66 FLRA No. 18

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1164
(Union)

and
SOCIAL SECURITY ADMINISTRATION
REGION 1
(Agency)

0-AR-4539

DECISION

August 31, 2011

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 exceptions to an award of Arbitrator William Croasdale 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.[1] The Agency filed an opposition to the Union's exceptions.

The Arbitrator found that the Agency properly reprimanded the grievant because he sent unsanitized documents to individuals who did not need to know the Privacy Act-covered information contained therein. Award at 30. For the reasons set forth below, we dismiss the Union's exceptions in part and deny them in part.

II. Background and Arbitrator's Award

The grievant works as a claims representative in the Agency's New Haven, Connecticut office. *Id.* at 18. The grievant also serves as area vice president and shop steward of the Union and "is allotted time in which to attend to Union business on official time." *Id.*

On one occasion, the grievant sent to the Agency's regional commissioner and the Union president a copy of a grievance concerning denial of official time, with attachments. *Id.* at 18-19, 24. The attachments included "copies of records obtained from [the] [Agency's] computer system . . . [containing] the names of members of the public, their social security numbers, and reasons for seeking services." *Id.* at 19; *see also id.* at 24. On a second occasion, the grievant sent to the Agency's regional commissioner, the Union president, and other Agency officials: (1) copies of a grievance concerning staffing and (2) unsanitized leave slips[2] containing employees' Social Security numbers.[3] *Id.* at 19-20, 24-25.

The Agency then issued the grievant a letter of reprimand for disclosing Privacy Act information on these two separate occasions in violation of Section 1.5 of the Agency's Standards of Conduct.[4] *Id.* at 18, 20, 23. The letter of reprimand discussed the disclosures and the meeting that took place between the Agency management official and the grievant. Opp'n, Attach. 7 at 1-3. The Agency purged the reprimand from the grievant's file after one year. Award at 20.

The Union presented a grievance. *Id.* The matter was unresolved and was submitted to arbitration. The issues at arbitration were as follows:

> 1. Did the [Agency] violate the National Agreement [(parties' agreement)] when it issued a reprimand to the grievant . . . for obtaining and sharing Privacy Act[-]covered information?
>
> 2. Did the Agency violate Article 2, Section [B] and Article 3, Sections 1 and 2A of the [parties' agreement], as well as commit an unfair labor practice [(ULP)] charge by violating 5 U.S.C. [§] 7116(a)(1) and (2) by reprimanding [the] grievant][?]

[1] The Authority issued an Order to Show Cause (Order), directing the Union to explain why its exceptions should not be dismissed as untimely filed. The Union filed a timely response to the Authority's Order, demonstrating that the award was incorrectly dated and that the Union's exceptions were filed timely with the Authority. *See* 5 C.F.R. §§ 2429.21(a), 2429.22. Thus, we will consider the Union's exceptions.

[2] The grievant obtained the unsanitized leave slips from an Agency management official after filing a request for information under 5 U.S.C. § 7114. Award at 19, 24.

[3] Prior to the second disclosure, an Agency management official scheduled a meeting with the grievant to address his possible disclosure of Privacy Act-covered information. *Id.* The meeting took place after both disclosures had occurred. *Id.* at 20, 25.

[4] The relevant portion of Section 1.5 of the Agency's Standards of Conduct is set forth in the appendix to this decision.

3. If so, what shall be the remedy?[5]

Id. at 2.

In the award, the Arbitrator summarized the parties' arguments and discussed testimony presented at arbitration. *See id.* at 21-23, 25-30. The Arbitrator noted that the Agency presented arguments and testimony claiming that the grievant received annual reminders about the Standards of Conduct; that the grievant previously was warned and counseled about misusing Agency records; that the recipients of the records did not need to know the Privacy Act-covered information contained therein; and that the grievant was not on official time when he made the first disclosure. *See id.* at 21, 25-26, 29-30. According to the Arbitrator, the Union maintained that the grievant was on official time and acting in his capacity as a Union representative when he made the disclosures; that the individuals who received the records needed to know the information contained in them; that no information was disclosed to individuals outside of the Agency; and that the Agency had not disciplined anyone previously for such actions. *See id.* at 22-23, 26, 27, 28-29.

After summarizing the parties' arguments and testimony, the Arbitrator found that the Agency's arguments were persuasive and that discipline was warranted. *Id.* at 30. In this regard, the Arbitrator determined that the reprimand was appropriate because the grievant sent "unsanitized materials to individuals and offices that did not have a legitimate reason to receive that information." *Id.* Moreover, the Arbitrator noted that the Agency had reminded and counseled the grievant previously about misusing Agency records. *Id.*

III. Positions of the Parties

A. Union's Exceptions

The Union claims that the grievant was denied due process because the Arbitrator relied on prior counseling in upholding the reprimand. Exceptions at 10-12. According to the Union, Merit Systems Protection Board precedent indicates that an agency may not rely on an employee's "'past disciplinary record where it was not cited' in any notice of proposed action or in a decision notice, and where it 'was mentioned for the first time' that the [a]gency considered and relied upon that discipline during testimony at the hearing." *Id.* at 10-11 (quoting *Lentine v. Dep't of Treasury*, 94 M.S.P.R. 676, 680 (2003); citing *Westmoreland v. Dep't of Veterans Affairs*, 83 M.S.P.R. 625, 628 (1999)). The Union asserts that the reprimand letter did not state that the Agency considered prior warnings and counseling in reprimanding the grievant and that the Agency mentioned this for the first time at arbitration. *Id.* at 11. Consequently, the Union claims that it "was denied the opportunity to prepare an informed defense" and that it "was . . . unprepared to argue the issue before the Arbitrator." *Id.* at 11-12.

Also, the Union asserts that the award is contrary to law because the grievant did not commit an unauthorized disclosure under the Privacy Act. *Id.* at 7-10. According to the Union, the grievant's actions are covered by the Privacy Act's "need to know" exception because the recipients of the records needed to receive and review the information contained therein. *See, e.g., id.* at 7, 8-9. Also, the Union maintains that the grievant's actions are covered by the "routine use" exception to the Privacy Act. *Id.* at 9 & nn.4-5. Moreover, the Union claims that the grievant did not commit an unlawful disclosure under the Privacy Act because the grievant did not disclose information to any outside individuals or agencies, and "intra-agency sharing of information 'is not the evil against which the Privacy Act was enacted.'" *Id.* at 7 (quoting *Clarkson v. Internal Revenue Serv.*, 811 F.2d 1396, 1398 (11th Cir. 1987); *Coburn v. Potter*, 2008 WL 4390153, at *4 (N.D. Ill., Sept. 24, 2008); citing *Murphy v. Soc. Sec. Admin.*, 2006 WL 2691614, at *4 (D. Mass. Sept. 19, 2006)); *see also id.* at 10. Conversely, the Union asserts that an intra-agency disclosure is unlawful only when an agency could use an individual's records "to coerce, harass, or humiliate that individual" and that the grievant did not use the records here "to coerce, harass, intimidate, or humiliate any of the individuals whose information was contained in the subject records." *Id.* at 8, 10 (citing *Parks v. Internal Revenue Serv.*, 618 F.2d 677, 681 & n.1 (10th Cir. 1980)).

The Union claims that the award is contrary to 5 U.S.C. § 7114(a)(1) because it interferes with its right to provide supporting documentation when presenting a grievance. *Id.* at 12. According to the Union, the award, "relying on the Agency's argument and testimony, purports to have the Agency determine for the Union [when] documentation is necessary for representational purposes." *Id.* Additionally, the Union maintains that the award has a chilling effect on union representation because union officials may now hesitate to provide supporting documentation when presenting a grievance. *Id.*

Finally, the Union asserts that the award is contrary to § 7102 of the Statute because the grievant's actions did not rise to the level of flagrant misconduct. *Id.* at 13-14. In this regard, the Union maintains that the grievant "was acting as a union representative and accessed and used the information for dispute resolution purposes." *Id.* According to the Union, the grievant's

[5] The relevant portions of the parties' agreement and 5 U.S.C. § 7116 are set forth in the appendix to this decision.

behavior was not intemperate, and the grievant transmitted the leave slips in response to an Agency management official's request to meet about his possible disclosure of Privacy Act-covered records. *Id.* at 14. The Union claims that, if the grievant was not authorized to access the Agency's system, then the Agency should have cited its Sanctions for Unauthorized Access policy in the reprimand. *Id.* Moreover, the Union asserts that the "Agency should have filed a grievance against [the] [grievant] per Article 24[,] Section 10 of the parties' agreement to dispute the actions he took as a [U]nion representative, instead of penalizing him as an employee." *Id.*

B. Agency's Opposition

The Agency contends that the Arbitrator's reliance on testimony indicating that the grievant had received prior warnings and counseling did not infringe on the grievant's due process rights. Opp'n at 13. The Agency argues that the reprimand did address prior warnings and counseling. *Id.* at 15. According to the Agency, the reprimand specifically mentioned the meeting that took place between the management official and the grievant, discussed emails that the grievant received requiring all employees to review the Standards of Conduct, and mentioned a staff meeting on the Standards of Conduct that the grievant attended. *Id.* Conversely, the Agency contends that, even if the Union did not know prior to arbitration that the Agency considered prior counseling in issuing the reprimand, the Arbitrator's reliance on the prior counseling was not unlawful. *Id.* at 13-14.

Also, the Agency argues that the award is not contrary to the Privacy Act. *Id.* at 8-12. With respect to the first disclosure, the Agency contends that there was no reason that the recipients of the records "needed to know the specific names and Social Security numbers of the members of the public who were served by the New Haven field office, or the reasons those individuals sought service at that office, to process a grievance on the [g]rievant's denial of official time." *Id.* at 9. According to the Agency, the grievant could have redacted the Privacy Act-covered information and still been able to establish the number and times of appointments at the New Haven field office. *Id.* With respect to the second disclosure, the Agency argues that none of the recipients of the leave slips legitimately needed to know individual employees' Social Security numbers. *Id.* at 10. Additionally, the Agency maintains that the precedent cited by the Union is distinguishable from this case. *Id.* at 10-11.

The Agency contends that the award does not interfere with the Union's right to represent employees. *Id.* at 16-17. According to the Agency, "the Union's right to represent employees exists only to the extent that it is done in compliance with other existing laws and regulations, including the Privacy Act and, thus, the Agency's Standards of Conduct." *Id.* at 17. Moreover, the Agency maintains that the award does not prohibit a Union official from using Agency records to support its grievance, but, rather, requires a Union official to redact Privacy Act-covered information before submitting such documentation. *Id.*

Finally, the Agency argues that the award is not contrary to § 7102 of the Statute because the Arbitrator clearly "resolved the grievance based on his interpretation of the [parties' agreement], rather than the Statute and, thus, found that the [g]rievant was disciplined in his capacity as an employee and not [as] a Union official . . . ." *Id.* at 19. Also, the Agency argues that the Arbitrator found credible its testimony indicating that the grievant was not on official time when the first disclosure occurred. *Id.* at 20. Moreover, the Agency contends that, even if the grievant was acting in a representative capacity when the disclosures occurred, the Arbitrator properly upheld the reprimand. *Id.*

IV. Preliminary Issues

Under § 2429.5 of the Authority's Regulations, the Authority will not consider issues that could have been, but were not, presented to the arbitrator. *See, e.g., U.S. Dep't of Homeland Sec., U.S. Customs & Border Prot., JFK Airport, Queens, N.Y.*, 64 FLRA 841, 843 (2010) (*JFK Airport*). However, where an issue arises from the issuance of the award and could not have been presented to the arbitrator, it is not precluded by § 2429.5. *See, e.g., U.S. Dep't of Justice, Fed. Bureau of Prisons, Fed. Corr. Complex, Oakdale, La.*, 65 FLRA 35, 38 (2010); *U.S. Dep't of Agric., Animal & Plant Health Inspection Serv., Plant Prot. & Quarantine*, 57 FLRA 4, 5 (2001) (citing *Prof'l Airways Sys. Specialists, Dist. No. 1, MEBA/NMU (AFL-CIO)*, 48 FLRA 764, 768 n.* (1993)).

The Union asserts that the grievant was denied due process because the Arbitrator improperly relied on prior counseling in upholding the reprimand. Exceptions at 10-12. The record establishes that the Union was on notice that the Agency argued below that it considered prior warnings and counseling in issuing the reprimand. *See* Award at 25, 29-30 (noting that the Agency argued below that it gave the grievant numerous warnings and counseled the grievant about misusing Agency records); Exceptions at 11 (conceding that, at arbitration, an Agency witness testified that the grievant "received prior counseling for similar actions and that the Agency relied on the prior counseling in determining to reprimand the [g]rievant"). Despite this notice, the record contains no indication that the Union ever argued to the Arbitrator

that the Agency improperly considered prior warnings and counseling in reprimanding the grievant. *See* Exceptions, Attach. 2 at 2-3 (asserting, in its closing statement, only that the Agency's enforcement of Section 1.5 of the Standards of Conduct was lax and that the grievant was unaware that a Union official acting in a representative capacity could not access or share protected information with Agency officials). Consequently, because the Union could have presented, but did not present, this argument to the Arbitrator, it may not do so now. *See, e.g., AFGE, Local 376*, 62 FLRA 138, 139 (2007) (concluding that, because there was no evidence that the union argued before the arbitrator that the grievant was denied due process, its exception should be dismissed under § 2429.5 of the Authority's regulations); *Nat'l Ass'n of Gov't Emps.*, 60 FLRA 35, 39 (2004) (dismissing the union's argument that the agency's suspension of the grievant violated his due process rights because the union raised this argument for this first time in its exceptions). Accordingly, we dismiss the Union's exception.

Moreover, to the extent that the Union asserts that the grievant's actions are covered by the "routine use" exception to the Privacy Act, it raises this assertion for the first time in its exceptions. *See* Exceptions at 9 & nn.4-5; Award at 28 (noting testimony only indicating that, in a prior case, an Agency official argued that the "routine use" and "need to know" exceptions to the Privacy Act applied when the Agency sent "unredacted leave slips to the arbitrator during the grievance process of the case"). As noted above, § 2429.5 bars a party from raising issues in its exceptions that could have been, but were not, presented to the arbitrator. *See, e.g., JFK Airport*, 64 FLRA at 843. Because the Union could have presented, but did not present, this argument to the Arbitrator, we find that it may not do so now.

V. Analysis and Conclusions

The Authority reviews questions of law raised by exceptions to an arbitrator's award de novo. *See NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)). In applying a standard of de novo review, the Authority determines whether the arbitrator's legal conclusions are consistent with the applicable standard of law. *See NFFE, Local 1437*, 53 FLRA 1703, 1710 (1998). In making that determination, the Authority defers to the arbitrator's underlying factual findings. *Id*.

A. The award is not contrary to the Privacy Act.

The Union claims that the award is contrary to law because the grievant did not commit an unauthorized disclosure under the Privacy Act. Exceptions at 7-10.

The Privacy Act restricts the disclosure and re-disclosure of personally identifiable records.[6] *See, e.g., AFGE, Local 32*, 59 FLRA 926, 929 (2004); *Gen. Servs. Admin.*, 53 FLRA 925, 933 (1997). With certain enumerated exceptions, the Privacy Act provides that: "No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains . . . ." *AFGE, Local 32*, 59 FLRA at 929 (quoting 5 U.S.C. § 552a(b)). Under the "need to know" exception to the Privacy Act, disclosure of a record is permitted "to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties." 5 U.S.C. § 552a(b)(1). This exception focuses on the needs of the agency official who received the disclosure, rather than on the needs of the official who made the disclosure. *See Doe v. U.S. Dep't of Justice*, 660 F. Supp. 2d 31, 45 (D.D.C. 2009); *Cacho v. Chertoff*, 2006 WL 3422548, at *5 (D.D.C. Nov. 28, 2006). Moreover, this exception applies to intra-agency disclosures. *See Britt v. Naval Investigative Serv.*, 886 F.2d 544, 547 (3d Cir. 1989); *Ciralsky v. Cent. Intelligence Agency*, 689 F. Supp. 2d 141, 154-55 (D.D.C. 2010); *Gamble v. Dep't of the Army*, 567 F. Supp. 2d 150, 157 (D.D.C. 2008); *Thompson v. Dep't of State*, 400 F. Supp. 2d 1, 20 (D.D.C. 2005); *see also Parks*, 618 F.2d at 681 n.1 (indicating that the purpose § 552a(b)(1) is "to prevent the office gossip, interoffice and interbureau leaks of information about persons of interest in the agency or community, or such actions as the publicizing of information of a sensational or salacious nature or of that detrimental to character or reputation" and covers "such activities as . . . reporting personal disclosures contained in personnel and medical records").

Here, the Arbitrator set forth specific factual findings in support of his legal conclusion that the grievant's discipline was warranted. Award at 30. Specifically, the Arbitrator found that the reprimand was appropriate because the grievant sent "unsanitized materials to individuals and offices that did not have a legitimate reason to receive that information." *Id.* Implicitly, the Arbitrator determined that the recipients did not need to know the Privacy Act-covered information contained in the attachments to evaluate the grievances. *See id.*

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[6] Under the Privacy Act, a record is defined as "any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his . . . medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual . . . ." 5 U.S.C. § 552a(a)(4).

Although the Union disagrees with these factual findings, it does not argue that they are based on a nonfact, and, as stated previously, in assessing whether an arbitration award is contrary to law, the Authority defers to an arbitrator's factual findings. *See, e.g., Soc. Sec. Admin.*, 65 FLRA 523, 526 (2011); *AFGE, Local 2382*, 64 FLRA 123, 124 n.4 (2009) (concluding that, to preclude the Authority from deferring to an arbitrator's factual finding in determining whether the arbitrator's legal conclusion is consistent with the applicable standard of law, the appealing party needs to establish that the factual finding is deficient as based on a nonfact); *U.S. Dep't of Transp., Fed. Aviation Admin.*, 63 FLRA 502, 504 (2009) (noting that, in the absence of a determination that a factual finding is deficient as based on a nonfact, the Authority defers to an arbitrator's factual findings in resolving whether the award is contrary to law). Also, the Arbitrator's factual findings support the conclusion that the need to know exception does not apply in this case. *See* 5 U.S.C. 552a(b)(1) (permitting disclosure of a record "to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties"); *cf. Pippinger v. Rubin*, 129 F.3d 519, 529-30 (10th Cir. 1997) (finding that the recipients needed to know the information contained in the records, including the employee's name, to conduct a thorough investigation). Moreover, because Section 1.5 of the Standards of Conduct requires that any disclosure made within an agency must be to employees who legitimately need to know the information to perform their official duties, the Arbitrator's findings support the conclusion that discipline was warranted under that Section. *See* Opp'n, Attach. 4 at 2-3 (requiring that, "[w]hen using systems of records protected by the Privacy Act," employees should "[e]nsure that any disclosure made within [the Agency] is in fact made to [Agency] employees and that such employees have a legitimate need to know the information in the course of their official duties"). Consequently, based on the Arbitrator's factual findings, the Union has not established that the Arbitrator improperly found that the recipients did not need to know the Privacy Act-covered information contained in the attachments. *See, e.g., AFGE, Local 1102*, 65 FLRA 148, 150-51 (2010) (concluding that the union's exception failed to demonstrate that the award was deficient because, based on the arbitrator's factual findings, his application of the confidentiality provisions of the Privacy Act was not contrary to law); *Nat'l Ass'n of Gov't Emps., Local R5-66*, 40 FLRA 504, 506, 508-09 (1991) (upholding the award finding that discipline was warranted when the grievant disclosed and released confidential information that he obtained as an employee without proper authorization because the union's exceptions provided no basis for finding the award deficient).

Furthermore, the Union's assertion that the award is contrary to law because intra-agency sharing of information does not constitute an unlawful disclosure under the Privacy Act is similarly without merit. As noted above, 5 U.S.C. § 552a(b)(1) clearly indicates that intra-agency disclosures are covered by the Privacy Act except when employees need to know the information to perform their official duties. *See* § 552a(b)(1) (authorizing disclosure of a record "to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties"). Legislative history also suggests that the Privacy Act covers intra-agency disclosures. *See* Privacy Act, H.R. 16373, 93d Cong. (1974) (indicating that one of the purposes of § 552a is to prohibit disclosure of "personal information within the agency other than to officers or employees who have a need for such personal information in the performance of their duties for the agency"). Moreover, the cases that the Union cites in its exceptions are distinguishable from this case and do not demonstrate that the Privacy Act was enacted to address only inter-agency disclosures. For instance, *Murphy* is inapplicable because, although the plaintiff argued that the defendants "did not make required disclosures to [him]," he never asserted "that the defendants disclosed his records . . . ." 2006 WL 2691614, at *4. Also, in *Clarkson*, the court implicitly found that, because the agency officials who received the disclosure needed to know the material in question in order to pursue legitimate law enforcement activities, the disclosure was not made in violation of the Privacy Act. *See* 811 F.2d at 1397-98 (indicating that "the material in question was collected and maintained in connection with legitimate law enforcement activities" and that the dissemination of this material to criminal investigation units within the agency did not violate the Privacy Act's disclosure requirements). Finally, in *Coburn*, the court did not find that the Privacy Act only covers inter-agency disclosures; rather, the court determined that, because the agency employees "ha[d] a 'need for the record in the performance of their duties[,]'" it did not need to consider whether the Privacy Act was enacted to address intra-agency disclosures. 2008 WL 4390153, at *4 (quoting 5 U.S.C. § 552a(b)(1)) (emphasis omitted).

Accordingly, we deny the Union's exception.

B. The award is not contrary to 5 U.S.C. § 7114(a)(1).

According to the Union, the award is contrary to § 7114(a)(1) of the Statute because it interferes with its right to provide supporting documentation when presenting a grievance. Exceptions at 12. In this regard, the Union claims that the award, "relying on the Agency's argument and testimony, purports to have the Agency determine for the Union [when] documentation is necessary for representational purposes." *Id.* Moreover,

the Union asserts that the award has a chilling effect on union representation. *Id.*

The Union's claim that the award is contrary to § 7114(a)(1) of the Statute is without merit. Here, the Arbitrator found that, because the recipients did not need to know the Privacy Act-covered information contained in the attachments to evaluate the grievances, the disclosure of that information was barred by the Privacy Act. Award at 30. Although § 7114(a)(1) entitles a union "to act for, and negotiate collective bargaining agreements covering, all employees in the unit," the Union cites no authority permitting a union unlimited discretion to determine how to support a grievance. 5 U.S.C. § 7114(a)(1). In particular, the Union cites no authority supporting a conclusion that § 7114 permits a union to support a grievance by disclosing information when that disclosure is prohibited by law. Because the Arbitrator found that disclosure of the disputed information contained in the attachments was barred by the Privacy Act, the Union has not demonstrated that the award is deficient on this basis. *See U.S. Dep't of the Navy, Naval Mine Warfare Eng'g Activity, Yorktown, Va.*, 39 FLRA 1207, 1214 (1991) (holding that the right to represent under § 7114(a)(1) does not override other provisions of law); *AFGE, Local 1931, AFL-CIO*, 32 FLRA 1023, 1031-32 (1988) (same).

Accordingly, we deny the Union's exception.

C. The award is not contrary to 5 U.S.C. § 7102.

The Union claims that the award is contrary to § 7102 of the Statute because the grievant was acting in a representative capacity. Exceptions at 13-14.

Under the Statute, a union official acting in a representative capacity may not be disciplined for actions taken in performing representative duties unless such action exceeds the bounds of protected activity. *See, e.g., U.S. Dep't of the Army, U.S. Army Corps of Eng'rs, St. Louis Dist., St. Louis, Mo.*, 65 FLRA 642, 645 (2011); *U.S. Dep't of Veterans Affairs Med. Ctr., Richmond, Va.*, 63 FLRA 553, 555 (2009) (*VA Richmond*); *U.S. Dep't of the Air Force, Aerospace Maint. & Regeneration Ctr., Davis Monthan Air Force Base, Tucson, Ariz.*, 58 FLRA 636, 636 (2003).

The Union's assertion that the award is contrary to § 7102 of the Statute is without merit. Here, the Arbitrator determined that the reprimand was warranted because the grievant violated Section 1.5 of the Standards of Conduct by unlawfully disclosing Privacy Act-covered information. *See, e.g.,* Award at 23, 30. Because the grievant engaged in misconduct by making an unlawful disclosure, the grievant's actions exceed the bounds of protected activity. *Cf. VA Richmond*, 63 FLRA at 554, 556 (upholding the arbitrator's determination that the agency did not have just cause to suspend the grievant because she did not engage in behavior that could properly be characterized as misconduct). Thus, even if the grievant was acting in a representative capacity when he made the disclosures, the Union has failed to demonstrate that the Arbitrator erred in sustaining the reprimand. *See AFGE, Local 987*, 63 FLRA 362, 364 (2009) (finding that, because the grievant's conduct exceeded the bounds of protected activity, the union did not demonstrate that the arbitrator erred in sustaining the suspension).

Accordingly, we deny the Union's exception.

VI. Decision

The Union's exceptions are dismissed in part and denied in part.

APPENDIX

Section 1.5 of the Standards of Conduct states, in pertinent part:

> *Using Records Subject to the Privacy Act*
> Many official records (for example, claims folders, personnel records, etc.) are contained in systems of records protected by the Privacy Act. A system of records is any group of records under the control of the agency from which information is retrieved by a personal identifier such as your name, Social Security number or other unique number or symbol assigned to you as an SSA employee. The Privacy Act is a law that provides certain safeguards for individuals against invasion of personal privacy.
>
> When using systems of records protected by the Privacy Act, you should:
>
> . . . .
>
> - Ensure that any disclosure made within SSA is in fact made to SSA employees and that such employees have a legitimate need to know the information in the course of their official duties.

Opp'n, Attach. 4 at 2-3.

Article 2, Section B of the parties' agreement states:

> B. The Administration shall not restrain, interfere with, or coerce representatives of the Union in the exercise of their rights under 5 U.S.C. 71 and this agreement.

Award at 3.

Article 3 of the parties' agreement states, in pertinent part:

> *Section 1. Right to Unionism*
>
> Each employee shall have the right to join or assist the Union, or to refrain from such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under law, such right includes the right:
>
> - To act for a labor organization in the capacity of a representative, and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and
> - To engage in collective bargaining with respect to conditions of employment through representatives.
>
> *Section 2. Personal Rights*
>
> A. All employees shall be treated fairly and equitably in all aspects of personnel management and without regard to political affiliation, race, color, religion, national origin, sex, sexual orientation, marital status, age, parental status or disabling condition, and with proper regard and protection of their privacy and constitutional rights.
>
> The parties agree that in the interest of maintaining a congenial work environment, Agency employees will deal with each other in a professional manner and with courtesy, dignity, and respect. To that end, all Social Security employees should refrain from coercive, intimidating, loud[,] or abusive behavior.

Id. at 3-4.

5 U.S.C. § 7116(a) states, in pertinent part:

> (a) For the purpose of this chapter, it shall be an unfair labor practice for an agency –
>
> (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;
>
> (2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment[.]