63 FLRA No. 116

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 1417
(Union)

and

UNITED STATES
DEPARTMENT OF THE ARMY
UMATILLA CHEMICAL DEPOT
HERMISTON, OREGON
(Agency)

0-AR-4189

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ORDER DISMISSING EXCEPTIONS

May 21, 2009

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For the Authority: Carol Waller Pope, Chairman and Thomas M. Beck, Member

I. Statement of the Case

This matter is before the Authority on exceptions to an award of Arbitrator Paul P. Tinning 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 exceptions.

The Arbitrator found that the Agency had just cause to suspend the grievant for seven days. For the reasons set forth below, we find that the Union has failed to comply with Authority orders and dismiss the Union's exceptions.

II. Background and Arbitrator's Award

The Union filed a grievance contesting the grievant's seven-day suspension for failure to obey a direct order and for use of vulgar language. *See* Award at 3. The matter was not resolved and was submitted to arbitration. The parties did not stipulate to an issue and the Arbitrator did not frame an issue. However, the Arbitrator stated that he had been selected to arbitrate a grievance "concerning the issuance of a seven[-]day suspension[.]" *Id*.

As a preliminary matter, the Union argued that the matter was not arbitrable because the grievance was not processed by the Agency within the thirty-day time period set forth in the parties' agreement. The Arbitrator did not address the Union's arbitrability argument. However, the Arbitrator addressed the merits of the grievance and concluded that the grievant's conduct was improper and, as such, the seven-day suspension was proper. The Arbitrator denied the grievance.

III. Order to Show Cause and the Union's Response

The Union filed exceptions, and the Agency filed an opposition. Thereafter, the Authority issued a Deficiency Order that stated the Union's exceptions were procedurally deficient because: (1) the Union submitted the original and three copies of its exceptions instead of the original and four as required by 5 C.F.R. § 2429.25; [1] and (2) the statement of service accompanying the exceptions did not contain the Agency representative's complete address as required by 5 C.F.R. § 2429.27(c). *See* Order (Deficiency Order) at 1-2. As relevant here, the Authority directed the Union to submit one complete copy of its exceptions with all attachments and five copies one of which contains an original signature of the statement of service with the Agency's complete address. *See id.* at 2. The Authority informed the Union that its failure to comply with the Deficiency Order could result in the Authority dismissing its exceptions. *See id.* The Union submitted no response to the Deficiency Order.

As a result of the Union's failure to reply to the Deficiency Order, the Authority issued an Order to Show Cause directing the Union to show cause why its exceptions should not be dismissed for failure to comply with the Deficiency Order. *See* Order to Show Cause at 1. The Authority informed the Union that its failure to comply with the Order to Show Cause could result in its exceptions being dismissed. *See id.* at 2. The Union filed a timely response stating that it had already "submitted the required documents to the . . . Authority as directed" and that its statement of service correctly addressed the Agency's counsel of record for the arbitration hearing. [2] Union Response to Order to Show Cause at 1. The Union provided no documentation or other support for its contentions.

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1. When the Union filed its exceptions, the Authority required four copies of all papers and documents filed with the Authority. 5 C.F.R. § 2429.25 (1997).

2. Along with its reply to the Order to Show Cause, the Union filed an unsolicited "Post Hearing Brief." Response, Attach. at 1. As the Authority's Regulations do not provide for the filing of supplemental submissions, and as the Union failed to request permission to file its submission under 5 C.F.R. § 2429.26, we will not consider the submission. *See, e.g., United States Dep't of HHS, FDA,* 60 FLRA 250, 250 n.1 (2004).

IV. Discussion and Analysis

The Authority will dismiss a party's filing that is procedurally deficient under the Authority's Regulations when the party fails to comply with an Authority Order directing the party to cure its deficiencies. *See, e.g., United States Dep't of Veterans Affairs,* 60 FLRA 479, 479 n.1 (2004) (*VA*) (Authority dismissed union's opposition that was deficient under 5 C.F.R. §§ 2429.25 and 2429.27 after union failed to comply with a deficiency order and a subsequent order to show cause); *NAGE, Local R3-32,* 57 FLRA 624, 624 n.1 (2001) (agency's opposition was dismissed because agency did not comply with an order to show cause why its opposition should not be dismissed because, among other reasons, the agency failed to include the correct number of copies).

Although the Union asserts that its exceptions were not procedurally deficient, the record establishes that the Union did not submit the correct number of copies of its exceptions and that the statement of service accompanying the exceptions failed to list the Agency representative's complete address. The Union has offered no evidence in support of its bare assertion that its exceptions were not procedurally deficient. In addition, the Union did not cure the deficiencies in its exceptions as directed by the Deficiency Order. Further, the Union has not shown cause why its failure to comply with the Deficiency Order should not result in the dismissal of its exceptions. Accordingly, as the Union has failed to comply with the requirements of the Deficiency Order and the Order to Show Cause, we dismiss its exceptions. *See VA*, 60 FLRA at 479 n.1.

V. Order

We dismiss the Union's exceptions.