

71 FLRA No. 64

SOCIAL SECURITY ADMINISTRATION
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1122
(Union)

0-AR-5458

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DECISION

September 27, 2019

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

I. Statement of the Case

In this case, we remind the federal labor-management community that the Authority will not set aside an arbitrator's award that is based on his reasonable interpretation of the plain wording of the parties' agreement.

The Agency excepts to Arbitrator Burton White's decision that the grievance was procedurally arbitrable. It argues that the award failed to draw its essence from the parties' agreement, which establishes a timeframe during which the arbitration hearing must be held. However, we find that the Arbitrator's determination is a reasonable interpretation of the parties' agreement because it is based on the specific language of the agreement. Accordingly, we deny the exception.

II. Background and Arbitrator's Award

The Union filed a grievance protesting the grievant's fourteen-day suspension for alleged time and attendance discrepancies.

Article 25, § 5 of the agreement, which the parties refer to as the "[s]unset [p]rovision,"¹ provides that arbitration "must be heard within 2 ½ years from the date of invocation."² It allows for a six-month extension for a variety of reasons, including illness of the arbitrator and other grounds not relevant here.

Article 25 also provides

The parties agree that the primary purpose of this supplemental arbitration procedure is to provide a swift and economical method for the resolution of identified disputes. The parties agree to take positive action to see that this purpose is fulfilled; and, in addition the arbitrator shall have the authority necessary to take steps necessary to see that the purpose is fulfilled.³

Further, Article 25 provides "*The Parties* will contact the arbitrator and set a date, time and place for the hearing when they are ready to move the case to hearing."⁴ And it grants the Arbitrator authority "to take steps necessary" to ensure the arbitration procedure provides a "swift and economical" method for resolving disputes.⁵

Despite the haste the agreement suggests, scheduling the hearing for the grievance at issue was beset by delays. The Union invoked arbitration on June 12, 2014. It then contacted the Agency to schedule the hearing more than two years after an arbitrator was assigned. While the hearing was scheduled to take place within the two-and-a-half-year timeframe, on October 24, 2016, it was cancelled at the last minute because the arbitrator was ill. More delays followed, in part because the Agency requested them to accommodate its counsel and witnesses and in part because the parties tried to schedule a date when they could hold multiple hearings on separate grievances before one arbitrator. In addition, multiple arbitrators were engaged and withdrew or were removed before the grievance ended up assigned to Arbitrator White on March 26, 2018, nearly four years after the Union invoked arbitration.

The Agency informed the Union on June 5, 2018 that the sunset provision had elapsed. After the Arbitrator scheduled a hearing for December 4, 2018, the Agency moved to dismiss the grievance, arguing the grievance was non-arbitrable under Article 25, § 5's sunset provision due to the time elapsed.

Arbitrator White denied the Agency's motion, noting that Sections 8 and 9 of Article 25 assigned the responsibility for scheduling a hearing to "[t]he parties," rather than placing it with a specific party or person.⁶ The Arbitrator interpreted Article 25, which governs arbitration procedures, in context with Article 24, which describes how the parties should process grievances. He

¹ Exceptions Br. at 8.

² Exceptions, Ex. 5, Collective-Bargaining Agreement at 25-2.

³ Arbitrability Award at 2 (quoting Art. 25, § 8).

⁴ *Id.* (quoting Art. 25, § 9).

⁵ Opp'n at 6-7 (quoting Art. 25, § 8(A)).

⁶ Arbitrability Award at 2.

observed that Article 24 “makes clear which party or person has the responsibility to act,”⁷ while Article 25’s references to “[t]he parties” call “for mutuality and for joint action.”⁸ Therefore, he reasoned that “that once arbitration has been invoked, the obligation to move the case to meet the contractual deadlines is mutual.”⁹ He found “that the Agency did not meet its share of this mutual responsibility” and concluded that the sunset provision did not render the grievance non-arbitrable.¹⁰

On the merits, the Arbitrator sustained the grievance in an award served on December 7, 2018. The Agency filed exceptions to the award on January 3, 2019, and the Union filed an opposition on February 4, 2019.

III. Analysis and Conclusion: The Arbitrator’s procedural arbitrability determination draws its essence from the parties’ agreement.

In its exceptions, the Agency asserts that the Arbitrator’s procedural arbitrability determination fails to draw its essence from the parties’ agreement because it manifestly disregards Article 25, § 5’s sunset provision.¹¹ The Agency argues that the sunset provision required the hearing to occur within three years, factoring in two-and-a-half years allowed by the parties’ agreement and one six-month extension that was warranted because of an arbitrator’s illness.¹² Measuring from the June 12, 2014 invocation date, the Agency contends that the hearing should have occurred on or before June 12, 2017.¹³ Because the hearing occurred afterward, the Agency asks the Authority to set aside the Arbitrator’s award.¹⁴

Here, the Arbitrator determined that the parties had a mutual responsibility to ensure that a hearing occurred within the established timeframe by identifying specific language in their agreement that led to his conclusion. The Arbitrator found that Article 25’s references to “[t]he parties” meant that the responsibility to schedule the hearing was mutual, that the Agency failed

to do its share, and so, the sunset provision did not render the grievance non-arbitrable.¹⁵ The Agency has not demonstrated that this conclusion is irrational, unfounded, implausible, or in manifest disregard of agreement.

By arguing that Article 25 does not provide a basis from which to conclude that the grievance was arbitrable, the Agency is merely disagreeing with the Arbitrator’s conclusion to the contrary. Disagreement with the Arbitrator’s interpretation and application of a collective bargaining agreement provides no basis for finding the award deficient.¹⁶

We therefore deny the Agency’s exception that the award fails to draw its essence from the parties’ agreement.

IV. Decision

We deny the Agency’s exception.

⁷ Arbitrability Award at 2; Exceptions, Ex. 5, Collective-Bargaining Agreement at 24-5 (“Within ten (10) working days after receipt of the grievance, the Step 1 official must hold a meeting or, if one is not requested, issue a decision in writing.”).

⁸ Arbitrability Award at 2.

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ Exceptions Br. at 11 (“The Arbitrability Ruling failed to draw its essence from the Contract because it conflicts with the Sunset Provisions’ plain wording.”). The Authority will find that an arbitration award fails to draw its essence from a 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. *U.S. DOL (OSHA)*, 34 FLRA 573, 575 (1990) (*OSHA*).

¹² Exceptions Br. at 11-12.

¹³ *Id.* at 14. In support of its argument, the Agency cites *U.S. Small Business Administration*, 70 FLRA 525 (2018) (*SBA*) (Member DuBester concurring, in part, and dissenting, in part) (setting aside arbitrator’s award that concluded agency waived its right to contest whether the union timely submitted a form when the agency accepted and processed it because nothing in the parties’ agreement provided for waiver), *recons. denied*, 70 FLRA 988 (2018) (Member DuBester dissenting). But *SBA* is unavailing because it is distinguishable from the instant case where the Arbitrator’s determination was based on the specific wording of provisions of the agreement.

¹⁴ Exceptions Br. at 23.

¹⁵ Arbitrability Award at 2, 4.

¹⁶ *OSHA*, 34 FLRA at 575-76.

Member DuBester, concurring:

I agree that the Arbitrator's procedural arbitrability determination draws its essence from the parties' collective-bargaining agreement. The Arbitrator's interpretation and application of Article 25 of the parties' agreement to conclude that the parties had a mutual responsibility to move the case to hearing falls well within the deferential standard governing essence challenges to awards. Therefore, I concur in the Decision to deny the Agency's exception.