

**74 FLRA No. 2**

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 25  
(Union)

and

UNITED STATES  
DEPARTMENT OF VETERANS AFFAIRS  
VETERANS BENEFITS ADMINISTRATION  
(Agency)

0-AR-5959

DECISION

August 19, 2024

Before the Authority: Susan Tsui Grundmann, Chairman,  
and Colleen Duffy Kiko and Anne Wagner, Members

**I. Statement of the Case**

Arbitrator Keith D. Greenberg denied the Union's grievance, finding the Agency had just cause to issue a letter of reprimand (the reprimand) to an employee (the grievant). The Union filed exceptions on the ground that the Arbitrator exceeded his authority, and on grounds that the award fails to draw its essence from the parties' collective-bargaining agreement and is incomplete, ambiguous, or contradictory so as to make implementation impossible. We deny these exceptions because the Union does not establish the award is deficient.

**II. Background and Arbitrator's Award**

The grievant reviews decisions concerning veteran-benefit claims. One of her duties is to "recertif[y]" cases for further review by the Agency.<sup>1</sup> The Agency issued the grievant a reprimand in November 2022 because she failed to recertify an assigned case, despite being reminded by her supervisor and specifically committing to complete the assignment. The Union grieved the

reprimand. The grievance proceeded to arbitration, where the parties stipulated the issues as "whether the Agency had just cause to issue the [g]rievant . . . a [l]etter of [r]eprimand for failure to follow instructions and, if not, to determine the appropriate remedy."<sup>2</sup>

Following a hearing in December 2023, the parties submitted closing briefs. In its brief, the Union argued that, as an "[a]lternative [r]emedy to [d]ismissal of [the] [d]isciplinary [a]ction[]," the reprimand should be removed from the grievant's personnel file under Article 14, Section 3 of the parties' agreement (Section 3).<sup>3</sup> This provision states that reprimands "may be removed from an employee's files after a six[-]month period" if the "employee requests removal" and "the purpose of the discipline has been served."<sup>4</sup> In support of its request, the Union asserted the grievant made "proactive work improvements" in the year after being disciplined and Agency witnesses found her to be "nonproblematic."<sup>5</sup>

The Arbitrator found the Agency had just cause to discipline the grievant because "she failed to complete her assignment or to seek clarification" and "ultimately decided to ignore her supervisor's instruction."<sup>6</sup> He further determined there was no basis to mitigate the discipline, and he denied the grievance "in its entirety."<sup>7</sup>

On May 3, 2024, the Union filed exceptions to the award and, on June 3, 2024, the Agency filed an opposition to the exceptions.

**III. Preliminary Matter: Sections 2425.4(c) and 2429.5 of the Authority's Regulations do not bar the Union's essence exception.**

Under §§ 2425.4(c) and 2429.5 of the Authority's Regulations, the Authority will not consider any arguments that could have been, but were not, presented to the arbitrator.<sup>8</sup> The Union argues the award fails to draw its essence from the parties' agreement because the Arbitrator "failed to appropriately apply"<sup>9</sup> and "ignor[ed]" Section 3.<sup>10</sup> The Agency asserts the Authority should dismiss this exception because the Union did not address or raise the Arbitrator's interpretation of Section 3 at arbitration.<sup>11</sup> However, the Agency concedes the Union requested, during arbitration, the alternative remedy of removing the reprimand from the grievant's file, as

<sup>1</sup> Award at 4.

<sup>2</sup> *Id.* at 1.

<sup>3</sup> Exceptions, Ex. 4, Union Closing Br. (Union Br.) at 8.

<sup>4</sup> Award at 2 (quoting Section 3).

<sup>5</sup> Union Br. at 8.

<sup>6</sup> Award at 17.

<sup>7</sup> *Id.* at 19, 20.

<sup>8</sup> 5 C.F.R. §§ 2425.4(c), 2429.5; *see USDA, Food & Nutrition Serv.*, 73 FLRA 822, 823-24 (2024) (citing 5 C.F.R. §§ 2425.4(c), 2429.5; *U.S. Dep't of the Army, U.S. Army Garrison, Picatinny Arsenal, N.J.*, 73 FLRA 700, 701 (2023) (*Army*), *recons. denied*, 73 FLRA 827 (2024)).

<sup>9</sup> Exceptions at 7.

<sup>10</sup> *Id.* at 10.

<sup>11</sup> Opp'n at 5.

allowed by Section 3.<sup>12</sup> Because the Union raised Section 3 to the Arbitrator, we find the Union's essence exception is not barred.<sup>13</sup>

**IV. Analysis and Conclusion: The Union does not establish the award is deficient.**

The Union argues that (1) the Arbitrator exceeded his authority, (2) the award fails to draw its essence from the parties' agreement, and (3) the award is incomplete, ambiguous, or contradictory so as to make implementation impossible.<sup>14</sup> Each of these exceptions is premised on the argument that the Arbitrator should have addressed and awarded the "alternative remedy" under Section 3.<sup>15</sup>

First, the Union argues the Arbitrator exceeded his authority because he did not address the Agency's compliance with Section 3.<sup>16</sup> As relevant here, arbitrators exceed their authority when they fail to resolve an issue submitted to arbitration.<sup>17</sup> Arbitrators do not exceed their authority by failing to address an argument that the parties did not include in their stipulation.<sup>18</sup> In determining whether an arbitrator has exceeded his or her 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.<sup>19</sup>

Here, the parties stipulated the issues as whether the Agency had just cause to reprimand the grievant "and, if not, to determine the appropriate remedy."<sup>20</sup> As these issues did not specifically include a question concerning the Agency's compliance with Section 3, the Arbitrator

did not exceed his authority by failing to address that issue.<sup>21</sup> Moreover, to the extent the Union argues the Arbitrator exceeded his authority by not addressing whether the Agency was required to rescind the reprimand from the grievant's file, as allowed by Section 3, as a *remedy* to the grievance, we similarly reject this argument.<sup>22</sup> In resolving the stipulated issues, the Arbitrator found the Agency had just cause to reprimand the grievant, and he denied the grievance "in its entirety."<sup>23</sup> Therefore, based on the stipulated issue, he had no obligation to consider any remedy.<sup>24</sup> We deny this exception.<sup>25</sup>

The Union also asserts the award fails to draw its essence from the parties' agreement because the Arbitrator "ignor[ed]" the provision in Section 3 allowing for reprimands to be removed "after six months."<sup>26</sup> However, as discussed above, the Arbitrator was not required to interpret or apply Section 3 to resolve the issues as framed in the parties' stipulation. Accordingly, the Union has not demonstrated that the Arbitrator's failure to address Section 3 fails to draw its essence from the parties' agreement.<sup>27</sup>

Finally, the Union argues that the award is incomplete, ambiguous, or contradictory so as to make implementation of the award impossible.<sup>28</sup> In order to prevail on this ground, the appealing party must demonstrate that the award is impossible to implement because the meaning and effect of the award are too

<sup>12</sup> *Id.* (acknowledging the Union "offered the idea of removing the reprimand after [six] months as an 'alternate remedy' in its closing brief"); see Union Br. at 8 (requesting alternative remedy).

<sup>13</sup> *NTEU, Chapter 149*, 73 FLRA 133, 134-35 (2022) (considering arguments party raised to arbitrator).

<sup>14</sup> Exceptions at 5-10.

<sup>15</sup> *Id.* at 8.

<sup>16</sup> *Id.* at 7-8.

<sup>17</sup> *AFGE, Loc. 2092*, 73 FLRA 596, 597 (2023) (*Local 2092*) (citing *NTEU, Chapter 149*, 73 FLRA 413, 415 (2023)).

<sup>18</sup> *Id.* (citing *AFGE, Council of Prison Locs., Council 33*, 70 FLRA 191, 193 (2017) (*Council 33*)).

<sup>19</sup> *Id.* (citing *Council 33*, 70 FLRA at 193; *Fraternal Ord. of Police, Lodge 12*, 68 FLRA 616, 618 (2015)).

<sup>20</sup> Award at 1.

<sup>21</sup> *Local 2092*, 73 FLRA at 597 (arbitrator did not exceed authority by failing to consider two articles in the parties' collective-bargaining agreement where the stipulated issue did not reference either article); *Council 33*, 70 FLRA at 193 (arbitrator did not exceed authority by failing to rule on issue which was not "specifically . . . include[d]" in stipulated issue).

<sup>22</sup> See Exceptions at 8.

<sup>23</sup> Award at 20. We further note that in reaching this conclusion, the Arbitrator expressly rejected the Union's arguments that he

should mitigate the grievant's discipline. See Award at 17 ("The record fails to provide a basis to mitigate the penalty in this case."); *id.* at 18-19 (rejecting the Union's procedural arguments for mitigation); *id.* at 19 (denying the grievance after viewing "the record evidence . . . as a whole"). In doing so, the Arbitrator tacitly rejected the Union's arguments regarding early expungement of the reprimand under Section 3.

<sup>24</sup> See *AFGE, Loc. 1547*, 65 FLRA 91, 94 (2010) (finding arbitrator did not exceed authority by failing to address stipulated issues that were mooted by resolution of first stipulated issue (citing *AFGE, Loc. 987*, 58 FLRA 619, 621 (2003))).

<sup>25</sup> *Local 2092*, 73 FLRA at 597-98; *Council 33*, 70 FLRA at 193.

<sup>26</sup> Exceptions at 10.

<sup>27</sup> *NAIL, Loc. 10*, 71 FLRA 513, 515 (2020) (denying essence exception where the excepting party failed to show that the arbitrator was required to address the cited contract provision); *Nat'l Nurses United*, 70 FLRA 166, 168 (2017) (rejecting union's argument that award failed to draw its essence from certain provisions in the parties' collective-bargaining agreement where arbitrator, in concluding the agency had just cause to suspend the grievant, "did not discuss or interpret" the provisions).

<sup>28</sup> Exceptions at 10.

unclear or uncertain.<sup>29</sup> According to the Union, the award lacked “clarity” because it “ignor[ed]” Section 3’s “timelines and conditions of [discipline] reassessment specified in [Section 3].”<sup>30</sup> As the Arbitrator was not required to address Section 3, the award is not incomplete. Moreover, the Union provides no explanation as to how the award, which denied the grievance and awarded no remedies, is impossible to implement.<sup>31</sup> We therefore deny this exception.<sup>32</sup>

## V. Decision

We deny the Union’s exceptions.

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<sup>29</sup> *U.S. Dep’t of VA, John J. Pershing Veterans’ Admin. Ctr., Poplar Bluff, Mo.*, 73 FLRA 842, 843 (2024) (*VA Pershing*) (citing *U.S. Dep’t of VA, John J. Pershing VA Med. Ctr., Poplar Bluff, Mo.*, 73 FLRA 498, 505, *recons. denied*, 73 FLRA 628 (2023)).

<sup>30</sup> Exceptions at 10.

<sup>31</sup> *See id.*

<sup>32</sup> *VA Pershing*, 73 FLRA at 843 (denying exception where party did not explain how award denying grievance was impossible to implement (citing *Army*, 73 FLRA at 702)).