

**71 FLRA No. 127**

UNITED STATES  
DEPARTMENT OF LABOR  
(Agency)

and

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 12  
(Union)

0-AR-5582

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ORDER DISMISSING EXCEPTIONS

April 6, 2020

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

This matter is before the Authority on exceptions to an award of Arbitrator Lana S. Flame filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute)<sup>1</sup> and part 2425 of the Authority's Regulations.<sup>2</sup> The Union filed an opposition to the Agency's exceptions.

Pursuant to § 7122(a) of the Statute, the Authority lacks jurisdiction to review exceptions to an arbitration award "relating to a matter described in [§] 7121(f)" of the Statute.<sup>3</sup> The matters described in § 7121(f) include adverse actions, such as removals, which are covered under 5 U.S.C. §§ 4303 or 7512.<sup>4</sup> Arbitration awards resolving these matters are reviewable by the United States Court of Appeals for the

Federal Circuit (Federal Circuit), rather than the Authority.<sup>5</sup>

Consequently, the Authority issued a show-cause order (SCO) directing the Agency to show cause why its exceptions should not be dismissed because the Authority is without jurisdiction to review exceptions relating to an award pertaining to the removal of the grievant from the Agency.<sup>6</sup> In its timely response to the SCO, the Agency argued that the Authority has jurisdiction over the exceptions because the Arbitrator's award solely concerns a timeliness issue under the parties' agreement that is wholly separate from the removal claim.<sup>7</sup>

We have determined that this case is appropriate for issuance as an expedited, abbreviated decision under § 2425.7 of the Authority's Regulations.<sup>8</sup>

The Authority has repeatedly held that an arbitrator's interpretation of procedural issues under the parties' agreement is inextricably intertwined with the

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<sup>1</sup> 5 U.S.C. § 7122(a).

<sup>2</sup> 5 C.F.R. pt. 2425.

<sup>3</sup> 5 U.S.C. § 7122(a).

<sup>4</sup> *AFGE, Local 933*, 71 FLRA 521, 521 (2020) (*Local 933*); *AFGE, Local 491*, 63 FLRA 307, 308 (2009) (*Local 491*).

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<sup>5</sup> *Local 933*, 71 FLRA at 521; *Local 491*, 63 FLRA at 308; see also *Appleberry v. DHS*, 793 F.3d 1291, 1294-95 (Fed. Cir. 2015) (*Appleberry*) (noting that the Federal Circuit had jurisdiction to review an arbitral determination of procedural arbitrability in a removal claim). Member Abbott observes that the Agency argues it has no recourse for reviewing the Arbitrator's determination of the procedural issues. Response to Order at 1-2. However, as noted in *Appleberry*, 793 F.3d at 1294-95, and § 7121(f) of the Statute, the Federal Circuit reviews procedural as well as substantive aspects of the grievance and arbitration.

<sup>6</sup> Order to Show Cause at 2.

<sup>7</sup> Response to Order at 1-2.

<sup>8</sup> 5 C.F.R. § 2425.7 ("Even absent a [party's] request, the Authority may issue expedited, abbreviated decisions in appropriate cases.").

original removal action.<sup>9</sup> Here, because the exceptions concern a procedural arbitrability issue under the parties' negotiated grievance procedure, the Arbitrator's determination of the procedural issue is dispositive of the removal claim and is, therefore, inextricably intertwined with that claim.<sup>10</sup> Upon full consideration of the circumstances of this case, including the case's similarity to other fully detailed decisions involving the same or similar issues,<sup>11</sup> we conclude that the Agency's exceptions are not within the Authority's jurisdiction and we dismiss the Agency's exceptions on that ground.

Accordingly, we dismiss the Agency's exceptions.

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<sup>9</sup> *Local 933*, 71 FLRA at 521 (“Here, because the exceptions concern a procedural arbitrability issue[,] . . . the Arbitrator's determination of the procedural issue is dispositive of the removal claim and is, therefore, inextricably intertwined with that claim.”); *AFGE, Local 1770*, 62 FLRA 503, 504 (2008) (*Local 1770*) (“[H]ere, there is only one grievance, and it concerns whether the grievant can bring a removal action under the parties' negotiated grievance procedure. Consequently, the resolution of the removal matter is dependent on the resolution of the issue before the [a]rbitrator and the two matters are inextricably intertwined.”); see also *Local 491*, 63 FLRA at 308 (holding that a grievance was inextricably intertwined with removal where the Arbitrator denied the grievance as abandoned); *AFGE, Local 171*, 49 FLRA 1520, 1521 (1994) (“It is undisputed that the claim of reprisal discrimination is based on the grievant's removal. Consequently, the [a]rbitrator's award as to whether there was compliance with the procedural requirements of the parties' collective[-]bargaining agreement is directly related to the removal of the grievant.”); *U.S. Dep't of the Army, Military Dist. of Wash.*, 35 FLRA 1272, 1275 (1990) (holding that a grievance which was denied for being untimely filed was “directly connected to and an integral part of the grievance over the removal of the grievant.”).

<sup>10</sup> Award at 13; *Local 933*, 71 FLRA at 521; *Local 1770*, 62 FLRA at 504.

<sup>11</sup> 5 C.F.R. § 2425.7.