

70 FLRA No. 176

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
MEDICAL CENTER
RICHMOND, VIRGINIA
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2145
(Union)

0-AR-5369

DECISION

October 12, 2018

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

Decision by Member Abbott for the Authority

I. Statement of the Case

In this case, we remind the labor-management relations community what should be obvious, but apparently was not to the Agency—an arbitrator does not exceed his authority when he addresses an issue that was raised in the Union’s grievance and included in the issues as framed by the arbitrator.

The Union grieved the Agency’s failure to process union dues-deduction forms for its bargaining-unit employees. Arbitrator Garvin Lee Oliver found that the Agency violated the parties’ agreement and 5 U.S.C. §§ 7115(a), and 7116(a)(1) and (8) of the Federal Service Labor-Management Relations Statute (Statute)¹ when it did not process the forms in a timely manner. The Arbitrator awarded several remedies, but the Agency challenges only the remedial posting ordered by the Arbitrator. On this point, the Agency argues that the Arbitrator exceeded his authority by addressing a statutory violation that the Union did not present at arbitration. Because the award and remedy directly

respond to the grievance and issues, as framed by the Arbitrator, we deny the Agency’s exception.

II. Background and Arbitrator’s Award

In December 2016, the Union discovered that the Agency failed to process a number of union dues withholding forms submitted by employees. When the Union discovered this error, it filed a grievance arguing that the Agency violated the parties’ agreement and 5 U.S.C. § 7116(a)(1) when it did not process the forms in a timely manner.

Because the parties did not stipulate to the issues, the issues were framed by the Arbitrator as: (1) whether the Agency violated the parties’ agreement and 5 U.S.C. §§ 7115(a) and 7116(a)(1) and (8) when it did not process the union dues-deduction forms in a timely manner; and (2) if so, what is the remedy.

At arbitration, the Union argued that the Agency violated the parties’ agreement and requested reimbursement for all dues not collected. The Agency claimed that the Union did not keep track of its dues deductions and waited years to raise its concerns. According to the Agency, it did not violate the parties’ agreement because, once the concern was raised, it worked diligently to process the forms.

In his award, the Arbitrator found that, even though the Agency later processed the forms, its unintentional delay nonetheless violated the parties’ agreement and §§ 7115(a) and 7116(a)(1) and (8) of the Statute. As relevant here, the Arbitrator ordered that the Agency post a notice of the violation at various locations throughout the Agency.

On April 19, 2018, the Agency filed its exception, and on May 18, 2018, the Union filed an opposition.

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

The Agency argues that the Arbitrator exceeded his authority when he resolved a statutory issue and ordered a posting remedy that was not submitted to arbitration.² Specifically, the Agency claims that the Union’s arguments, both at the hearing and in its post-hearing brief, focused only on the violation of the parties’ agreement and did not address a statutory violation.³ According to the Agency, it did not have the opportunity to challenge the alleged statutory violation.

¹ 5 U.S.C. §§ 7115(a), 7116(a)(1), (8).

² Exception Br. at 2-3.

³ *Id.*

As relevant here, arbitrators exceed their authority when they resolve an issue not submitted to arbitration.⁴ But that is not what occurred.

Here, the Arbitrator framed the issues because the parties did not stipulate to the issues. It is well settled that when the parties do not agree on the issues, an arbitrator has the discretion to frame them.⁵ The Arbitrator's award and remedies are directly responsive to the issues he framed.⁶

Finally, we are not persuaded that the Agency did not have the opportunity to, or was unaware that it needed to, address the alleged statutory violation. We note that the alleged statutory violation and posting remedy were presented in both of the Union's second-step and third-step grievances,⁷ which the parties submitted for consideration at arbitration. Thus, the Agency was on notice that these issues were before the Arbitrator.⁸ Consequently, there is no basis for finding that the Arbitrator exceeded his authority.⁹

Accordingly, we deny the Agency's exceeds-authority exception.

IV. Decision

We deny the Agency's exception.

⁴ *U.S. Dep't of the Treasury, IRS, Office of Chief Counsel*, 70 FLRA 783, 784 n.15 (2018) (Member DuBester dissenting); *AFGE, Local 12*, 70 FLRA 582, 583 (2018) (citing *U.S. DOD, Army & Air Force Exch. Serv.*, 51 FLRA 1371, 1378 (1996)); *AFGE, Local 1415*, 69 FLRA 386, 389-90 (2016) (citing *NAGE, SEIU, Local 551*, 68 FLRA 285, 286 (2015)); *U.S. DOD, Def. Logistics Agency*, 66 FLRA 49, 50 (2011).

⁵ *AFGE, Local 3627*, 64 FLRA 547, 550 (2010) (*Local 3627*) (citing *AFGE, Local 3957, Council of Prisons Locals*, 61 FLRA 841, 843 (2006)).

⁶ See *AFGE, Council 215*, 66 FLRA 137, 141 (2011) (arbitrator did not exceed his authority by adopting the union's statement of the issue); cf. *USDA, Forest Serv., Monogahela Nat'l Forest*, 64 FLRA 1126, 1130 (2010) ("it is the issues framed by the [a]rbitrator, not the grievance's content, that is determinative in analyzing whether an arbitrator exceed his authority").

⁷ Opp'n, Attach. 2, Step-Three Grievance at 3; Opp'n, Attach. 4, Step-Two Grievance at 3.

⁸ See generally *Pension Benefit Guar. Corp.*, 64 FLRA 692, 697 (2010); see also *U.S. Dep't of HUD*, 24 FLRA 442, 445 (1986) (agency fails to establish the issue was raised for the first time at hearing when the union specifically alleged a violation in its grievance); *NAGE, Local R1-100*, 51 FLRA 1500, 1502-03 (1996) (arbitrator did not exceed his authority by addressing a timeliness issue presented at hearing and in the record).

⁹ *Local 3627*, 64 FLRA at 550.

Member DuBester, concurring:

I agree with the determination to deny the Agency's exception.