

65 FLRA No. 173

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1546
(Union)

and

UNITED STATES
DEPARTMENT OF DEFENSE
DEFENSE LOGISTICS AGENCY
(Agency)

0-AR-4745

ORDER DISMISSING EXCEPTION

May 23, 2011

Before the Authority: Carol Waller Pope, Chairman,
and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This matter is before the Authority on an exception to an award of Arbitrator Kathy Fragnoli filed by the Union under § 7122 of the Federal Service Labor-Management Relations Statute and part 2425 of the Authority's Regulations. The Agency filed an opposition.

The Arbitrator found that the Agency did not violate the parties' agreement when it reassigned the grievant. For the reasons that follow, we dismiss the Union's exception.

II. Background and Arbitrator's Award

The Agency reassigned the grievant to a new position. Award at 5-6. The Union filed a grievance challenging the reassignment as contrary to the parties' agreement. *Id.* at 6-7. The grievance was unresolved and submitted to arbitration, where the Arbitrator stated the issue, in pertinent part, as follows: "Did the Agency violate the terms of the [parties'] [a]greement when the [g]rievant was involuntarily reassigned . . . ?" *Id.* at 2. The Arbitrator found that the Agency did not violate the parties' agreement, and denied the grievance. *Id.* at 12.

III. Positions of the Parties**A. Union's Exception**

The Union asserts that the award "conflicts with a Presidential Executive Order . . ." Exception at 1.

B. Agency's Opposition

The Agency argues that § 2429.5 of the Authority's Regulations (§ 2429.5) bars the Union's exception because the Union failed to argue, before the Arbitrator, that the reassignment conflicts with an executive order. Opp'n at 4-5. The Agency also argues that the Union's exception lacks merit and fails to comply with §§ 2425.4 and 2425.6 of the Authority's Regulations. *See id.* at 3-4, 5-12. Finally, the Agency argues that the Authority lacks jurisdiction because the award relates to a reduction in pay covered under 5 U.S.C. § 7512. *Id.* at 5.

IV. Analysis and Conclusions

Under § 2429.5, "[t]he Authority will not consider any . . . arguments . . . that could have been, but were not, presented in the proceedings before the . . . arbitrator." 5 C.F.R. § 2429.5. *See also* 5 C.F.R. § 2425.4(c) (exceptions may not rely on any "evidence, factual assertions, [or] arguments . . . that could have been, but were not, presented to the arbitrator").

Here, the issues before the Arbitrator included whether the Agency's reassignment of the grievant violated the parties' agreement. Award at 2. In this regard, the Union argued to the Arbitrator that the reassignment violated the parties' agreement. *Id.* at 6-7. Although the Union could have also argued that the reassignment violated an executive order, there is no indication in the record that it did so. Accordingly, we dismiss this exception as barred by § 2429.5.* *See, e.g., Fraternal Order of Police, Pentagon Police Labor Comm.*, 65 FLRA 781, 783-84 (2011).

V. Decision

The Union's exception is dismissed.

*Accordingly, we find it unnecessary to address the Agency's remaining arguments, including its claim that the Authority lacks jurisdiction. *See, e.g., Pan. Area Maritime/Metal Trades Council, AFL-CIO (M/MTC)*, 55 FLRA 1199, 1200 (1999) (Authority assumed, without deciding, that it had jurisdiction, and dismissed exception pursuant to § 2429.5).