Authority does not construe exceptions as raising recognized grounds for review,<sup>13</sup>

<sup>1</sup> 5 C.F.R. § 2425.6(e)(1).

<sup>2</sup> *Id.* § 2425.6(b).

<sup>3</sup> *U.S. Dep't of VA, Cent. Tex., Veterans Health Care Sys., Temple, Tex.*, 65 FLRA 71, 73 (2011) (*VA, Temple*).

<sup>4</sup> *See AFGFE, Local 3955, Council of Prison Locals 33*, 65 FLRA 887, 889 (2011) (*Local 3955*).

<sup>5</sup> Exceptions at 1.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 2-3.

<sup>11</sup> 5 C.F.R. § 2425.6(a)-(c).

<sup>12</sup> *Id.* § 2425.6(b).

<sup>13</sup> *Local 3955*, 65 FLRA at 889.

we dismiss the Union's exceptions consistent with § 2425.6(e)(1) of the Authority's Regulations.<sup>14</sup>

- B. The Union's remaining exceptions fail to support recognized grounds for review, and we deny them under § 2425.6(e)(1) of the Authority's Regulations.

Relying on 5 C.F.R. § 2425.6(b)(1) and (b)(2), the Union raises several private sector grounds for review that are recognized by the Authority. Specifically, the Union argues that: (1) under (b)(1)(ii), the Arbitrator demonstrated bias because he made a statement that Agency management had a right to hire and fire employees, and because he failed to consider the "pure facts";<sup>15</sup> (2) under (b)(1)(iii), the Arbitrator denied the Union a fair hearing because he allowed the Agency to raise a jurisdictional argument on several occasions throughout the proceeding, impeding the Union's ability to present all of its witnesses;<sup>16</sup> (3) under (b)(2)(i), the award fails to draw its essence from the parties' agreement because the Arbitrator asked the parties why the grievance was filed by the Union instead of the grievant;<sup>17</sup> (4) under (b)(2)(ii), the award is based on a nonfact because it states that the parties did not stipulate to an issue for arbitration;<sup>18</sup> and, (5) under (b)(2)(iii), the award is incomplete, ambiguous, or contradictory so as to make implementation impossible.<sup>19</sup>

However, these exceptions do not explain how, under the standards set forth in the decisional law of the Authority or federal courts, the award is deficient on the grounds upon which the Union relies. As noted above, a party arguing that an award is deficient on private-sector

grounds has an express duty to explain how the award is deficient.<sup>20</sup> Moreover, the Union cites to no record evidence to support its assertions. Under these circumstances, we find that these exceptions are unsupported, and we deny them under § 2425.6(e)(1) of the Authority's Regulations.

#### IV. Decision

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

<sup>14</sup> Member Pizzella notes his concurring opinion in *AFGE, Local 1897*, 67 FLRA 239, 243 (2014) (Concurring Opinion of Member Pizzella), wherein he reaffirmed that the "[Authority's] regulations do not require a party 'to invoke any particular magical incantation[]' to perfect an exception so long as the party provides 'sufficient citation to legal authority' or 'explain[s] how' the award is deficient." *Id.* (quoting *AFGE, Local 33*, 65 FLRA 887, 891 (2011) (Concurring Opinion of Member Beck); *AFGE, Local 1738*, 65 FLRA 975, 977 (2011) (Concurring Opinion of Member Beck)). To the contrary, Member Pizzella agrees that the exceptions in this case are properly dismissed under § 2425.6(e) because they fail to provide "sufficient citation to legal authority" and "explain how" the award is deficient sufficiently to meet the requirements of § 2425.6 in the same manner that the exceptions in *AFGE, Local 1858*, 67 FLRA 327 (2014) (Member Pizzella concurring), were deficient.

<sup>15</sup> Exceptions at 3.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.* at 1-2.

<sup>18</sup> *Id.* at 1.

<sup>19</sup> *Id.*

<sup>20</sup> 5 C.F.R. § 2425.6(b); *VA, Temple*, 66 FLRA at 73.