65 FLRA No. 219

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 3627
(Union)

and

SOCIAL SECURITY ADMINISTRATION
OFFICE OF DISABILITY
ADJUDICATION AND REVIEW
JACKSONVILLE, FLORIDA
(Agency)

0-AR-4749

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DECISION

July 29, 2011

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Before the Authority: Carol Waller Pope, Chairman, and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This matter is before the Authority on an exception to an award of Arbitrator Douglas F. Coleman filed by the Union under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Agency filed an opposition to the Union's exception.

The Arbitrator denied the Union's grievance, finding that the Agency had the right to suspend temporarily the flexiplace program due to a lack of available work. For the reasons set forth below, we deny the Union's exception.

II. Background and Arbitrator's Award

The grievant is employed as a Decision Writer in the Agency's Office of Disability Adjudication and Review (ODAR). Award at 4. In addition to a national collective bargaining agreement, the Agency and the Union negotiated a flexiplace agreement for the purpose of establishing a flexible workplace program. *Id.* at 1.

The flexiplace agreement provides that employees have the ability to work at an Alternative Duty Station (ADS) at least one, but up to three, days a week. *Id.* at 10. Employees must request leave to participate in the flexiplace program every six months. *Id.* The grievant's supervisor approved the grievant's timely request for three ADS days. *Id.* However, shortly thereafter, the hearing office director (Director) sent an email approving only one ADS day a week for all employees because there was insufficient work available to support employees working three ADS days. *Id.* at 10-11.

The Union presented a grievance, alleging that the Agency violated the flexiplace agreement by unilaterally changing the ADS assignments. *Id.* at 1. The matter was not resolved and was submitted to arbitration. The Arbitrator framed the issue as follows: "Did the [Director] unilaterally change the Flexiplace Program [Flex Plan] from 3 days to 1 day after the immediate Supervisor had approved a 3-day plan for [the grievant]?" *Id.* at 2 (second alteration in original).

The Arbitrator found that, under the flexiplace agreement, supervisors had the right to change an employee's ADS days or temporarily to suspend the employee's participation in the flexiplace program based on workload availability. *Id.* at 10. Further, the Arbitrator determined that a Director may review ADS requests before they are approved by the immediate supervisor to determine if enough work is available. *Id.* at 12. Accordingly, because the Arbitrator found that the Agency had the authority to change or suspend the flexiplace program, he denied the grievance. *Id.* at 12-13.

III. Positions of the Parties

A. Union's Exception

The Union notes that the issue it submitted to the Arbitrator was: "Did the Agency violate the [flexiplace agreement] when it unilaterally changed the terms of the flexiplace agreements properly and timely entered by bargaining unit employees and the appropriate management official in the Jacksonville, Florida [ODAR]?" Exception at 1. According to the Union, the Agency's submitted issues were: (1) "Whether the [A]gency violated the Agreement by limiting Decision-Writers to working at home one day per week . . . ?"; (2) "Whether the Agency violated the Agreement by retracting work plans signed in error by a Group Supervisor . . . ?"; and (3) "Whether the relief requested by the [U]nion is

available under law, rule, regulation or collective bargaining agreement?" *Id.*

The Union argues that the Arbitrator "did not resolve the issue submitted to him by the Union, . . . the issues submitted to him by the Agency, . . . [or] the issue as he framed it himself." *Id.* Additionally, the Union claims that the Arbitrator "limited the scope of the case" to the individual grievant, even though the Union filed the grievance on behalf of all the Agency's Decision Writers in Jacksonville. *Id.* at 2.

B. Agency's Opposition

The Agency argues that the Union did not "provide sufficient citation" to establish the grounds upon which it relied in filing its exception. Opp'n at 7 (quoting 5 C.F.R. § 2425.6(c)).

Further, the Agency asserts that the Arbitrator did not exceed his authority because he is "free to formulate the issues based on the subject matter of the grievance" and that the Authority must give "substantial deference" to the Arbitrator's formulation. *Id.* at 8. In this regard, the Agency contends that the Arbitrator did not err in "limiting the applicability of his decision" to the grievant because he "may choose to frame the issue narrowly." *Id.* at 9. The Agency claims that the Arbitrator is not required to resolve issues that he did not frame for resolution. *Id.* at 8.

The Agency also argues that the Arbitrator did not fail to resolve his formulated issue. *Id.* at 10. The Agency claims that the Arbitrator reviewed the flexiplace agreement and the hearing testimony before concluding that the Directors may approve or reject employee requests for ADS days "based on projected workloads and employee availability." *Id.* (citing Award at 11-12). The Agency contends that the Union does not contest the Arbitrator's findings. *Id.* According to the Agency, the Arbitrator resolved the issue that was before him and the Union's exception should be denied. *Id.* at 10-11.

IV. Analysis and Conclusion: The Arbitrator did not exceed his authority.

The Union argues that the Arbitrator failed to resolve the issues submitted to arbitration. Exception at 1-2. Arbitrators exceed their authority when they fail to resolve an issue submitted to arbitration, resolve an issue not submitted to arbitration, disregard specific limitations on their authority, or award relief to those not encompassed within the grievance. *See AFGE, Local 1617*, 51 FLRA 1645, 1647 (1996). In the absence of a stipulated issue, the arbitrator's formulation of the issue is accorded substantial deference. *See U.S. Dep't of the Army, Corps of Eng'rs, Memphis Dist., Memphis, Tenn.*, 52 FLRA 920, 924 (1997).

The Authority's Regulations specifically enumerate the grounds that the Authority currently recognizes for reviewing awards. *AFGE, Local 3955, Council of Prison Locals 33*, 65 FLRA 887, 889 (2011) (Member Beck dissenting in part) (citing 5 C.F.R. § 2425.6(a)-(b)) (*AFGE, Local 3955*). Further, "an exception 'may be subject to dismissal or denial if[] . . . [t]he excepting party fails to raise and support a ground as required in' § 2425.6(b)." *Fraternal Order of Police, Pentagon Police Labor Comm.*, 65 FLRA 781, 785 (2011) (quoting 5 C.F.R. § 2425.6(e)) (*Pentagon Police*). In other words, as the Authority has explained, "an exception that fails to support a properly raised ground is subject to denial." *AFGE, Local 3955*, 65 FLRA at 889.

In arguing that the Arbitrator failed to resolve the issues submitted to him in arbitration, the Union has raised a ground recognized by the Authority – that the Arbitrator exceeded his authority. *See* 5 C.F.R. § 2425.6(b)(1)(i). However, the Union has failed to offer any support for its contention. The Union has provided no record citations to demonstrate how it or the Agency articulated the issues presented to the Arbitrator. However, even accepting as true the Union's assertion that its grievance was filed on behalf of all of the Decision Writers and that the Arbitrator formulated the issue as only relating to the grievant, the Union has failed to establish whether the Arbitrator's formulation was outside his authority. The Union does not provide any legal standard by which to analyze its argument, nor does it cite to any case law, from the Authority or otherwise, in support of its position. Additionally, the Union has not demonstrated how the Arbitrator's decision does not resolve the issue as he framed it. The Union offers no explanation for its assertion beyond its statement that review of the various issues "will clearly show" that none of the issues were resolved by the Arbitrator in his award. Exception at 2. In other words, the Union has failed to "explain how" the

Arbitrator exceeded his authority as required by § 2425.6(b).[1]

Accordingly, the Union has failed to support the ground upon which it relied in filing its exceptions and, thus, we deny the Union's exception.[2] *See Pentagon Police*, 65 FLRA at 785.

V. Decision

The Union's exception is denied.

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1. Chairman Pope finds that the Union has not raised a "ground[]" for finding the award deficient under § 7122(a)(2) of the Statute and § 2425.6 of the Authority's Regulations. In this connection, failure to "resolve the issues submitted[,]" Exceptions at 2, is not one of the recognized grounds for review. Rather, it is a *standard* that the Authority applies in determining whether one of the enumerated grounds -- that the arbitrator exceeded his or her authority -- has been established. *See U.S. Dep't of the Navy, Naval Base, Norfolk, Va.*, 51 FLRA 305, 307-08 (1995). As the Union has not cited one of the grounds for review that the Authority recognizes -- which grounds are easily found in § 2425.6(a)-(b) of our Regulations -- or provided citation to legal authority that establishes the purported ground on which the Union relies under § 2425.6(c), Chairman Pope would dismiss the exception under § 2425.6(e). *See, e.g., AFGE, Local 738*, 65 FLRA 931, 932 (2011); *AFGE, Local 3955, Council of Prison Locals 33*, 65 FLRA 887, 889 (2011) (Member Beck dissenting in part).

2. We disagree with our colleague that failing to "resolve the issues submitted" is not a valid articulation of the exceeds-authority ground, Exception at 2, and that this articulation is substantively different from the ground itself. Authority precedent recognizes this articulation as a component of the exceeds-authority ground. *See, e.g., U.S. EPA, N.Y.C., N.Y.*, 64 FLRA 227, 230 (2009) (resolving a claim that the arbitrator "resolved an issue not submitted to arbitration and thus disregarded a specific limitation of his authority" as an exceeds-authority exception); *U.S. Dep't of the Navy, Puget Sound Naval Shipyard, Bremerton, Wash.*, 53 FLRA 1445, 1447 (1998) (Member Wasserman dissenting) (resolving an argument that the arbitrator "erred when he reframed the stipulated issue" as an exceeds-authority exception).

Further, Member Beck notes that a requirement that parties submitting exceptions must use only certain preferred words placed in a certain preferred order can be found in neither our Statute nor § 2425.6 of our Regulations. Member Beck also notes that insisting on such precision exalts form over substance and creates pitfalls of hypertechnicality to the unnecessary detriment of the parties who come before us.