

67 FLRA No. 46

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 3571
(Union)

and

SOCIAL SECURITY ADMINISTRATION
REGION V
(Agency)

0-AR-4912

DECISION

January 14, 2014

Before the Authority: Carol Waller Pope, Chairman, and
Ernest DuBester and Patrick Pizzella, Members
(Member Pizzella concurring)

I. Statement of the Case

Arbitrator Barry Goldman found that the Agency did not violate the parties' collective-bargaining agreement when, on a particular day, the temperature in one of its offices dropped below what the Union contended were permissible limits. The Arbitrator found, in this regard, that the parties' agreement does not contain a "required temperature range."¹ There are two substantive questions before us.

The first question is whether the award fails to draw its essence from the parties' agreement. With regard to several cited provisions of the agreement, the Union has not demonstrated that the Arbitrator's interpretation is irrational, unfounded, implausible, or in manifest disregard of the agreement. With regard to one other cited provision of the agreement, the Arbitrator based his determination on two separate and independent grounds, and the Union has not shown that both of those grounds are deficient. Accordingly, the answer is no.

The second question is whether the award is contrary to law. The Union argues, in this regard, that the parties' agreement requires the Agency to comply with certain rules and regulations that specify permissible office temperatures as ranging from sixty-eight to seventy-six degrees. Because the Arbitrator found that

the parties' agreement does not contain a required temperature range, and because the Agency's compliance with the agreement was the only issue before the Arbitrator, the answer is no.

II. Background and Arbitrator's Award

Over the course of one day, the temperature in one of the Agency's offices (the office) was "[sixty-five] degrees minimum" at 8:15 a.m., "[sixty-seven] degrees minimum" at 10:15 a.m., and "[sixty-eight] degrees" at 1:00 p.m.² The Union filed a grievance claiming that the Agency violated the parties' agreement when the temperature fell below sixty-eight degrees. The grievance was unresolved and submitted to arbitration. The parties stipulated to the following issue before the Arbitrator: Whether the Agency violated the parties' agreement "with respect to temperature" during the day in question.³

The Arbitrator first considered whether the parties' agreement requires the Agency to ensure that the temperature in the office stays within the range of sixty-eight to seventy-six degrees. The Arbitrator found that, although the parties' previous agreement contained a "required temperature range,"⁴ the Union failed to "have that temperature range included in the present [a]greement."⁵ As such, the Arbitrator determined that the parties' agreement does not contain a "required temperature range."⁶

The Arbitrator then considered Article 9, Section 8 of the parties' agreement (Article 9-8). Article 9-8, entitled "Temperature Conditions,"⁷ states, as relevant here, that "problem[s] of temperature extremes . . . are appropriate matters for referral . . . to the local health and safety representatives."⁸ The Arbitrator found that the temperatures that occurred on the day in question "were not temperature extremes."⁹ Accordingly, he determined that the Agency did not violate Article 9-8.

In addition, the Arbitrator considered Article 9, Section 19 (Article 9-19), entitled "Work space,"¹⁰ which states, in pertinent part:

The [A]gency will make every reasonable effort to provide work space that comports with [Occupational

² *Id.* at 1.

³ *Id.*

⁴ *Id.* at 3.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 2; *see also id.* at 3.

⁸ *Id.* at 2.

⁹ *Id.* at 3 (internal quotation marks omitted).

¹⁰ *Id.* at 2.

¹ Award at 3.

Safety and Health Administration (OSHA)] and [American National Standards Institute (ANSI)] standards Should the Agency decide to change employee workspace including ergonomic furniture, the Agency will provide notice and bargain to the extent required by [the Federal Service Labor-Management Relations Statute (the Statute)].¹¹

The Arbitrator found that “credible testimony at the hearing” indicated that Article 9-19 was “intended by the drafters to deal with furniture, not temperature.”¹² Additionally, the Arbitrator found that because the Agency made “every reasonable effort to provide work space that comports with [applicable] OSHA and ANSI standards,”¹³ the Agency complied with Article 9-19. In this connection, the Arbitrator found that, on the day in question, the Agency contacted the building’s owners “promptly” and “properly communicated with the building contractor,” and that the matter was “brought under control within a few hours.”¹⁴ The Arbitrator thus determined that the Agency’s response was “entirely reasonable and appropriate under the circumstances.”¹⁵

Next, the Arbitrator considered Article 9, Section 7.B. (Article 9-7.B.), which pertains to “hazardous”¹⁶ and “potentially serious”¹⁷ conditions. The Arbitrator found that the office was “neither unsafe nor unhealthy” on the day in question.¹⁸ Accordingly, he determined that Article 9-7.B. “[does] not apply” to the temperature changes at issue here.¹⁹

Finally, the Arbitrator considered Article 9, Section 11 (Article 9-11), entitled “Indoor Air Quality.”²⁰ Article 9-11 states, in pertinent part, that the Agency “will provide safe, healthful indoor air quality in compliance with applicable laws and industry standards.”²¹ Based on the “common meaning of the term ‘air quality,’”²² and on the fact that Article 9 has a separate section that specifically addresses “temperature conditions,”²³ the Arbitrator determined that Article 9-11

“does not apply” to temperature changes in the workplace.²⁴

The Arbitrator concluded that the Agency did not violate the parties’ agreement. Accordingly, he denied the grievance.

The Union filed exceptions to the award, and the Agency filed an opposition to the Union’s exceptions.

III. Preliminary Matter

The Union failed to provide four copies of its exceptions in addition to the original, and the original was missing pages.²⁵ Citing §§ 2425.4(a)(2) and 2429.25 of the Authority’s Regulations,²⁶ the Authority issued an order directing the Union to correct these deficiencies.²⁷ The Union filed a timely response that corrected the missing-page issue, but again provided only an original, and not four additional copies, of its exceptions.²⁸ Moreover, the Union submitted several new documents.²⁹ In a show-cause order, the Authority stated that in order to avoid dismissal, the Union “must file” an original and four copies of its exceptions “excluding” the new documents.³⁰ The Union filed a timely response that provided an original and four copies of its exceptions, but again the Union submitted the new documents.

As the Union has now submitted an original and four copies of its exceptions, we consider the Union’s exceptions. As for the new documents, the Authority’s Regulations do not provide for the filing of supplemental submissions.³¹ Although § 2429.26 of the Authority’s Regulations provides that the Authority may grant leave to file documents as the Authority deems appropriate,³² the Authority requires parties to request leave to file supplemental submissions.³³ Here, the Union submitted the new documents without requesting leave to file them. Therefore, we do not consider the new documents.

¹¹ *Id.*

¹² *Id.* at 3.

¹³ *Id.* (internal quotation mark omitted).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 4 (internal quotation mark omitted).

¹⁷ *Id.* (internal quotation mark omitted).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 2; *see also id.* at 4.

²¹ *Id.* at 2.

²² *Id.* at 4.

²³ *Id.* (internal quotation marks omitted).

²⁴ *Id.*

²⁵ Order, Feb. 28, 2013 (Order) at 1.

²⁶ 5 C.F.R. §§ 2425.4(a)(2), 2429.25.

²⁷ Order at 1.

²⁸ Order to Show Cause, Apr. 1, 2013 at 1.

²⁹ *Id.*

³⁰ *Id.* at 1-2.

³¹ *E.g.*, *U.S. Dep’t of the Treasury, IRS, Wash., D.C.*, 66 FLRA 712, 714 (2012).

³² 5 C.F.R. § 2429.26.

³³ *E.g.*, *AFGE, Local 522*, 66 FLRA 560, 560 n.1 (2012); *AFGE, Council 215*, 66 FLRA 137, 137 n.1 (2011).

IV. Analysis and Conclusions

- A. The award does not fail to draw its essence from the parties' agreement.

The Union argues that the award fails to draw its essence from several provisions of the parties' agreement – specifically Article 9-8 (and, in that connection, Article 9, Section 7.C. (Article 9-7.C.)), Article 9-19, and Article 9-11.³⁴

The Authority will find an arbitration award deficient as failing to draw its essence from the collective-bargaining agreement when the excepting 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 collective-bargaining 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.³⁵

With regard to Article 9-8, that provision states, in pertinent part, that “problem[s] of temperature extremes . . . are appropriate matters for referral . . . to the local health and safety representatives.”³⁶ The Arbitrator found that the Agency did not violate Article 9-8, because temperatures that went as low as sixty-five degrees “were not temperature extremes.”³⁷

The Union asserts that the Arbitrator “did not seem to comprehend the importance that the contract places on temperature issues.”³⁸ To support this claim, the Union argues that Article 9-8 indicates that “temperature has a bearing on employees['] health.”³⁹ Additionally, the Union cites Article 9-7.C., which states, as relevant here, that health and safety committees may review procedures regarding “bomb threats, possible shootings, [and] temperature conditions.”⁴⁰ Because Article 9-7.C. “includes temperature issues along with shootings and bomb threats,”⁴¹ the Union argues, Article 9-7.C. further indicates that temperature issues are important under the parties' agreement.⁴²

The Union's arguments do not demonstrate that it was irrational, unfounded, implausible, or in manifest disregard of the agreement for the Arbitrator to find that

office temperatures that went as low as sixty-five degrees were not “temperature extremes” within the meaning of Article 9-8.⁴³ Therefore, the Union has not demonstrated that the award fails to draw its essence from Article 9-8.

With regard to Article 9-19, that provision states, in pertinent part: “The [A]gency will make every reasonable effort to provide work space that comports with OSHA and ANSI standards Should the Agency decide to change employee workspace including ergonomic furniture, the Agency will provide notice and bargain to the extent required by [the Statute].”⁴⁴ The Arbitrator determined that the Agency did not violate Article 9-19, based on two grounds: (1) Article 9-19 pertains to “furniture, not temperature”;⁴⁵ and (2) the Agency did “make every reasonable effort to provide work space that comports with OSHA and ANSI standards” and, thus, complied with Article 9-19.⁴⁶

Although the Union challenges the Arbitrator's determination with regard to the first ground (arguing that the provision pertains to more than just furniture),⁴⁷ the Union does not challenge the Arbitrator's determination with regard to the second ground. When an arbitrator has based an award on separate and independent grounds, an appealing party must demonstrate that all of the grounds are deficient in order to demonstrate that the award is deficient.⁴⁸ As the Union does not challenge the second ground on which the Arbitrator found that the Agency did not violate Article 9-19, and as that ground provides a separate and independent basis for the Arbitrator's determination that the Agency did not violate that provision,⁴⁹ the Union has not demonstrated that the award fails to draw its essence from Article 9-19.

With regard to Article 9-11, that provision, entitled “Indoor Air Quality,”⁵⁰ states, in pertinent part, that the Agency “will provide safe, healthful indoor air quality in compliance with applicable laws and industry standards.”⁵¹ The Arbitrator found that Article 9-11 does not apply to temperature changes in the workplace, based on the “common meaning of the term ‘air quality,’”⁵² and on the fact that Article 9 has a separate section specifically addressing “temperature conditions.”⁵³

³⁴ Exceptions at 37-38.

³⁵ *U.S. DOL (OSHA)*, 34 FLRA 573, 575 (1990).

³⁶ Award at 2.

³⁷ *Id.* at 3 (internal quotation marks omitted).

³⁸ Exceptions at 38.

³⁹ *Id.*

⁴⁰ *Id.* at 37.

⁴¹ *Id.* at 38.

⁴² *See id.*

⁴³ Award at 3 (internal quotation marks omitted).

⁴⁴ *Id.* at 2.

⁴⁵ *Id.* at 3.

⁴⁶ *Id.* (internal quotation marks omitted).

⁴⁷ Exceptions at 38.

⁴⁸ *E.g., NAGE, Local R5-184*, 67 FLRA 32, 33 (2012).

⁴⁹ *See id.*

⁵⁰ Award at 2; *see also id.* at 4.

⁵¹ *Id.* at 2.

⁵² *Id.* at 4.

⁵³ *Id.* (internal quotation marks omitted).

The Union claims that the award fails to draw its essence from Article 9-11 because: (1) an OSHA document interpreting OSHA regulations (the OSHA document)⁵⁴ discusses both indoor air quality and office temperature;⁵⁵ and (2) the parties' previous agreement contained a provision entitled "Indoor Air Quality" that discussed "temperature ranges," and also contained a provision entitled "Temperature Conditions."⁵⁶ With regard to the second claim, the Union concedes that its argument about "temperature ranges being included in the 'Indoor Air Quality' section of the previous contract"⁵⁷ was not made to the Arbitrator. Under other circumstances, the Union's concession would raise a question of whether that specific argument was properly before the Authority. However, because the Arbitrator addressed the broad issue of whether the parties' previous agreement contained a required temperature range,⁵⁸ we find that the argument is properly before us.

Reviewing all of the Union's arguments regarding Article 9-11, we find that the Union does not demonstrate that it was irrational, unfounded, implausible, or in manifest disregard of the agreement for the Arbitrator to find that "air quality" does not pertain to temperature changes in the workplace.⁵⁹ Accordingly, the Union has not shown that the award fails to draw its essence from Article 9-11.

B. The award is not contrary law, rule, or regulation.

The Union argues that the award is contrary to law, rule, and regulation. Specifically, the Union contends that the parties' agreement requires the Agency to comply with the following rules and regulations that, according to the Union, mandate that office temperatures range from sixty-eight to seventy-six degrees:⁶⁰ (1) the OSHA document; (2) a standard of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers; and (3) an Agency regulation, Administrative Instructions Manual System 13.04.02(A).

But the Arbitrator found that the agreement does not require a particular temperature range, and the Union has not demonstrated that the award fails to draw its essence from the agreement.⁶¹ Therefore, the Union's contrary-to-law argument provides no basis for finding the award deficient.

V. **Decision**

We deny the Union's exceptions.

⁵⁴ Exceptions, Attach. I.

⁵⁵ Exceptions at 38; *see also* Exceptions, Attach. I.

⁵⁶ Exceptions at 38 (internal quotation marks omitted).

⁵⁷ *Id.* at 40.

⁵⁸ Award at 3.

⁵⁹ *Id.* at 4 (internal quotation marks omitted).

⁶⁰ *See* Exceptions at 6, 12-13; *see also id.* at 8, 37-38.

⁶¹ *See, e.g., Sport Air Traffic Controllers Org.*, 66 FLRA 547, 549 (2012); *AFGE, Local 3701*, 66 FLRA 291, 293 (2011).

Member Pizzella, concurring:

I agree with my colleagues to the extent that our decision denies the Union's exceptions.

However, as I noted in my concurring opinions in *U.S. DHS, CBP*¹ and *NTEU, Chapter 32 (Chapter 32)*,² I conclude that this grievance fails to contribute to the "effective conduct of public business"³ or to those "progressive work practices [that] facilitate and improve employee performance."⁴

If this grievance was turned into a movie, it should be titled "*Three Degrees of Separation from Reality*." (Kevin Bacon call your agent!!)

On Monday, October 3, 2011, employees at the Social Security Administration Region V teleservice center offices in Indianapolis, Indiana reported to work to find that the heating system was not operating to capacity and that the ambient air temperature in the office was sixty-five degrees.⁵ The Agency "promptly" reported the problem to the building owners⁶ and the temperature was raised to sixty-seven degrees by 10:15 a.m. and sixty-eight degrees by 1:00 p.m.⁷

Despite the prompt response by the Agency to this mild inconvenience, the Union filed the instant grievance arguing that the Agency failed to make "every reasonable effort"⁸ and should have considered additional "appropriate arrangements" such as "bringing in supplemental heat/cooling equipment[] or closing the office and granting employees administrative leave."⁹

When Congress enacted the Federal Service Labor-Management Relations Statute, it could not have envisioned that a mild inconvenience, which occurred

(and was rectified within five hours) could justify the expenditure of Union official time and Agency resources¹⁰ just to have an Arbitrator determine twelve months later¹¹ that the office temperatures were neither "extreme[]"¹² nor "unsafe or unhealthy."¹³ In other words, the Arbitrator made an obvious and commonsense determination that should have been apparent to the Union and the grievants at the time they initiated this unnecessary grievance.

An effective bargaining relationship is not fostered under these circumstances and completely fails to take into account the resulting costs – of Agency resources (time, money, and human capital) and Union official time – to the taxpayers.¹⁴

Thank you.

¹ 67 FLRA 107, 112 (2013) (Concurring Opinion of Member Pizzella).

² 67 FLRA 174, 177 (2014) (Concurring Opinion of Member Pizzella).

³ *Id.* (citing 5 U.S.C. § 7101(a)(1)(B)).

⁴ *Id.* (citing 5 U.S.C. § 7101(a)(2)); *see also INS v. FLRA*, 855 F.2d 1454, 1460 (9th Cir. 1988) (citing 5 U.S.C. § 7101(b)) (Congress directed the Authority to interpret the Federal Service Labor-Management Relations Statute to promote governmental effectiveness and efficiency).

⁵ Award at 1. Public weather records indicate an external temperature of 45 degrees at 8:15 a.m. "Weather History for Indianapolis, Indiana," www.wunderground.com (Monday, Oct. 3, 2011).

⁶ Award at 3.

⁷ *Id.* at 1. Public weather records indicate that the external temperature rose to a high of *seventy-two degrees* by 1:00 p.m. National Oceanic and Atmospheric Administration, National Weather Service, www.weathersource.com (Oct. 11, 2011).

⁸ Exceptions, Attach. C, Union's Closing Brief at 8-9.

⁹ *Id.* at 8.

¹⁰ *See* 67 FLRA at 112.

¹¹ The arbitration hearing occurred on October 18, 2012, and the Arbitrator rendered his decision on December 30, 2012. Award at 1, 4.

¹² Award at 3.

¹³ *Id.* at 4.

¹⁴ *See Chapter 32*, 67 FLRA at 177 (Concurring Opinion of Member Pizzella).