

70 FLRA No. 71

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1206
(Union)

and

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

0-AR-5298

DECISION

November 14, 2017

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

I. Statement of the Case

Arbitrator Daniel F. Altemus found that the Agency did not violate a particular Agency letter and policy when it failed to promote an employee (the grievant) to a General Schedule (GS)-12 position. The main question before us is whether the Arbitrator's award is contrary to the Agency letter and policy. Because the Union does not demonstrate that the Arbitrator misinterpreted the letter or the policy, the answer is no.

II. Background and Arbitrator's Award

As relevant here, Title 5 of the U.S. Code had governed the Agency's social-worker positions. Then the Agency converted those positions to "hybrid" positions, which are subject to the advancement and qualification standards of Title 38 of the U.S. Code, as well as certain provisions of Title 5 not applicable here.¹ After the conversion, the social-worker positions were subject to "new or revised qualifi[cation] standards."²

Because of this change, the Agency issued Human Resources Management Letter 05-06-06 (the letter), which stated that employees in hybrid positions – including employees who occupied their

positions before the positions became hybrids – would undergo a one-time, special "boarding"³ process in which a review board (the board) would determine whether those employees satisfied the new qualification standards. The letter also stated that the board would recommend promoting an employee affected by the change if the board determined that the employee satisfied the new standards of "a grade that [was] higher than the current title, series, and grade held by the employee,"⁴ but that, if the board determined that an employee did not satisfy the new standards for the position or grade that he or she held, the employee would be "grandfathered into his [or her] *current* title, series, and grade" instead of being demoted.⁵ The letter also made any promotions retroactive to 2006.

The grievant was specially boarded as a GS-11 social worker. Under the new qualification standards, GS-12 social-worker positions require an "advanced[-]practice license."⁶ The board found that the grievant was unqualified for promotion to a GS-12 because she did not have an advanced-practice license.

The Union then filed a grievance challenging the Agency's failure to promote the grievant. The grievance was unresolved, and the parties submitted it to arbitration.

As pertinent here, the Arbitrator found that the letter "explicitly states" that the purpose of the special boarding was to apply the new qualification standards to employees.⁷ He also found that the letter did *not* state that, in conducting the special boarding, the Agency would use the Title 5 standards that had been in effect before the letter's issuance. Additionally, the Arbitrator determined that the Agency properly boarded the grievant as a GS-11 because she did not have an advanced-practice license.

Further, the Arbitrator found that Veterans Health Administration Directive 5005/23, Part II, Appendix G39 (the grandfather policy) did not apply to the grievant. The grandfather policy states, in relevant part, that employees in social-worker positions "on the effective date of th[e] new] qualification standard[s] are considered to have met all qualification requirements for the title, series[,] and grade held, including positive education and licensure or certification."⁸ The Arbitrator found that the grandfather policy protects employees who "already [held] a

³ *Id.*

⁴ *Id.* at 6 (quoting Letter at B-2).

⁵ Letter at B-2 (emphasis added) (internal quotation marks omitted).

⁶ Award at 6.

⁷ *Id.* at 14.

⁸ *Id.* at 15.

¹ Award at 5.

² *Id.* (quoting Exceptions, Attach. 1, Letter at 4 (Letter)).

particular title, series[,] and grade [when the new qualification standards were implemented] from being adversely impacted by the new . . . standards.”⁹ In other words, employees without the advanced-practice license who were already in GS-12 social-worker positions when they were specially boarded would not lose their GS-12 position just because they did not have the required license. Additionally, the Arbitrator determined that the grandfather policy “does not provide that employees who may have been *eligible* for advancement under the old standards must be recommended for promotion” even if they do not meet the new standards, because such an interpretation would “defeat the purpose” of the special boarding.¹⁰

The Arbitrator concluded that the Agency’s decision not to promote the grievant was consistent with the letter and grandfather policy. Accordingly, he denied the grievance.

The Union filed exceptions to the Arbitrator’s award.

III. Analysis and Conclusion: The award is not contrary to the letter or the grandfather policy.

The Union argues that the award is contrary to the letter and the grandfather policy.¹¹ In resolving grievances, arbitrators are empowered to interpret and apply agency rules and regulations.¹² When evaluating exceptions asserting that an arbitrator’s award is contrary to a governing agency rule or regulation, the Authority will determine whether the award is inconsistent with the plain wording of, or is otherwise impermissible under, the rule or regulation.¹³

According to the Union, when she was specially boarded, the grievant met the Title 5 requirements for a GS-12 social-worker position, and the letter required the board to recommend promoting her.¹⁴ The Union contends that the Arbitrator should have found that the board erred when it applied the new standards to the grievant because she “*only*” loses her “Title 5 status” once she is promoted to a GS-12.¹⁵

The letter states that the new standards apply to employees who were in their positions before the positions became hybrids¹⁶ and that “[t]he primary purpose of [the] initial special boarding is *to apply the new . . . standard[s]*.”¹⁷ The letter also states that the board will recommend promoting employees who satisfy the *new* standards.¹⁸ The letter does *not* state that Title 5 standards remain applicable to employees in hybrid positions.¹⁹ The Arbitrator found that the purpose of the special boarding was to apply the new standards and did not require that employees “who may have been eligible for advancement under the old standards must be recommended for promotion whether or not they meet the new . . . standards.”²⁰ That finding is consistent with the plain wording of the letter.²¹

Relatedly, the Union contends that the grandfather policy means that, because the grievant was *qualified* under Title 5 for GS-12 positions before her special boarding, the Agency should have boarded her as a GS-12, even though GS-12 social-worker positions now require an advanced-practice license.²² The grandfather policy states that employees in social-worker positions “on the effective date of th[e new] qualification standard[s] are considered to have met all qualification requirements for the title, series[,] and grade *held*.”²³ According to the Arbitrator, the grandfather policy did not apply to the grievant, because its plain wording means that those employees who already *held* a GS-12 position when the Agency boarded them could stay at that grade even if they did not have an advanced-practice license.²⁴ The Union has not shown that the Arbitrator’s interpretation is inconsistent with the plain wording of, or is otherwise impermissible under, the grandfather policy.²⁵

Consequently, the Union has not demonstrated that the Arbitrator’s finding that the Agency properly denied the grievant a promotion is contrary to the letter or the grandfather policy.

Because the Union has not demonstrated that the grievant was entitled to a promotion, we need not address

⁹ *Id.*

¹⁰ *Id.* (emphasis added).

¹¹ Exceptions Br. at 4-6.

¹² *U.S. Dep’t of VA, Med. Ctr., Dayton, Ohio*, 68 FLRA 360, 361-62 (2015) (*VA Dayton*) (citation omitted).

¹³ *Id.* at 362.

¹⁴ Exceptions Br. at 5 (citing Letter at B-2).

¹⁵ *Id.* at 6.

¹⁶ Letter at 2.

¹⁷ *Id.* at 4 (emphasis added).

¹⁸ Award at 6 (citing Letter at B-2).

¹⁹ See Letter at 1-4, B-1 to B-3.

²⁰ Award at 15.

²¹ See, e.g., *VA Dayton*, 68 FLRA at 362.

²² Exceptions Br. at 5.

²³ Award at 15 (emphasis added).

²⁴ *Id.*

²⁵ See, e.g., *Held*, *Oxford American Dictionary and Thesaurus* (Am. ed. 2003) (“held” is the past or past participle form of “have” or “possess”); *Black’s Law Dictionary* (3d pocket ed. 2006) (same); see also *VA Dayton*, 68 FLRA at 362.

the Union's argument concerning retroactive promotion.²⁶

IV. Decision

We deny the Union's exceptions.

²⁶ Exceptions Br. at 2, 5-6.