74 FLRA No. 8

UNITED STATES
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
ELKTON, OHIO
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 607
(Union)

0-AR-5957

_____

DECISION

September 26, 2024

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

I. Statement of the Case

The Union filed a grievance alleging the Agency violated the Fair Labor Standards Act (FLSA)[1] and the parties' collective-bargaining agreement by failing to pay certain employees (the grievants) the FLSA rate for overtime work they performed. Arbitrator Gerald Kobell issued an award finding the grievance was arbitrable and that the Agency violated the FLSA and the agreement as alleged. The Agency filed exceptions arguing that (1) the Arbitrator exceeded his authority and (2) the award fails to draw its essence from the parties' agreement. For the reasons explained below, we deny the exceptions.

II. Background and Arbitrator's Award

The Agency hired the grievants as teachers in the education department of its correctional facility. On June 8, 2023, the Union filed a grievance alleging the Agency violated the parties' agreement and the FLSA by failing to properly pay the grievants. The matter proceeded to arbitration.

The Union argued that "[d]uring the relevant recovery pe[r]iod from June 8, 2020[,] through June 2023," when the grievants worked overtime, the Agency improperly paid them at less than the overtime rate required by the FLSA.[2] The Arbitrator found that the Agency violated the FLSA, the violations were willful, and, thus, that the FLSA's three-year statute of limitations applied. He also found the grievance was timely because it was filed within three years of the alleged violations.[3] In so finding, he rejected several Agency arguments that the grievance was not arbitrable.

First, the Arbitrator rejected an Agency argument that the grievance was untimely under Article 31, Section d of the parties' agreement (Article 31) because it was not filed within forty days of the alleged grievable occurrence. Article 31 provides, in pertinent part:

> Grievances must be filed within forty . . . calendar days of the date of the alleged grievable occurrence. . . . If a party becomes aware of an alleged grievable event more than forty . . . calendar days after its occurrence, the grievance must be filed within forty . . . calendar days from the date the party filing the grievance can reasonably be expected to have become aware of the occurrence. A grievance can be filed for violations within the life of this contract, however, *where the statutes provide for a longer filing period, then the statutory period would control*.[4]

Relying on the italicized wording, the Arbitrator found the FLSA's three-year statute of limitations for willful violations governed over Article 31's forty-day filing period.

Second, the Arbitrator rejected an Agency claim that an April 3, 2023 national resolution (the resolution) between the Council of Prison Locals 33 (the Council) and the Federal Bureau of Prisons (BOP) procedurally and substantively barred the grievance. The resolution, entitled "Resolution on FLSA Status for Teachers," pertinently provides:

[1] 29 U.S.C. §§ 201-219.
[2] Award at 33.
[3] *See id.* at 97 (finding that the period of the alleged FLSA violations "clearly encompassed April 2020 until September[] 2020, and thereafter"); *id.* at 94 (finding grievance timely "in view of [his] finding . . . that the three[-]year limitation in timeliness" applied).
[4] Exceptions, Attach. D, Master Agreement at 72 (emphasis added).

> The Council . . . and . . . []BOP[] mutually agree[,] . . . based upon the work performed, to convert [General Schedule (GS)]-1710-11 Teacher positions . . . from . . . []FLSA[] . . . exempt to [nonexempt] positions.
>
> This conversion will occur no later than [sixty] days from the day of this agreement. The parties to any pending arbitrations should meet within [thirty] days to attempt to resolve the pending matters. This agreement constitutes full and final resolution of this matter.[5]

The Arbitrator found the resolution did not waive the FLSA's statute of limitations for overtime claims, because to do so "would require some sort of signed agreement or at least [a memorandum of understanding]," and "[t]here [was] none."[6] The Arbitrator also found the resolution's statement about parties to pending arbitrations meeting within thirty days "reflected a desired result, rather than an agreement of the parties to resolve any pending arbitrations, or grievances[,] that were yet to be filed concerning non[-]FLSA overtime compensation during the previous three years."[7] Relatedly, the Arbitrator determined the resolution referenced only "then[-]pending grievances, rather than those yet to be filed" at the time of the resolution.[8] Therefore, he found the resolution did not bar the grievance.

Third, the Arbitrator rejected an Agency claim that the grievance was inarbitrable because, during certain national labor-management meetings in 2014 and 2015, the Union unsuccessfully challenged the teacher position's FLSA classification. The Arbitrator acknowledged that the issue of the position's improper FLSA classification "was resolved unfavorably to the Union in 2014 and 2015," and the Union's grievance was "the inappropriate forum to raise the issue again."[9] However, the Arbitrator then stated, "Although that ship sailed seven or eight years ago, it fortunately for the Union reached port in April 2023 when [BOP] revised the job description for teachers and [sixty] days later, they became [nonexempt]," which "entitled them to FLSA overtime."[10]

Therefore, the Arbitrator rejected the Agency's arbitrability challenges and, as noted above, he found the Agency violated the FLSA and the parties' agreement as alleged.

The Agency filed exceptions to the award on March 21, 2024, and the Union filed an opposition on May 20, 2024.[11]

III. Analysis and Conclusions

A. The Arbitrator did not exceed his authority.

The Agency argues the Arbitrator exceeded his authority.[12] Arbitrators exceed their authority when, among other things, they fail to resolve an issue submitted to arbitration or disregard specific limitations on their authority.[13] Further, where a party does not cite any specific limitations on an arbitrator's authority, the Authority will not find that the arbitrator disregarded specific limitations on their authority.[14]

According to the Agency, the Arbitrator failed to resolve whether the resolution substantively barred the grievance.[15] Relatedly, the Agency contends the Arbitrator "exceeded his authority when he ignored specific limitations imposed by the . . . [r]esolution and the [parties' a]greement with regard to timeliness."[16] The Agency asserts that the resolution was a "full and final resolution" regarding the teachers' FLSA status,[17] and by allowing the grievance to proceed, the Arbitrator "effectively nullified the [r]esolution."[18]

As discussed in Section II above, the Arbitrator interpreted the resolution and found it resolved the question of the teachers' FLSA classification, but did not bar grievances over unpaid overtime. Because the Arbitrator found that the resolution did *not* constitute "an agreement of the parties to resolve . . . grievances that were yet to be filed concerning non[-]FLSA overtime

[5] Exceptions, Attach. F, National Resolution on FLSA Teacher Status at 1.
[6] Award at 96.
[7] *Id.*
[8] *Id.*
[9] *Id.* at 95.
[10] *Id.*
[11] Although the Agency initially filed its exceptions on March 21, 2024, it did not cure its procedural deficiencies of service until April 11, 2024. Pursuant to 5 C.F.R. § 2425.2(c)(1), the Union also received an additional five days to file its opposition because the Agency cured its procedural deficiencies by mail. Accordingly, we find the Union's opposition was timely filed, and we have considered it.
[12] Exceptions Br. at 8-11.
[13] *U.S. Dep't of the Army, Ky. Nat'l Guard*, 73 FLRA 869, 871 (2024) (Member Kiko concurring on other grounds); *AFGE, Loc. 15*, 68 FLRA 877, 881 (2015).
[14] *NLRB, Region 9, Cincinnati, Ohio*, 66 FLRA 456, 460 (2012) (*NLRB*).
[15] Exceptions Br. at 8-9.
[16] *Id.* at 11.
[17] *Id.*
[18] *Id.* at 10.

compensation during the previous three years,"[19] the Arbitrator rejected the Agency's argument that the resolution rendered the grievance substantively non-arbitrable. The Agency does not cite any specific limitations on the Arbitrator's authority that precluded him from interpreting the resolution in this manner. Thus, the Agency's contentions provide no basis for finding the Arbitrator exceeded his authority.[20]

We deny the exceeded-authority exceptions.

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

The Agency argues the Arbitrator's arbitrability determination "disregarded the clear and unambiguous language of" Article 31 and the resolution,[21] and, thus, that the award fails to draw its essence from the parties' agreement.[22] The Authority will find an arbitration award fails to draw its essence from a collective-bargaining agreement when the appealing 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.[23] Mere disagreement with the arbitrator's interpretation does not establish the award fails to draw its essence from the agreement.[24] Exceptions that are based on a misinterpretation of an award do not provide a basis for finding the award deficient on essence grounds.[25]

The Agency contends the Arbitrator interpreted the resolution as a "triggering event for challenging the preceding nine-year period during which the [t]eachers were classified as FLSA [nonexempt]."[26] The Agency acknowledges that the parties' agreement provides for longer grievance-filing periods when those periods are established by statute, but argues the FLSA's three-year statute of limitations "does not excuse the nine years following the 2014 . . . meeting when the Union first challenged that the BOP [t]eachers were improperly classified as FLSA [nonexempt]."[27]

The Arbitrator did not find that the resolution was a "triggering event" that permitted the Union to challenge the grievants' FLSA classification over the prior nine years.[28] Although the Arbitrator noted the resolution resulted in the grievants being reclassified as FLSA nonexempt, he did not base his timeliness finding on the date of the resolution.[29] Rather, the Arbitrator found that: (1) the resolution did not resolve yet-to-be filed grievances "concerning non[-]FLSA overtime compensation";[30] (2) the grievance was timely under the FLSA's three-year statute of limitations because Article 31 provides "that where the statutes provide for a longer period, then the statutory period would control";[31] and, thus, (3) any failures to pay the grievants the FLSA overtime rate, within the three-year FLSA period preceding the grievance, were grievable occurrences. To the extent the Agency's arguments misinterpret the award, they do not demonstrate the award fails to draw its essence from the parties' agreement.[32]

Further, to the extent the Agency is arguing the Arbitrator was required to consider the 2014 and 2015 national meetings as the grievable occurrence that triggered either the FLSA or the contractual grievance-filing period, that argument lacks merit. As discussed above, the Arbitrator explained why each failure to pay the grievants the FLSA overtime rate, within the three-year FLSA period preceding the grievance, was a grievable occurrence. The Agency does not cite any contractual wording that required the Arbitrator to reach a different conclusion, and does not otherwise provide any basis for finding this aspect of the award irrational, unfounded, implausible, or in manifest disregard of the agreement. Therefore, this argument also does not demonstrate the award fails to draw its essence from the parties' agreement.[33]

We deny the essence exceptions.

[19] Award at 96.
[20] *See U.S. DOJ, Fed. BOP, U.S. Penitentiary McCreary, Pine Knot, Ky.*, 73 FLRA 865, 867 (2024) (denying exception arguing arbitrator exceeded his authority by failing to resolve an issue where award was directly responsive to the issue); *NLRB*, 66 FLRA at 460 (denying exceeded-authority argument that the arbitrator disregarded specific limitations on her authority where the excepting party had "not cited any such express limitations").
[21] Exceptions Br. at 6.
[22] *Id.* at 4-8.
[23] *USDA, Food & Nutrition Serv.*, 73 FLRA 822, 824 (2024) (*USDA, FNS*).
[24] *Id*.
[25] *Id*. (citing *SSA*, 70 FLRA 227, 230 (2017) (*SSA*)).
[26] Exceptions Br. at 7.
[27] *Id.* at 8.
[28] *Id*. at 7.
[29] *See* Award at 95 (rejecting Agency's argument that the resolution "set a . . . 30[-]day deadline for the filing of grievances with respect to FLSA overtime" because that "argument focuses on 2023 and does not address the statute of limitations set forth in [the] FLSA").
[30] *Id.* at 96.
[31] *Id.*
[32] *USDA, FNS*, 73 FLRA at 824; *SSA*, 70 FLRA at 230.
[33] *AFGE, Loc. 2076, Nat'l Citizenship & Immigr. Serv. Council*, 73 FLRA 368, 369 (2022) (denying essence exception where excepting party did not cite any contractual wording that conflicted with arbitrator's findings or otherwise demonstrate those findings were irrational, unfounded, implausible, or in manifest disregard of parties' agreement).

IV. Decision

We deny the Agency's exceptions.