

71 FLRA No. 106

BREMERTON METAL TRADES COUNCIL
(Union)

and

UNITED STATES
DEPARTMENT OF THE NAVY
PUGET SOUND
NAVAL SHIPYARD AND INTERMEDIATE
MAINTENANCE FACILITY
(Agency)

0-AR-5487

DECISION

February 3, 2020

Before the Authority: Colleen Duffy Kiko, Chairman,
and Ernest DuBester and James T. Abbott, Members

I. Statement of the Case

Arbitrator Stephen Douglas Bonney found that, under federal law, bargaining-unit employees were not entitled to compensatory time for overtime worked on a Sunday when that overtime was scheduled before the administrative workweek. The Union argues that the award fails to draw its essence from the parties' collective-bargaining agreement, but does not support that argument. Consequently, we deny the Union's exception.

II. Background and Arbitrator's Award

Under the parties' agreement, the administrative workweek begins at midnight on Sunday and ends at midnight on Saturday. The Agency generally assigns overtime by Thursday for the upcoming administrative workweek. As relevant here, the parties' agreement provides that employees are eligible to earn up to 160 hours of compensatory time per year in lieu of overtime.

The Union alleged that the Agency violated the parties' agreement by failing to grant employees compensatory time for overtime scheduled on Thursdays and worked the following Sunday. The parties asked the Arbitrator to address whether: (1) the shift-change notice requirements in Sections 0701 and 0711 of the parties' agreement apply to overtime assignments described in Article 8; (2) the Agency has the discretion to deny

compensatory time requests for irregular or occasional overtime; and (3) a Sunday overtime assignment that was scheduled in the preceding administrative workweek is "irregularly scheduled or occasional overtime work."¹

Article 8 of the parties' agreement provides that the Agency "will notify the [e]mployee of the overtime assignment at the start of the shift on the day prior to the scheduled overtime" or "as soon as possible" if notice is not possible the day before the scheduled overtime.² In pertinent part, Sections 0701 and 0711 provide that the Agency must provide advance notice of a change in an employee's "normal assignments shift"³ and, when the Agency knows in advance of the administrative workweek that an employee's regular schedule will differ from his or her usual schedule, the Agency will "reschedule the [e]mployee's regular scheduled administrative workweek to correspond to those specific days and hours at least one week in advance."⁴ The Arbitrator found that the overtime notification provisions of Section 0802 take precedence over Sections 0701 and 0711 because Article 8 is specific to overtime assignments while Article 7 applies broadly to changes in an employee's workweek.

The Arbitrator noted that the parties did not stipulate to any facts regarding how Sunday overtime affects an employee's workweek. Therefore, he concluded that the Union did not prove that the shift change notice requirements in Article 7 are applicable to Sunday overtime assignments.

The Arbitrator also noted an earlier arbitration award addressing the Agency's denial of a request for compensatory time, and concluded that this award was binding on the parties to the extent that it found that the parties' agreement required the Agency to consider such requests in a "fair and equitable manner."⁵ Unlike the prior award, however, the Arbitrator concluded that the Sunday overtime assignments here "do not qualify for compensatory time" because they are not "irregular or occasional" as defined by federal regulations if they are scheduled in the preceding administrative workweek.⁶

¹ Award at 4.

² *Id.* at 9.

³ *Id.* at 8-9.

⁴ *Id.* at 9.

⁵ *Id.* at 11. The Arbitrator explained that, under this standard, the Agency "will ordinarily grant such requests unless it can provide specific reasons justifying a denial of a particular request." *Id.*

⁶ *Id.* at 14 (citing 5 U.S.C. § 5543(a)(1); 5 C.F.R. §§ 551.501(c), 551.531(a); *U.S. Dep't of the Air Force, Warner Robins Air Logistics Ctr., Robins Air Force Base, Ga.*, 60 FLRA 115, 117 (2004)).

Accordingly, he denied the grievance with respect to the first and third issues submitted by the parties.⁷

On March 28, 2019, the Union filed exceptions to the award. The Agency filed an opposition on April 17, 2019.

III. Analysis and Conclusion: The Union does not demonstrate that the award fails to draw its essence from the parties' agreement.

Section 2425.6(e)(1) of the Authority's Regulations⁸ provides that an exception "may be subject to dismissal or denial if . . . [t]he excepting party fails to . . . support a ground" listed in § 2425.6(a)-(c).⁹ Consistent with § 2425.6(e)(1), when a party does not provide any arguments to support its exception, the Authority will deny the exception.¹⁰

Here, the Union contends that the award fails to draw its essence from the parties' agreement because the award "fails to recognize the scope of Section 0711" of that agreement.¹¹ However, other than a conclusory statement that the prior arbitration award referenced by the Arbitrator "was derived" from Section 0711 while the Arbitrator's award was not, the Union makes no argument in support of its exception.¹² Consequently, we deny the Union's essence exception as unsupported.¹³

IV. Decision

We deny the Union's exception.

⁷ With respect to the second issue, the Arbitrator concluded that the prior arbitrator's award "is binding upon the parties in accordance with its terms." Award at 16.

⁸ 5 C.F.R. § 2425.6(e)(1).

⁹ *NTEU*, 70 FLRA 57, 60 (2016) (quoting 5 C.F.R. § 2425.6(e)(1)).

¹⁰ *NTEU*, Chapter 67, 67 FLRA 630, 630-31 (2014) (citing *AFGE, Nat'l Border Patrol Council, Local 2595*, 67 FLRA 361, 366 (2014)).

¹¹ Exceptions at 5.

¹² *Id.* at 6. To the extent that the Union's reference to the prior arbitration award could be construed as an argument that the Arbitrator erred by failing reach the same conclusion in his award, we reject that argument. *See, e.g., AFGE, Council of Prison Locals C-33, Local 720*, 67 FLRA 157, 159 (2013) (holding that "arbitration awards are not precedential, and an arbitrator is not bound to follow prior arbitration awards, even if they involve the interpretation of the same or similar contract provisions" (citing *AFGE, Local 2382*, 66 FLRA 664, 667 (2012))).

¹³ 5 C.F.R. § 2425.6(e)(1); *see also U.S. Dep't of VA, Gulf Coast Veterans Health Care Sys.*, 69 FLRA 608, 610 (2016) (citing *NAGE, Local R3-10, SEIU*, 69 FLRA 510, 510 n.11 (2016)).