68 FLRA No. 4

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1815
(Union)

and

UNITED STATES
DEPARTMENT OF THE ARMY
U.S. ARMY AVIATION
CENTER AND FORT RUCKER
ARMY AEROMEDICAL CENTER
(Agency)

0-AR-5044

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ORDER DISMISSING EXCEPTIONS

October 20, 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 Roberta J. Bahakel issued an award ruling that the Union's grievance was not substantively arbitrable as it concerned a classification matter and, thus, was barred from the grievance process by § 7121(c)(5) of the Federal Service Labor-Management Relations Statute (the Statute). Because the Union fails to raise any recognized grounds for review, we dismiss the exceptions.

II. Background

The grievant sought an "upgrade to her position description (PD) due to an accretion of duties."[1] At the direction of her supervisor, the grievant submitted a revised PD that reflected her increased duties. According to the grievant, although she was initially informed that she would not have to compete for the new position if approved, she was later informed that she would have to compete for the upgraded position.

The Union filed a grievance alleging, among other things, that the Agency violated the parties' agreement by informing the grievant that she had to compete for the higher-graded position. After the Union filed the grievance, the delegated classifications authority (DCA) – the ultimate authority in approving PD changes – "declined to approve the [g]rievant's proposed [PD]."[2]

The matter was unresolved, and the parties submitted the matter to arbitration. At arbitration, the Union contended, for the first time, that the Agency had committed an unfair labor practice (ULP) by failing to inform the Union of changes to the Agency's classification standards. The Arbitrator declined to address this issue. According to the Arbitrator, this "contention was not a part of the grievance at issue . . . and was never addressed by the parties during the grievance process."[3] Therefore, the Arbitrator concluded that the Union's allegation was "not a proper issue to be addressed at the arbitration of this grievance."[4]

The Arbitrator next addressed whether the grievance was substantively arbitrable. The Agency argued that the grievance concerned classification and thus was excluded from the grievance process under § 7121(c)(5) of the Statute. The Union disagreed; it contended that the grievance concerned the accuracy of the grievant's PD and whether the Agency had violated a provision of the parties' agreement governing career promotions. The Arbitrator determined that "the testimony and evidence . . . showed that the essential nature of the grievance went beyond the accuracy of the content of the [g]rievant's [PD] . . . and was instead integrally related to the accuracy of the classification of the [g]rievant's position."[5] As a result, the Arbitrator concluded that the grievance was not substantively arbitrable and denied it.

The Union filed exceptions to the award, and the Agency filed an opposition.

III. Analysis and Conclusion

The Authority's Regulations enumerate the grounds upon which the Authority will review 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] Furthermore, § 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

[1] Award at 2.

[2] *Id.* at 4.
[3] *Id.* at 8.
[4] *Id.*
[5] *Id.* at 10-11.
[6] 5 C.F.R. § 2425.6(a)-(b).
[7] *Id.* § 2425.6(c).

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.[9]

In its exceptions, the Union states that it "totally disagrees with the Arbitrator['s] statement in her decision . . . that the Union's argument regarding an alleged ULP was not part of the grievance at issue."[10] The Union also "reiterates its position" that the Agency's actions "constitute[] a ULP by failing to both notify the Union and bargain in good faith prior to and during the grievance process."[11] Furthermore, the Union alleges that the Arbitrator "failed to acknowledge that the Agency was in violation of the [parties' agreement]."[12] Additionally, the Union argues that the Arbitrator "failed to consider all evidence relating to the case."[13] According to the Union, the Arbitrator "failed to acknowledge . . . that the [grievant's revised PD] had already been classified."[14]

These exceptions fail to raise any grounds currently recognized by the Authority,[15] and do not cite any legal authority to support a ground not currently recognized by the Authority.[16] We do not "construe parties' exceptions as raising grounds that the exceptions do not raise."[17] Therefore, consistent with § 2425.6(e)(1) of the Authority's Regulations, we dismiss these exceptions.[18]

IV. Order

We dismiss the Union's exceptions.

[8] *Id.* § 2425.26(e)(1).
[9] *AFGE, Local 738*, 65 FLRA 931, 932 (2011) (*Local 738*); *AFGE, Local 3955, Council of Prison Locals 33*, 65 FLRA 887, 889 (2011) (Member Beck dissenting in part).
[10] Exceptions at 2.
[11] *Id.* at 3.
[12] *Id.*
[13] *Id.* at 1.
[14] *Id.*
[15] 5 C.F.R. § 2425.6(a)-(b).
[16] *Id.* § 2425.6(c).
[17] *AFGE, Local 3955*, 65 FLRA at 889.
[18] 5 C.F.R. § 2425.6(e)(1). Member Pizzella would find that the Union has stated one argument that sufficiently "explain[s] how the award is deficient" to avoid dismissal. *AFGE Local 1897*, 67 FLRA 239, 243 (2014) (Concurring Opinion of Member Pizzella) (citation and internal quotation marks omitted). He would rule that, by arguing that the Arbitrator "failed to consider all evidence relating to the case," the Union has set forth a fair-hearing exception that cannot be merely dismissed. Exceptions at 1. As Member Pizzella has previously noted, the Authority's Regulations do not require a party "to invoke any particular magical incantation[s]" to perfect an exception. *AFGE Local 1897*, 67 FLRA at 243 (Concurring Opinion of Member Pizzella) (citation and internal quotation marks omitted); *see also NTEU v. FLRA*, 754 F.3d 1031, 1040 (D.C. Cir. 2014) ("A party is not required to invoke 'magic words' in order to adequately raise an argument before the Authority. Instead, an argument is preserved if the party has 'fairly brought' the argument 'to the Authority's attention.'") (citations omitted). However, that an arbitrator does not specifically mention or rely on evidence does not establish that the arbitrator failed to provide a fair hearing. *AFGE, Local 522*, 66 FLRA 560, 564 (2012). As such, Member Pizzella would rule that the Union has failed to establish that the Arbitrator denied it a fair hearing and would deny this exception.