

70 FLRA No. 42

UNITED STATES
DEPARTMENT OF DEFENSE
DEFENSE LOGISTICS AGENCY AVIATION
RICHMOND, VIRGINIA
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1992
(Union)

0-AR-5262

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DECISION

April 24, 2017

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Before the Authority: Patrick Pizzella, Acting Chairman,
and Ernest DuBester, Member

I. Statement of the Case

The Agency denied the grievant's request to telework full-time, and the Union filed a grievance challenging the denial. Arbitrator Randi E. Lowitt sustained the grievance but found that no relief was available to the grievant because he had retired shortly after the arbitration hearing. Therefore, as a remedy, the Arbitrator directed the Agency to review future telework requests consistent with the parties' collective-bargaining agreement.

The main question before us is whether the Arbitrator exceeded her authority by awarding relief to individuals other than the grievant. The answer is yes, because the Authority has consistently held that where a grievance is limited to a particular grievant, an arbitrator's remedy must be similarly *limited*. Accordingly, we set aside the award.

II. Background and Arbitrator's Award

The grievant asked the Agency to increase his telework days from four to five days per week. The Agency denied his request, and the Union filed a grievance challenging the denial. As a remedy, the

grievance asked the Agency to "grant [the grievant's] request to work [five] days of [t]elework."¹

Article 9 of the parties' agreement concerns the Agency's telework program. Specifically, Section 4 states that if the Agency denies an employee's telework request, then the Agency "will advise the employee of the business/mission reasons" for the denial but that "generic statements," such as "mission requirements," are not sufficient.²

At arbitration, the Union argued that the Agency's reasons for denying the telework request were "insufficient and generic."³ The Agency argued that it denied the grievant's telework request because his presence in the office at least one day per week was essential to "maintain or improve communication and [teambuilding]."⁴

After the arbitration hearing, but before the Arbitrator issued her award, the grievant retired.

Because the parties did not agree to a stipulated issue, the Arbitrator framed the issue as: "Did [the Agency] violate the [agreement]?"⁵ As a preliminary matter, the Arbitrator determined that the issue was not rendered moot by the grievant's retirement although relief was not sought for any other employees.

The Arbitrator found that the Agency's reasons for denying the telework request were "generic"⁶ and "insufficient."⁷ Therefore, the Arbitrator sustained the grievance but found that – because the grievant had retired – no relief was available to him. She, nonetheless, "directed [the Agency] to review [the] future telework requests [of nongrievants] in light of the requirements set forth in the . . . [a]greement."⁸

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

¹ Exceptions, Joint Ex. 6, Grievance at 2.

² Award at 3-4.

³ *Id.* at 11.

⁴ *Id.* at 9.

⁵ *Id.* at 8.

⁶ *Id.* at 12, 14.

⁷ *Id.* at 13, 14.

⁸ *Id.* at 15.

III. Analysis and Conclusion: The Arbitrator exceeded her authority by awarding relief to individuals other than the grievant.

The Agency argues that the Arbitrator exceeded her authority and that the Authority should vacate the award.⁹

As relevant here, arbitrators exceed their authority when they award relief to employees who are not part of the grievance.¹⁰ In other words, if a grievance is limited to a particular grievant, then the remedy must be limited to that grievant.¹¹

Here, the grievance concerned only the grievant's telework request. Therefore, the Arbitrator exceeded her authority when she directed how the Agency should address the future telework requests of other employees.¹² Accordingly, we set aside the award, and find it unnecessary to address the Agency's remaining exceptions.¹³

IV. Decision

We set aside the award.

⁹ Exceptions Br. at 9-11.

¹⁰ See e.g., *U.S. Dep't of Energy, Oak Ridge Office, Oak Ridge, Tenn.*, 64 FLRA 535, 538 (2010) (*Energy*) (citing *U.S. DOD, Army & Air Force Exch. Serv.*, 51 FLRA 1371, 1378 (1996)); see also *U.S. Dep't of the Air Force, Air Force Logistics Ctr., Tinker Air Force Base, Okla.*, 45 FLRA 1234, 1240 (1992) (*Tinker*) (arbitrators exceed their authority when they "award[] relief to persons who did not file a grievance on their own behalf and did not have the union file a grievance for them") (citing *U.S. Dep't of the Air Force, Okla. City Air Logistics Ctr., Tinker Air Force Base, Okla.*, 42 FLRA 680, 685-86 (1991)).

¹¹ See, e.g., *U.S. Dep't of the Air Force, Joint Base Elmendorf-Richardson*, 69 FLRA 541, 547 (2016) (then-Member Pizzella dissenting as to other matters); *U.S. Dep't of the Army, U.S. Corps of Eng'rs, Nw. Div.*, 65 FLRA 131, 133-34 (2010) (citing *Energy*, 64 FLRA at 538; *Tinker*, 45 FLRA at 1240); *GSA, Region VII, Fort Worth, Tex.*, 35 FLRA 1259, 1266 (1990) (citing *U.S. Army, Acad. of Health Scis., Fort Sam Houston, Tex.*, 34 FLRA 598, 600 (1990)).

¹² See, e.g., *Energy*, 64 FLRA at 538.

¹³ See *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Coleman, Fla.*, 66 FLRA 300, 304 (2011) (setting aside the award in connection with an exceeded-authority exception and finding it unnecessary to address remaining exceptions).