69 FLRA No. 70

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 836
(Union)

and

SOCIAL SECURITY ADMINISTRATION
(Agency)

0-AR-5110

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DECISION

July 29, 2016

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

I. Statement of the Case

Arbitrator Rex H. Wiant conducted two expedited arbitrations to resolve two separate grievances involving the same grievant. The arbitrations took place on the same day. The first arbitration addressed the grievant's one-day suspension and the second arbitration addressed his fourteen-day suspension. The Arbitrator later issued two separate awards simultaneously, and denied both grievances. In the first award, he concluded that the Agency had just cause to suspend the grievant for one day. And in the second award, he determined that the Agency had just cause to suspend the grievant for fourteen days. This case presents us with four substantive questions.

The first question is whether the awards are contrary to an Agency-wide regulation. Because the Union does not provide any arguments to support this contention, the answer is no.

The second question is whether the Arbitrator exceeded his authority. Because the Arbitrator's basis for declining to resolve one of the Union's claims is not clear, we remand that aspect of the award for further findings. But because the parties' stipulated issue did not specifically include another Union claim, the Arbitrator did not exceed his authority when he failed to address that claim, and therefore the answer is no.

The third question is whether the Arbitrator failed to conduct fair hearings. Because the Union's assertion that the Arbitrator failed to acknowledge or discuss certain evidence and arguments does not provide a basis for finding that he denied the Union a fair hearing, the answer is no.

The fourth question is whether the awards fail to draw their essence from the parties' collective-bargaining agreement. Because part of the Union's arguments "parallel"[1] the Union's fair-hearing arguments, which we reject, and because the Union's remaining arguments do not demonstrate that the Arbitrator interpreted the parties' agreement in a manner that is irrational, unfounded, implausible, or in manifest disregard of the agreement, the answer is no.

II. Background and Arbitrator's Awards

The grievant is an Agency claims representative who also serves as Union president. After a series of alleged incidents, such as: talking with other employees about non-work matters, failing to make a phone-call appointment, and not following directions, the Agency suspended the grievant for one day for alleged "failure to work."[2] The Union filed a grievance and invoked arbitration when the parties could not resolve the matter.

Over a year later, the Agency suspended the grievant for fourteen days for allegedly providing "inaccurate time records" and "request[ing] union time to visit [one] [o]ffice but instead [going] to [another] [o]ffice."[3] The Union also grieved this action and, when the grievance was not resolved, invoked arbitration.

The Arbitrator heard both grievances on the same day, as permitted by the expedited-arbitration procedures of the parties' agreement. The parties stipulated to the issues for both hearings. For the first arbitration, they stipulated, in relevant part, to the following: "Was the [one]-day suspension for just cause, and was it in accordance with the [parties' agreement] and applicable laws and regulations?"[4] The stipulated issue for the second arbitration was the same, except that it replaced the words "[one]-day suspension" with "[fourteen]-day suspension."[5]

For reasons that are not clear, the Arbitrator reframed the issues. Omitting the reference to "applicable laws and regulations,"[6] the Arbitrator framed the issue for the first arbitration as: "Was the [one]-day

[1] Exceptions Br. at 11.
[2] First Award at 2.
[3] Second Award at 2.
[4] Exceptions, JX 1 at 1.
[5] Exceptions, 2JX 1 at 1.
[6] Exceptions, JX 1 at 1.

suspension for just cause and was it in accordance with the [parties' agreement]?"[7] For the second arbitration, he used the same reframed issue, except that he replaced the words "[one]-day suspension" with "[fourteen]-day suspension."[8] The Arbitrator concluded that the Agency had just cause for both suspensions, and he denied both grievances. However, the Arbitrator did not rule on a Union claim that the one-day suspension was based on anti-union animus, determining that "[t]he claim of anti-union animus is more properly referred to the Federal Labor Relations Authority [(FLRA)]."[9]

The Union filed exceptions to both awards. The Agency filed an opposition to the Union's exceptions.

III. Preliminary Matters: Sections 2425.4(c) and 2429.5 of the Authority's Regulations bar some of the Union's exceptions.

The Agency asserts that the Union is barred from raising various arguments in its exceptions because it did not raise those arguments before the Arbitrator.[10] Under §§ 2425.4(c) and 2429.5 of the Authority's Regulations, the Authority will not consider any evidence or arguments that could have been, but were not, presented to the arbitrator.[11]

In its exceptions, the Union claims that the Arbitrator erred by failing to resolve the Union's anti-union-animus argument.[12] In its opposition, the Agency claims that the Union's anti-union-animus argument is barred because it was not raised before the Arbitrator.[13]

Regarding the one-day suspension, the Arbitrator expressly found that the Union made an anti-union-animus argument during the arbitration,[14] and the Union has submitted a copy of its opening statement showing that it did so.[15] Accordingly, §§ 2425.4(c) and 2429.5 do not bar the Union's claim regarding anti-union animus in connection with the one-day suspension because the record demonstrates that the claim was raised before the Arbitrator.

Regarding the fourteen-day suspension, the Union concedes that it did not make an anti-union-animus argument during the second arbitration.[16] The Union explains that it did not do so because the Arbitrator refused to hear such a claim in connection with the arbitration of the one-day suspension.[17] But the Union provides no basis for finding that the Union could not have at least attempted to raise the argument in connection with the fourteen-day suspension, thereby preserving its right to raise the issue on exceptions. Because the Union did not make this argument before the Arbitrator, but could have done so, it may not do so now.[18] Accordingly, applying §§ 2425.4(c) and 2429.5, we dismiss the Union's exceeded-authority, fair-hearing, and contrary-to-law exceptions to the second award to the extent that they rely on the Arbitrator's failure to address its anti-union-animus argument when he rendered that award.

In its exceptions, the Union also claims that the Arbitrator erred by failing to resolve the Union's argument that the fourteen-day suspension was untimely under the parties' agreement.[19] In its opposition, the Agency claims that the argument is barred because it was also not raised before the Arbitrator.[20]

As to this argument, the record does not provide a sufficient basis for finding that it was not raised below. In keeping with the parties' expedited grievance-arbitration procedures, there is no transcript, no list of exhibits, and no briefs submitted to the Arbitrator. Lacking an objective basis for determining whether this argument was or was not argued before the Arbitrator, we find that §§ 2425.4(c) and 2429.5 do not bar the argument, and we decline to dismiss the Union's exceeded-authority exception to the extent it relies on that argument.

[7] First Award at 1.
[8] Second Award at 1.
[9] First Award at 5.
[10] Opp'n Br. at 7, 11-12, 13.
[11] 5 C.F.R. §§ 2425.4(c), 2429.5; *see also U.S. DHS, CBP*, 68 FLRA 157, 159 (2015) (citations omitted).
[12] Exceptions Br. at 5-7.
[13] Opp'n Br. at 7, 11-12.
[14] First Award at 5.
[15] Exceptions, UX 1 at 2.
[16] Exceptions Br. at 4-5.
[17] *Id.*
[18] *AFGE, Local 3911, AFL-CIO*, 68 FLRA 564, 566 (2015) (citing *AFGE, Local 1164*, 66 FLRA 74, 77 (2011)).
[19] Exceptions Br. at 9.
[20] Opp'n Br. at 11, 13.

IV. Analysis and Conclusions

A. The awards are not contrary to an Agency-wide regulation.

The Union contends that both awards are contrary to an Agency-wide regulation.[21] But the Union does provide any arguments to support this contention. Therefore, because the Union fails to support this exception, we deny it under § 2425.6(e)(1) of the Authority's Regulations.[22]

B. The Arbitrator did not exceed his authority, in part, and we remand the first award, in part.

The Union argues that the Arbitrator exceeded his authority in a variety of ways.[23] 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.[24] In determining whether an arbitrator has exceeded his or her authority, the Authority accords an arbitrator's interpretation of a stipulated issue the same substantial deference that it accords an arbitrator's interpretation and application of a collective-bargaining agreement.[25]

1. We remand the first award to the Arbitrator for further findings concerning the Arbitrator's basis for declining to resolve the Union's anti-union-animus claim.

The Union claims that the Arbitrator exceeded his authority by failing to resolve the issue of whether the grievant's one-day suspension was a result of anti-union animus for the grievant's protected Union activity – which the Union characterizes as an unfair-labor-practice (ULP) claim.[26] The Agency concedes that, as discussed above, the parties' stipulated issue concerning the one-day suspension included a claim regarding alleged violations of "applicable laws and regulations."[27] But the Arbitrator modified the parties' stipulated issue to omit those words. And the Arbitrator did not address the merits of any legal issues, instead stating that the Union's "claim of anti-union animus is more properly referred to the [FLRA]."[28]

In these circumstances, the record is not sufficient for us to rule on the Union's exception. The Arbitrator's possible basis for declining to resolve the Union's anti-union-animus claim includes a number of possibilities, each with a different legal consequence. For example, the Arbitrator may simply have misstated the stipulated issue, which arguably would render the first award deficient because it resulted in the Arbitrator's failure to resolve a stipulated issue.[29] Or the Arbitrator may have believed, erroneously, that as a matter of law, only the FLRA can address statutory ULP allegations of anti-union animus.[30] As another alternative, the Arbitrator may have determined that the parties' agreement precludes grievances alleging such ULP claims, potentially raising issues regarding whether the award fails to draw its essence from the parties' agreement.[31] Still further, the Arbitrator may have interpreted the stipulated issue as not involving a specific ULP claim concerning anti-union animus, also raising essence issues.[32] And there may be other explanations. But to choose among these possibilities would require us to speculate, which we decline to do. Therefore, we find it necessary to remand this aspect of the first award to the parties for resubmission to the Arbitrator, absent settlement, for further findings, in order to resolve the Union's related exceeded-authority claim.

Our dissenting colleague disagrees. The dissent acknowledges that part of the stipulated issue involved whether the one-day suspension violated "*applicable laws and regulations*,"[33] but effectively finds that the Arbitrator did not interpret this wording as including an

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[21] Exceptions at 5.
[22] 5 C.F.R. § 2425.6(e)(1).
[23] Exceptions Br. at 5-10.
[24] *AFGE, Local 1617*, 51 FLRA 1645, 1647 (1996) (citing *USDA, Animal & Plant Health Inspection Serv., Plant Prot. & Quarantine*, 51 FLRA 1210, 1218 (1996)).
[25] *U.S. DHS, U.S. ICE*, 65 FLRA 529, 532 (2011) (citing *U.S. Info. Agency, Voice of Am.*, 55 FLRA 197, 198 (1999)).
[26] Exceptions Br. at 5-7.
[27] Opp'n Br. at 7.
[28] First Award at 5.
[29] *See, e.g., AFGE, Local 1547*, 65 FLRA 91, 95 (2010) (finding that arbitrator exceeded authority by failing to resolve stipulated issue).
[30] *See, e.g., AFGE, Local 3529*, 57 FLRA 464, 465 (2001) (citing *NTEU, Chapter 168*, 55 FLRA 237, 241 (1999)) (noting that arbitrators have authority to resolve ULP claims provided (1) the parties have not agreed to exclude ULPs from the scope of their negotiated grievance procedures and (2) the issue of whether the agency committed a ULP has been properly submitted to arbitration).
[31] *See AFGE, Local 3911*, 56 FLRA 480, 482 (2000) (parties may agree to exclude any matter from the scope of their negotiated grievance procedures; Authority applies essence analysis to disputes over arbitrator's interpretation of purely contractual exclusions to scope of negotiated grievance procedures).
[32] *E.g., U.S. Dep't of Interior, Bureau of Reclamation, Great Plains Region, Colo./Wyo. Area Office*, 68 FLRA 992, 994 (2010) (citations omitted) (applying essence analysis to arbitrator's interpretation of stipulated issue).
[33] Dissent at 11.

anti-union-animus claim. However, for the reasons stated above – including the Arbitrator's statement that the Union's "claim of anti-union animus is more properly referred to the [FLRA]"[34] – it is *far* from clear that the Arbitrator considered the anti-union-animus claim as being distinct from the alleged violation of "applicable laws and regulations."[35] While the dissent states that we "should not simply speculate about what an '[a]rbitrator *may have intended* to find,'"[36] the *dissent* does precisely that when it reaches definitive conclusions about how the Arbitrator interpreted the stipulated issue.

Therefore, we remand this aspect of the first award for further findings, in order to resolve the Union's related exceeded-authority claim. And consequently, we find it premature at this time to separately resolve the Union's fair-hearing and contrary-to-law exceptions that relate to the Arbitrator's decision not to resolve the Union's anti-union-animus allegation in the first award on its merits.

Making an argument on behalf of the Agency that the Agency does not make, the dissent claims that the parties' expedited-arbitration procedure "[gave] the Arbitrator full 'authority to take steps necessary'" to see that the grievance was resolved "'swift[ly] and economical[ly],'"[37] regardless of the Statute's standards for review of arbitration awards. And because our remand would delay the grievance's resolution, the dissent thinks that the remand "runs counter to the Authority's mandate to 'facilitate[] and encourage[] the amicable settlement[] of disputes.'"[38] In effect, the dissent finds that, by agreeing to expedited arbitration, the Union waived its right to except to the award on exceeds-authority grounds.

As an initial matter, neither party argues, and the Arbitrator did not find, that such a waiver occurred. But, even leaving those facts aside, we disagree with the dissent. The Authority has held that a party's waiver of its statutory right to file exceptions must be clear and unmistakable.[39] Here, the dissent points to no contractual wording that would support finding such a waiver. Under longstanding Authority precedent, that the parties agreed to expedited arbitration is simply not enough.[40] Further, our holding here is consistent with the Authority's practice of remanding awards – including awards resulting from expedited arbitration – when the Authority is unable to determine, based on the record, whether the award is deficient.[41]

> 2. The Arbitrator did not exceed his authority by failing to resolve whether the suspensions were in accordance with particular sections of the parties' agreement concerning progressive and timely discipline.

The Union claims that the Arbitrator exceeded his authority by failing to resolve whether the two suspensions were in accordance with the parties' agreement, including the agreement's requirements for progressive and timely discipline in Article 23, Sections 1 and 2.[42] Article 23, Section 1 provides, as relevant here, that the "parties agree to the concept of progressive discipline . . . . A common pattern of progressive discipline is reprimand, short[-]term suspension, long[-]term suspension[,] and removal."[43] Article 23, Section 2 provides, as relevant here, that "[i]f . . . disciplinary or adverse action is necessary, such action will be initiated timely after the offense was committed or made known to the Agency."[44] As discussed above, the Arbitrator resolved the grievances by finding that the Agency had just cause for both suspensions.

The Union's claim does not demonstrate that the Arbitrator exceeded his authority by resolving the grievances based only on his just-cause findings. The Union concedes that Article 23 requires that discipline be for "just cause."[45] And the Arbitrator found that the Agency "had just cause to discipline the [g]rievant,"[46] which effectively resolved whether the Agency violated Article 23.

The Union provides no basis for finding that the stipulated issue necessarily encompassed the particular sections of the parties' agreement that the Union cites in its exception. The Authority has held that an arbitrator does not exceed his authority by failing to address an argument that the parties did not include in their

[34] First Award at 5.
[35] Exceptions, JX 1 at 1.
[36] Dissent at 11.
[37] *Id.* at 12 (quoting Exceptions, Joint Ex. 2 at 25-4).
[38] *Id.* at 13 (quoting 5 U.S.C. § 7101(a)(1)(C)).
[39] *E.g.*, *NFFE, Local Lodge 2276, IAMAW*, 61 FLRA 387, 389 (2005) (citing *U.S. EEOC, Balt. Field Office, Balt., Md.*, 59 FLRA 688, 689-90 (2004)); *SSA*, 31 FLRA 1277, 1279 (1988) (citing *IRS*, 29 FLRA 162, 166 (1987)).
[40] *E.g.*, *SSA*, 25 FLRA 513, 515 (1987) (citations omitted).
[41] *See, e.g.*, *SSA, Balt., Md.*, 64 FLRA 516, 519 (2010); *SSA*, 35 FLRA 377, 378, 382-83 (1990); *SSA*, 32 FLRA 712, 714, 716 (1988); *U.S. Air Force Logistics Command, Tinker Air Force Base, Tinker, Okla. City, Okla.*, 32 FLRA 252, 254 (1988).
[42] Exceptions Br. at 8-9.
[43] Exceptions, Joint Ex. 2 at 23-1.
[44] *Id.*
[45] Exceptions Br. at 8.
[46] First Award at 5; Second Award at 5.

stipulation.[47] Because the parties' stipulated issues did not specifically include a claim of particular Article 23 violations concerning progressive and timely discipline, the Arbitrator did not exceed his authority by not addressing those claims.[48]

Accordingly, we deny the Union's exceeded-authority exception concerning the Arbitrator's failure to resolve the grievances in accordance with the particular sections of the parties' agreement concerning progressive and timely discipline.

C. The Arbitrator conducted fair hearings.

The Union contends that the Arbitrator failed to conduct fair hearings.[49] The Authority will find that an arbitrator denied a fair hearing when the excepting party demonstrates that the arbitrator refused to hear or consider pertinent and material evidence, or he or she conducted the proceedings in a manner that so prejudiced a party as to affect the fairness of the proceedings as a whole.[50] The Authority will not find that an arbitrator refused to consider evidence or failed to provide a fair hearing merely because he or she does not mention a particular evidentiary item in the award.[51] And the Authority will not find an award deficient in this regard merely because it does not address every argument raised by the parties.[52]

The Union asserts that the Arbitrator denied the Union a fair hearing by not acknowledging or discussing certain evidence and related arguments.[53] The Union's assertions do not establish that the Arbitrator denied the Union a fair hearing. As indicated, just because an award does not mention a particular evidentiary item or argument does not demonstrate that the arbitrator refused to consider it or failed to provide a fair hearing.[54] Accordingly, we deny this exception.

D. The awards draw their essence from the parties' agreement.

The Union argues that the awards do not draw their essence from the parties' agreement.[55] In reviewing an arbitrator's interpretation of a collective-bargaining agreement, the Authority applies the deferential standard of review that federal courts use in reviewing arbitration awards in the private sector.[56] Under this standard, the Authority will find that an arbitration award is deficient as failing to draw its essence from the collective-bargaining agreement when the appealing party establishes that the award: (1) cannot in any rational way be derived from the agreement, (2) is so unfounded in reason and fact and so unconnected with the wording and purposes of the agreement as to manifest an infidelity to the obligation of the arbitrator, (3) does not represent a plausible interpretation of the agreement, or (4) evidences a manifest disregard of the agreement.[57] The Authority and the courts defer to arbitrators in this context "because it is the arbitrator's construction of the agreement for which the parties have bargained."[58]

The Union argues that its essence claim "parallels" its fair-hearing exception.[59] Specifically, the Union asserts that the Arbitrator "ignored the relevance of" the parties' agreement, claiming that the Arbitrator "[could] not possibly resolve . . . whether the suspensions were in accordance with the parties' [agreement] without making even the slightest mention [of] the [a]greement and the restrictions it imposes on issuing discipline."[60]

To the extent that the Union's essence exception restates its fair-hearing exception, we reject the Union's essence exception for the same reasons that we rejected its fair-hearing exception. And to the extent the Union argues that the Arbitrator failed to consider specific sections of the parties' agreement, the pertinent portion of the stipulated issue before the Arbitrator for both awards was whether, under the parties' agreement, the Agency had just cause to discipline the grievant.[61] The Arbitrator found that it did.[62] The Union provides no basis for finding that the pertinent portion of the stipulated issue, for either of the arbitrations, encompassed more than a

[47] *GSA, E. Distrib. Ctr., Burlington, N.J.*, 68 FLRA 70, 72 (2014) (citing *U.S. DHS, CBP Agency, N.Y.C., N.Y.*, 60 FLRA 813, 816 (2005)).
[48] *E.g.*, *id.*
[49] Exceptions Br. at 10-11.
[50] *U.S. Dep't of Transp., FAA*, 65 FLRA 806, 807 (2011) (citation omitted).
[51] *AFGE, Local 3438*, 65 FLRA 2, 3 (2010) (*Local 3438*) (citation omitted).
[52] *Id.* at 3 (citations omitted).
[53] Exceptions Br. at 11.
[54] *Local 3438*, 65 FLRA at 3-4.
[55] Exceptions Br. at 11-12.
[56] *AFGE, Council 220*, 54 FLRA 156, 159 (1998) (citing 5 U.S.C. § 7122(a)(2)).
[57] *U.S. DOL (OSHA)*, 34 FLRA 573, 575 (1990) (citation omitted).
[58] *Id.* at 576 (citing *Paperworkers v. Misco, Inc.*, 484 U.S. 29, 38 (1987); *Dep't of HHS, SSA, Louisville, Ky. Dist.*, 10 FLRA 436, 437 (1982)).
[59] Exceptions Br. at 11.
[60] *Id.* at 12.
[61] Exceptions, JX 1 at 1, 2JX 1 at 1; *see also* First Award at 1 (Arbitrator's reframing of the stipulated issue); Second Award at 1 (same).
[62] First Award at 5; Second Award at 5.

resolution of the just-cause issue. Consequently, the Union fails to demonstrate that the Arbitrator interpreted the parties' agreement in a manner that is irrational, unfounded, implausible, or in manifest disregard of the agreement.

Accordingly, we deny the Union's essence exception.

V. Decision

We dismiss the Union's exceptions, in part, deny the exceeded-authority exception, in part, and deny the fair-hearing and essence exceptions. Further, we remand the first award to the parties for resubmission to the Arbitrator, absent settlement, for further findings consistent with this decision.

Member Pizzella, dissenting in part:

Comedian and philosopher George Carlin once observed: "By and large, language is a tool for concealing the truth."[1] Were Carlin alive today, he probably would have loved this case.

As I have noted before, the Federal Labor Relations Authority, as an impartial review authority, should not simply speculate about what an "[a]rbitrator *may have intended* to find."[2] That was my concern in *SSA*[3] when the majority relied on pure speculation to justify a remand. Once again, today, the majority remands this case based on nothing more than its own speculations as to what the arbitrator "*may . . . have* misstated," "*may have* believed," or "*may have* determined."[4]

Unlike my colleagues, I would conclude that the Arbitrator did not exceed his authority and there is no need to give the Arbitrator "a second chance . . . to give a different decision that just *may* be more to the liking of the majority."[5]

Although the Union identified the issue in the case as whether "the [one]-day suspension [was] for just cause, and was it in accordance with the [parties' agreement] and *applicable laws and regulations*[]," [6] the Arbitrator framed the issue somewhat differently: "Was the [one]-day suspension for just cause and was it in accordance with the [parties' agreement]?"[7]

The Authority has long held that "an arbitrator does not exceed his or her authority by failing to address an argument that the parties *did not include in their stipulation*."[8] And six months ago (under circumstances strikingly similar to those in this case), the majority held that an arbitrator *did not exceed* his authority when he reframed the stipulated issue differently than the one to which the parties stipulated, and the stipulated issue "*did not specifically include* the two particular activities that the [u]nion list[ed]."[9]

Therefore, even though it is *possible* that the Union *may have* believed that the suspension was based on anti-union animus, it is problematic for the Union that the issue, to which it stipulated and *actually* submitted to the arbitrator, did not include *any mention* of *anti-union animus*.

Accordingly, I do not agree that it is necessary to remand the Arbitrator's award for further findings. To the contrary, the Union's exception should be denied.

But, the majority, contrary to the long-standing precedent which it applied in *U.S. DOJ, Federal BOP, Federal Correctional Institution, Jessup, Georgia*,[10] *SSA*,[11] and *DHS, CBP*,[12] orders a remand here based on nothing more than its own conjecture and "speculat[ion]" about any "number of possibilities" the Arbitrator "*may have . . .* misstated," "*may have* believed," or "*may have* determined."[13]

In so doing, the majority also ignores the fact that the parties opted for, and asked, the Arbitrator to decide this case under the "expedited" arbitration procedures[14] set forth in their collective-bargaining agreement.[15] Under those expedited procedures, the parties forgo a lengthier process and agree that the hearing before the Arbitrator will be "informal," no briefs will be filed, no transcripts will be made, and the Arbitrator will not apply "formal evidence rules."[16] In other words, the parties give the Arbitrator full "authority to take steps necessary" in order to get "a swift and economical . . . resolution of [their] dispute[]."[17]

Under that broad authority, which the Union agreed to give the Arbitrator, the Arbitrator framed the issue as: "was the [one]-day suspension for just cause

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[1] Brainy Quote, *George Carlin Quotes*, http://www.brainyquote.com/quotes/quotes/g/georgecarl382665.html.

[2] *SSA*, 69 FLRA 271, 277 (2016) (*SSA*) (Dissenting Opinion of Member Pizzella).

[3] 69 FLRA 271.

[4] Majority at 5-6 (emphasis added).

[5] *SSA*, 69 FLRA at 277.

[6] Majority at 2 (citing Exceptions, JX 1 at 1) (emphasis added).

[7] First Award at 1.

[8] *GSA, E. Distrib. Ctr., Burlington, N.J.*, 68 FLRA 70, 72 (2014) (*GSA*) (Member Pizzella dissenting); *see also U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Jessup, Ga.*, 69 FLRA 197, 200 (2016) (*Jessup*) (Member Pizzella dissenting in part).

[9] *Jessup*, 69 FLRA at 200; *see also U.S. DHS, U.S. CBP*, 69 FLRA 419, 419-21 (2016) (Member Pizzella dissenting) (The parties' reference to "any law, rule, or regulation" is insufficient to preserve agency's arguments concerning management's § 7106(a) rights to discipline and to assign work.); *GSA*, 68 FLRA at 72 (Member Pizzella dissenting) (citing *U.S. DHS, CBP Agency, N.Y.C., N.Y.*, 60 FLRA 813, 816 (2005)) ("an arbitrator does not exceed his or her authority by failing to address an argument that the parties did not include in their stipulation").

[10] 69 FLRA 197.

[11] *SSA*, 69 FLRA 271.

[12] 69 FLRA 419.

[13] Majority at 5-6 (emphasis added).

[14] First Award at 1.

[15] Exceptions, Joint Ex. 2 at 25-4.

[16] *Id.*

[17] *Id.*

and was it in accordance with the [parties' agreement]?"[18] Consistent with Authority precedent and the parties' expedited procedures, the Arbitrator was free to frame the issue more narrowly, or more broadly, as he saw fit.[19]

This does not mean that the Union "waived" any right to file all exceptions to the Arbitrator's award. But it does mean that, because the parties gave the Authority such broad authority, it is naturally *more difficult to demonstrate* that he *exceeded* that authority.

The Union did not have to agree to use the expedited procedures in this case and those procedures could not be used unless the Union agreed to them. But, if the Union believed that the number (or complexity) of issues involved in this case were not appropriate for expedited arbitration, the Union should have made that decision *before* it agreed to submit the grievance to the Arbitrator under the expedited procedures, not *after* the Arbitrator exercised the expansive authority the parties gave him.

Therefore, under these circumstances, the Union has failed to demonstrate that the Arbitrator exceeded his authority.

The Authority should encourage, respect, and enforce such agreements. This case began in 2012[20] and went to arbitration in February 2015.[21] Remanding it now, for even more proceedings (which could take longer than the original hearing itself), does not promote "the effective conduct of [government] business"[22] and runs counter to the Authority's mandate to "facilitate[] and encourage[] the amicable settlement[] of disputes."[23]

Thank you.

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[18] First Award at 1.
[19] *See AFGE, Local 3911, AFL-CIO*, 68 FLRA 564, 569-70 (2015); *GSA*, 68 FLRA at 72.
[20] First Award at 2.
[21] *Id*. at 1.
[22] 5 U.S.C. § 7101(a)(1)(B).
[23] *Id*. § 7101(a)(1)(C).