73 FLRA No. 114

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2092
(Union)

and

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
(Agency)

0-AR-5857

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DECISION

July 5, 2023

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Before the Authority: Susan Tsui Grundmann, Chairman, and Colleen Duffy Kiko, Member

I. Statement of the Case

Arbitrator Vincent C. Longo determined that an Agency change to the grievant's work schedule did not violate the parties' collective-bargaining agreement because the Agency provided the Union with notice and an opportunity to bargain before implementing the change. The Union filed exceptions on essence and exceeded-authority grounds. For the reasons discussed below, the Union does not establish that the award is deficient, and we deny the exceptions.

II. Background and Arbitrator's Award

The grievant is a surgical technician (technician), and works a compressed-work schedule (CWS) of four ten-hour days. The grievant had Wednesday as a regularly scheduled day off. In March 2021,[1] the grievant's supervisor informed her and two other technicians that their regularly scheduled days off would be rotated, effective May 3, due to patient needs. The grievant then discussed the matter with her supervisor on two occasions. Subsequently, on April 6, the supervisor provided the grievant and the Union with a memorandum (April memo) officially notifying them of the change to the grievant's schedule.

After the Union received the April memo, it discussed the matter with the grievant's supervisor; advised management that the Union would grieve the CWS change; and requested documentation to support the change. Subsequently, the Union requested a meeting to discuss the proposed change, which the supervisor initially declined. However, after the Union asserted its notification and bargaining rights under the parties' agreement, the supervisor arranged a meeting, which occurred on April 26.

The next day, the Union filed a grievance alleging the Agency violated Article 21, Section 2.G.1 of the parties' agreement (Section 2.G.1), which states, in relevant part: "If the Department proposes to make any changes to the [Alternative Work Schedules] Plan (including the CWS Plan . . .) . . . of bargaining[-]unit employees or to restrict application of the plans to any new position, the local union shall be notified and given an opportunity to bargain."[2] The parties did not resolve the matter, and it went to arbitration.

At the arbitration hearing, the parties stipulated the issue as "whether the Agency violated any article of the [parties' a]greement, executive orders, laws and policies, *specifically* [*Section 2.G.1*] . . . when it changed the compressed schedules."[3] In the award, the Arbitrator framed the issue as "whether the Agency violated [Section 2.G.1] . . . when it implemented changes to the [CWS] of the [g]rievant and, if so, what is the appropriate remedy."[4] In framing the issue, the Arbitrator more specifically described "the narrow question presented" as whether the Agency "notified the [Union] and provided the [Union] an opportunity to bargain prior to changing the [g]rievant's CWS, as required by . . . Section 2.G.1."[5]

The Arbitrator found that the April memo provided the requisite notice of the proposed change to the CWS schedule. Addressing the Agency's bargaining obligation, the Arbitrator found the Agency arranged the April 26 meeting and was willing to discuss the matter, but the Union caused the meeting "to be unproductive and come to a premature end."[6] On this point, the Arbitrator noted testimony that the Union discontinued the meeting after the Agency refused the Union's demand to engage in bargaining over the substance of the change and undo the change.[7] The Arbitrator determined that no "rigid formality" was required for a meeting between the parties to be considered bargaining, and that the April 26 meeting satisfied the Agency's contractual obligation in this respect.[8] Finding the Agency "clearly fulfilled its

[1] Unless otherwise noted, all dates occurred in 2021.
[2] Award at 3.
[3] Opp'n, Ex. A (Tr.) at 5 (emphasis added).
[4] Award at 3.
[5] *Id.* at 13.
[6] *Id.* at 15.
[7] *See id.* at 6-7.
[8] *Id.* at 15.

obligation under . . . Section 2.G.1," the Arbitrator denied the grievance.[9]

The Union filed exceptions on January 23, 2023, and the Agency filed an opposition on February 22, 2023.

III. Analysis and Conclusions

A. The award draws its essence from the parties' agreement.

The Union argues the award fails to draw it essence from Article 21, Section 1(A) (Section 1A) and Article 49, Sections 3 and 4 (Article 49) because the Arbitrator found that the Agency provided an opportunity to bargain without considering those provisions' requirements.[10] The Authority will find an award fails to draw its essence from the parties' agreement when the excepting party establishes 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.[11]

The Arbitrator found that the parties agreed the "relevant provision of the [parties' agreement] is . . . Section 2.G.1."[12] As noted previously, this article provides that if the Agency "proposes to make any changes to the [CWS] of bargaining[-]unit employees . . . the local union shall be notified and given the opportunity to bargain."[13] Section 1A states, in relevant part, that "[a] change in the administrative workweek and changes in the regularly scheduled administrative workweek are considered changes in conditions of employment for purposes of the notice requirement of Article 49."[14] Article 49 provides, in relevant part, that the Agency "shall provide reasonable advance notice to the [Union] prior to changing conditions of employment"[15] and "agrees to forward, along with the notice, a copy of any and all information . . . relied upon to propose the change(s) in conditions of employment."[16]

The Arbitrator determined the Agency fulfilled its obligations under Section 2.G.1 by emailing the Union the April 6 memo explaining the change to the grievant's schedule before the change's effective date, and by arranging the April 26 meeting.[17] The Union, however, argues the Arbitrator did not "accurately consider[]" Section 1A and Article 49.[18]

While the Union asserts that the Agency did not comply with the Section 1A or Article 49, it does not challenge the Arbitrator's factual findings.[19] Moreover, the Union does not demonstrate that the Arbitrator's findings are irrational, implausible, unfounded, or in manifest disregard of the parties' agreement.[20] Therefore, we deny the essence exception.

B. The Union does not demonstrate that the Arbitrator exceeded his authority.

The Union argues that the Arbitrator exceeded his authority because he misstated the stipulated issue, improperly narrowed the issue, and, thus, failed to address whether the Agency violated 5 U.S.C. § 6131 or articles in the parties' agreement other than Section 2.G.1.[21] As relevant here, arbitrators exceed their authority when they fail to resolve an issue submitted to arbitration.[22] In determining whether an award exceeds an arbitrator's 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.[23]

The Union asserts the Arbitrator erred by failing to consider Section 1A or Article 49.[24] However, the Union provides no basis for finding that the stipulated issue necessarily encompassed those provisions. The Authority has held that arbitrators do not exceed their authority by failing to address an argument that the parties did not include in their stipulation.[25] Here, the stipulated issue referenced "any article," but "specifically" referenced Section 2.G.1.[26] As the Arbitrator found that the Agency complied with Section 2.G.1, he resolved that issue.

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[9] *Id.*
[10] Exceptions Br. at 22-25.
[11] *NTEU, Chapter 149*, 73 FLRA 413, 416 (2023) (*Chapter 149*) (citing *NTEU, Chapter 149*, 73 FLRA 133, 136 (2022)).
[12] Award at 12.
[13] *Id.* at 3.
[14] Exceptions, Ex. 3 at 85.
[15] *Id.* at 250.
[16] *Id.*
[17] Award at 13-15.
[18] Exceptions Br. at 23.
[19] *Id.* at 25.
[20] *Chapter 149*, 73 FLRA at 416-17.
[21] Exceptions Br. at 14-15, 20-22.
[22] *Chapter 149*, 73 FLRA at 415 (citing *NTEU, Chapter 66*, 72 FLRA 70, 71 (2021) (Chairman DuBester concurring; Member Abbott dissenting)).
[23] *AFGE, Council of Prison Locs., Council 33*, 70 FLRA 191, 193 (2017) (*Council 33*); *Fraternal Ord. of Police, Lodge 12*, 68 FLRA 616, 618 (2015) (*Lodge 12*).
[24] Exceptions Br. at 22-24.
[25] *Council 33*, 70 FLRA at 193 (denying exceeded-authority exception where stipulated issue did not specifically include contractual provisions argued on exception); *Lodge 12*, 68 FLRA at 618.
[26] Tr. at 5.

Regarding the Arbitrator's alleged failure to address 5 U.S.C. § 6131, the stipulated issue cited "laws" generally, and did not specifically cite § 6131.[27] Nevertheless, the award is not "silent" on that matter as the Union contends.[28] The Arbitrator noted the Union's argument that § 6131 required the Agency to bargain before changing the grievant's schedule, as well as the Agency's rebuttal that the matter was governed by Section 2.G.1. instead of § 6131 because the Agency did not terminate the CWS.[29] The Arbitrator then resolved this dispute by stating that the "narrow question presented" to him was whether the Agency provided notice and an opportunity to bargain "prior to changing the [g]rievant's CWS, as required by . . . Section 2.G.1."[30]

The Arbitrator's "narrow" interpretation of the stipulated issue is entitled to deference, as the Union does not demonstrate that this interpretation is irrational, unfounded, implausible, or in manifest disregard of the stipulation.[31]

Consequently, the award is responsive to the stipulated issue, and the Union's arguments do not demonstrate that the Arbitrator exceeded his authority.[32]

IV. Decision

We deny the Union's exceptions.

[27] *Id.*
[28] Exceptions Br. at 21.
[29] Award at 9, 11.
[30] *Id.* at 13.
[31] *See Council 33*, 70 FLRA at 193 (denying exceeded-authority exception where union failed to demonstrate that arbitrator's interpretation of stipulated issue as excluding certain claims was irrational, unfounded, implausible, or in manifest disregard of the stipulation); *Lodge 12*, 68 FLRA at 618 (same).
[32] *IBEW, Loc. 121*, 71 FLRA 161, 162-63 (2019) (Member DuBester concurring) (citing *AFGE, Loc. 12*, 70 FLRA 582, 583 (2018) (finding award responsive to stipulated issue where arbitrator referenced issue in award and the arbitrator's conclusions indicate he resolved the issue)).