73 FLRA No. 116

INTERNATIONAL FEDERATION
OF PROFESSIONAL
AND TECHNICAL ENGINEERS
LOCAL 1
(Union)

and

UNITED STATES
DEPARTMENT OF THE NAVY
MID-ATLANTIC
REGIONAL MAINTENANCE CENTER
NORFOLK, VIRGINIA
(Agency)

0-AR-5868

_____

DECISION

July 13, 2023

_____

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

I. Statement of the Case

Arbitrator Charles Feigenbaum issued an award finding the Union's grievance was not procedurally arbitrable. The Union filed an exception to the award on essence grounds. Because the Union does not demonstrate that the award is deficient, we deny the exception.

II. Background and Arbitrator's Award

The grievant is the Union's vice president.[1] On May 20, 2022,[2] he filed a grievance alleging that the Agency violated the parties' collective-bargaining agreement by requiring him to come to building "CEP-200 every morning to submit a request for official time."[3] The parties were unable to resolve the grievance, and the Union invoked arbitration on August 29. Within the same week, the Union contacted the Federal Mediation and Conciliation Service (FMCS).

On September 2, FMCS sent the Agency a panel of arbitrators. On September 7, the Agency contacted the Union to acknowledge receiving the panel and asserted the Union violated Article 2, Section 2 of the parties' agreement (Article 2) by requesting the panel before meeting with the Agency. The Union responded that it thought its actions were proper.

In relevant part, Article 2 provides that once a party has invoked arbitration, "representatives of the parties will meet no later than fifteen (15) workdays after receipt of such notice to select an arbitrator" and "[i]f agreement on an arbitrator cannot be reached, the [Agency] shall immediately request the . . . []FMCS[] to submit a list of five (5) impartial persons qualified to act as arbitrators."[4]

On September 29, the Agency told the Union the grievance was not arbitrable based on the Union's alleged Article 2 violation. The Agency also proposed FMCS hybrid mediation to resolve the issue and invited the Union to propose a reasonable remedy for settlement. The parties were unable to participate in hybrid mediation, and the matter proceeded to arbitration.

The Arbitrator stated that he would determine whether the grievance was arbitrable as a threshold issue. During the hearing, he initially found the grievance arbitrable on the ground that the Agency waived its arbitrability claim by participating in hybrid mediation. However, after the parties informed him that they had *not* participated in hybrid mediation, the Arbitrator rescinded that finding and concluded he had no basis for finding a waiver of the arbitrability claim. Based on the Union's "clear violations" of Article 2, the Arbitrator dismissed the grievance as non-arbitrable.[5]

On February 24, 2023, the Union filed an exception to the award. The Agency filed an opposition to the Union's exception on March 24, 2023.

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

The Union asserts that the award fails to draw its essence from the parties' agreement. The Authority will find that an award fails to draw its essence from a 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

[1] *See* Exception at 1.
[2] Unless otherwise noted, all dates hereafter occurred in 2022.
[3] Award at 2.
[4] *Id.* (quoting Art. 2, § 2 of the parties' agreement).
[5] *Id.* at 7.

plausible interpretation of the agreement; or (4) evidences a manifest disregard of the agreement.[6]

In its exception, the Union recounts the Arbitrator's initial finding that the parties' recourse to FMCS waived the non-arbitrability claim and his subsequent rescission of that conclusion.[7] The Union also references requirements in the parties' agreement for requesting official time, along with 5 U.S.C. § 7102.[8] Specifically, the Union references Article 3, Section 4(b) of the parties' Memoranda of Agreement, which states that the vice president will request official time "by maintaining an ongoing daily dialog with his/her supervisor via face-to-face, telephone, or e-mail, giving a general description of his/her daily official duties and the location where he/she will be performing these duties so that his/her supervisor can reach him/her during the day to make assignments or engage in work discussions."[9]

However, the Union does not provide any explanation for how the award conflicts with that provision of the agreement. Moreover, the Union makes no argument, and provides no supporting authority, demonstrating that the Arbitrator's arbitrability determination – the sole issue resolved in the award – is irrational, unfounded, implausible, or in manifest disregard of the parties' agreement. Thus, the Union's exception does not demonstrate that the award fails to draw its essence from the parties' agreement.[10]

Accordingly, we deny the Union's exception.

IV. Decision

We deny the Union's exception.

---

[6] *AFGE, Loc. 2338*, 73 FLRA 522, 524 (2023) (citing *AFGE, Loc. 446*, 73 FLRA 421, 421 (2023)).
[7] Exception at 4.
[8] *Id.*
[9] Exception, Attach. 1 at 13-14.
[10] *E.g.*, *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Butner, N.C.*, 73 FLRA 334, 336 (2022) (denying essence exceptions where excepting party's arguments provided no basis for finding award irrational, unfounded, implausible, or in manifest disregard of agreement).

Chairman Grundmann, concurring:

In finding the grievance non-arbitrable, the Arbitrator relied on the Authority's decisions in *U.S. Department of the Army, 93rd Signal Brigade, Fort Eustis, Virginia* (*Army*)[1] and *U.S. Department of HUD* (*HUD*),[2] which he found to be "on point."[3] Although the Arbitrator opined that *Army* and *HUD* are "overly strict," he also stated, "Nevertheless, they are, to my knowledge, still in effect."[4]

I was not a Member when the Authority issued *Army* or *HUD* and, thus, did not participate in those cases. I am open to revisiting those decisions in a future, appropriate case.

However, the Union's exception provides only the limited arguments summarized in the decision. Those arguments do not challenge the Arbitrator's reliance on *Army* and *HUD* or require us to resolve whether those decisions were rightly decided. I agree that the Union's limited arguments do not demonstrate that the award fails to draw its essence from the parties' agreement.

Therefore, I concur.

[1] 70 FLRA 733 (2018) (Member DuBester dissenting).
[2] 72 FLRA 450 (2021) (Chairman DuBester dissenting).
[3] Award at 5.
[4] *Id.*