

70 FLRA No. 121

INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS
LOCAL F-283
(Union)

and

UNITED STATES
DEPARTMENT OF THE ARMY
HQ, I CORPS AND FORT LEWIS
JOINT BASE LEWIS-McCHORD, WASHINGTON
(Agency)

0-AR-5327

DECISION

May 24, 2018

Before the Authority: Colleen Duffy Kiko, Chairman,
and Ernest DuBester and James T. Abbott, Members
(Member DuBester concurring;
Member Abbott concurring)

I. Statement of the Case

The Agency issued an employee (the grievant) a letter of reprimand, and the Union filed a grievance. Subsequently, the grievant was separated from federal service. Because the grievant was no longer a federal employee, Arbitrator James R. Bailey issued an award closing the grievance. There are two questions before us.

The first question is whether the award fails to draw its essence from the parties' collective-bargaining agreement. Because the Union does not establish that the award is irrational, unfounded, implausible, or in manifest disregard of the agreement, the answer is no.

The second question is whether the Arbitrator's interpretation of the agreement is contrary to the Union's right to pursue grievances under § 7121(b)(1)(C)(i) of the Federal Service Labor-Management Relations Statute (the Statute).¹ Because the Union does not demonstrate that the award is contrary to § 7121(b)(1)(C)(i), we deny the exception.

¹ 5 U.S.C. § 7121(b)(1)(C)(i).

II. Background and Arbitrator's Award

The Agency issued the grievant a letter of reprimand, and the Union filed a grievance, which went to arbitration. In his award,² the Arbitrator noted that Article 26, Section 12 (Section 12) of the parties' agreement states that "[i]f an employee separates from the federal service, action will be stopped and the grievance will be closed without decision."³ The Arbitrator found that the grievant had been separated from federal service on October 1, 2017, so, on October 2, 2017, the Arbitrator "closed [the grievance] without decision."⁴

On November 6, 2017, the Union filed exceptions to the Arbitrator's award, and on December 6, 2017, the Agency filed an opposition to the Union's exceptions.

III. Analysis and Conclusions

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

The Union argues that the award fails to draw its essence from Section 12 of the agreement.⁵ The Authority will find that the award fails to draw its essence from the parties' 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 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.⁶

According to the Union, Section 12 requires closing a grievance when an employee separates from federal service only if the grievance is an *employee-initiated grievance*.⁷ The Union asserts that the grievance was initiated *by the Union*, so Section 12 does not apply.⁸

Section 12 does not specify that it applies only to employee-initiated grievances, and the Union does not otherwise show that the award is irrational, unfounded, implausible, or in manifest disregard of the agreement. Accordingly, we deny the exception.⁹

² Award at 7 (citing Exceptions, Ex. B, Collective-Bargaining Agreement (CBA) at 19).

³ CBA at 22.

⁴ Award at 7.

⁵ Exceptions at 3.

⁶ SSA, 70 FLRA 227, 229 (2017).

⁷ Exceptions at 3.

⁸ *Id.*

⁹ *See, e.g., Nat'l Nurses United*, 70 FLRA 166, 168 (2017).

- B. The award is not contrary to § 7121(b)(1)(C)(i) of the Statute.

The Union also argues that the Arbitrator's interpretation of the agreement is contrary to § 7121(b)(1)(C)(i) of the Statute. As relevant here, § 7121(b)(1)(C)(i) provides that any negotiated grievance procedure shall afford a union, as exclusive representative, "the right, in its own behalf or on behalf of any employee in the unit . . . to present and process grievances."¹⁰ The Arbitrator did not deny the Union its right to present and process grievances; he merely interpreted and applied the terms of the parties' negotiated grievance procedure. And the Union does not otherwise demonstrate that the award is contrary to § 7121(b)(1)(C)(i). Consequently, we deny the exception.¹¹

IV. Decision

We deny the Union's exceptions.

Member DuBester, concurring:

As the Union asserts, it is undisputed that "the Union initiated the instant grievance . . . based on its independent institutional interest on the appropriate treatment of [a] bargaining unit employee."¹ But that is not a sufficient basis to overturn the Arbitrator's award on essence grounds. Nor does the Union establish that the award is contrary to § 7121(b)(1)(C)(i) of the Federal Service Labor-Management Relations Statute.² Accordingly, I agree with the decision to deny the exceptions.

¹⁰ 5 U.S.C. § 7121(b)(1)(C)(i).

¹¹ See *AFGE, Local 900*, 63 FLRA 536, 538 (2009) (citing *AFGE, Local 104*, 61 FLRA 681, 683 (2006)).

¹ Exceptions at 2. This comports with Article 26, Section 4 of the Collective-Bargaining Agreement (Union Initiated Grievances). Exceptions, Ex. B, Collective-Bargaining Agreement at 21.

² 5 U.S.C. § 7121(b)(1)(C)(i).

Member Abbott, concurring:

I agree wholeheartedly with my colleagues that the Union's exceptions are without merit and should be denied. I write separately because certain aspects of this case demonstrate what I have referred to previously as the "manipulation of Title V."¹

The record in this case is not exhaustive, but what we do know is that the grievant received a letter of reprimand,² the Union filed a grievance, and then requested arbitration in May 2017.³ The parties agreed, with the Arbitrator, that the arbitration would occur on September 14.⁴ On September 15, the day after the scheduled hearing (at which neither the Union's representative nor the grievant bothered to appear), the Union announced that the grievant was retiring on October 1. Because the parties' negotiated grievance procedure, which has been in effect since 1998,⁵ provides that a "grievance will be closed without decision" if an employee leaves the Federal Service.⁶ And that is exactly what the Arbitrator did; he closed the grievance "without decision."⁷ In other words, *without a grievant, there is no grievance to resolve.*

That is this case in a nutshell. Unfortunately, the official record of many a case does not illuminate, for the federal labor-management relations community, the real story. For that, it is more often than not necessary to dive below the surface. Or, as Oscar Wilde once observed, "those who go beneath the surface do so at their own peril."

What is noteworthy about this case is the ambivalence of the Union in acting on and participating in the grievance which it filed on behalf of the grievant. Most shocking is that neither the Union representative nor the grievant bothered to show up for the arbitration hearing on September 14.

On August 21, the president of International Association of Firefighters, Local 283 (IAFF), Scott Powers, notified the Agency and Arbitrator that Brook Beesley (presumably a steward of the local)

would be representing the grievant but claimed that Beesley did not have an email (although the Union is provided email service, dedicated to Union business, courtesy of the Agency). Between August 21 and September 11, representative Beesley did not respond to several requests from the Arbitrator and Agency representative, which were conveyed to him by fax and telephone (and also to president Powers by email), asking for specific information pertaining to the start time for the arbitration hearing and details concerning a court reporter.

On September 11, president Powers (but not representative Beesley) asked for a postponement of the hearing. Powers (but not representative Beesley) appeared at the hearing on September 14 and asked for a 15-day postponement.⁸ The Arbitrator asked the parties to "brief" the issue concerning postponement *by 4:00 p.m.* on September 22.⁹ It was not until September 22 *at 4:10 p.m.* (and after several last-minute but futile attempts by the Arbitrator to reach either president Powers or representative Beesley) that Powers telephoned the Arbitrator to state that "[representative] Beesley [would not be] writing the brief since the [grievant] was scheduled to separate from service on October 1."¹⁰

Later on September 22, the Arbitrator dismissed the grievance because "Union IAFF 283 has not met the requirements needed for me to make a ruling on the merits of this case. Therefore, the . . . arbitration . . . is settled in favor of the Agency regarding all issues and actions."¹¹

Finally on September 23 (after four months, multiple attempts at communication with, and nine days after the scheduled arbitration hearing), representative Beesley (virtually and for the very first time) appeared, in an email to the Arbitrator, objecting to the Arbitrator's "closing" of the case.¹² He also argued that the Union would be proceeding with the arbitration "independent of Mr. Foster."¹³ In a September 25 response to representative Beesley's objection to the "closing" of the case, the Arbitrator informed Beesley that he "may be prepared to reopen [the case]" if Beesley could explain his failures to respond to communications and to appear at the scheduled hearing on September 14.¹⁴ Beesley's only response was "that he seldom uses email and this it is not a requirement

¹ U.S. DOJ, *Fed. BOP, Fed. Corr. Inst. Englewood, Littleton, Colo.*, 70 FLRA 372, 376 (2018) (BOP) (Concurring Opinion of Member Abbott).

² Oddly, even though this entire matter was about the letter of reprimand received by the grievant, no one involved in this case – Union, grievant, Agency, or Arbitrator – bothered to share with us why the letter was received, when it was issued, or when the grievance was filed.

³ Award at 1.

⁴ *Id.*

⁵ Exceptions, Ex. C, at 1.

⁶ Exceptions, Ex. B, Collective-Bargaining Agreement at 22.

⁷ Award at 7.

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ *Id.* at 4.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

in federal sector” and that he “ha[d] nothing further to add.”¹⁵

It is a shame our decision did not issue on April 15.

Promptly thereafter, the Arbitrator issued his award which “closed [the case] without decision.”¹⁶

The filing of exceptions – *after* the grievant had retired and to challenge the dismissal which was *premised on the Union’s own failure* to respond to requests from the Arbitrator and *failure* to appear and advocate for the grievant at the scheduled hearing – certainly does not “contribute[] to the effective conduct of public business”¹⁷ nor “facilitate[] . . . the amicable settlement[] of disputes.”¹⁸ From my perspective, the filing of exceptions under these circumstances amounts to nothing less than a “manipulation of Title V.”¹⁹

It is well-settled under our Statute that only an exclusive bargaining representative may take a matter to arbitration.²⁰ It is equally well-settled that a Union may pursue a grievance either on “its own behalf or on behalf of any employee in the unit.”²¹

However, that is not the issue in this case. This case was about a letter of reprimand issued to the grievant. There simply is no evidence that in the grievance, the Union asserted a violation of any Union interest or right. The Arbitrator appropriately dismissed the case because the Union did not “[meet] the requirements needed . . . to make a ruling”²² on the only matter before him and because of a crystal clear provision in the parties’ contract that requires the closure of any grievance when the employee separates from federal service.²³

I doubt that any taxpayer, who happens to read this decision, will be encouraged when they learn that they paid for all of the costs associated with and any official time used by the Union president and the elusive (aka no-show) representative in the (non) pursuit of a case which concerns a letter of reprimand which did not survive the grievant’s retirement. In other words, this case (and its associated costs) has extended eight months longer than the letter of reprimand and the grievant’s federal employment.

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 7.

¹⁷ 5 U.S.C. § 7101(a)(1)(B).

¹⁸ *Id.* § 7101(a)(1)(C).

¹⁹ *See BOP*, 70 FLRA at 376.

²⁰ 5 U.S.C. § 7121(b)(1)(C)(iii).

²¹ *Id.* § 7121(b)(1)(C)(i).

²² Award at 4.

²³ *Id.* at 7.