

**71 FLRA No. 162**

UNITED STATES  
DEPARTMENT OF VETERANS AFFAIRS  
NORTH FLORIDA/ SOUTH GEORGIA  
VETERANS HEALTH SYSTEM  
(Agency)

and

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 2779  
(Union)

0-AR-5554

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ORDER DISMISSING EXCEPTIONS

June 24, 2020

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 Phillip E. Ray 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> In determining whether an award resolves – or is inextricably intertwined with – a matter covered under § 7512, the Authority looks not to the outcome of the award, but whether the claim advanced in arbitration is reviewable by the Merit System Protection Board (MSPB), and on appeal, by the United States Court of Appeals for the Federal Circuit.<sup>5</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>6</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>7</sup> In its timely response to the SCO, the Agency argued that the Authority has jurisdiction over the exceptions. The Agency argued that the matters are not inextricably intertwined because the MSPB does not have the authority to interpret the parties' agreement, that the Arbitrator erred as a matter of law because he did not provide the Agency proper deference in interpreting the Agency's own statute and regulations, and that the Arbitrator misinterpreted the parties' agreement.<sup>8</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>9</sup>

The Arbitrator framed the issue as whether "the Agency . . . had just and sufficient cause to remove [the g]rievant."<sup>10</sup> Because the issue advanced at arbitration is a removal claim, and the Arbitrator's determination is dispositive of the removal claim, the issue is reviewable on appeal to the Federal Circuit.<sup>11</sup> Therefore, 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>12</sup>

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<sup>37th Servs. Div., Lackland Air Force Base</sup>, 68 FLRA 392, 393 (2015); *U.S. Dep't of the Interior, Bureau of Indian Affairs, Wapato Irrigation Project*, 65 FLRA 5, 6 (2010) (*DOI*) (Member Beck dissenting); *AFGE, Local 491*, 63 FLRA 307, 308 (2009).

<sup>6</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*).

<sup>7</sup> Order to Show Cause at 2.

<sup>8</sup> Response to Order at 2-3. Member Abbott notes that the MSPB will consider an argument rooted in a collective-bargaining agreement, when reviewing an action that falls within its jurisdiction. See *Hollingsworth v. Dep't of Air Force*, 121 M.S.P.R. 397, 401 (2014); *Archerda v. Dep't of Defense*, 121 M.S.P.R. 314, 321 (2014); *Sadiq v. Dep't of Veterans Affairs*, 119 M.S.P.R. 450, 453 (2013); see also *Buffkin vs. Dep't of Defense*, 957 F.3d.1327, 1329-31 (Fed. Cir. 2020) (reviewing procedural arbitrability determination by labor arbitrator for a removal grievance).

<sup>9</sup> 5 C.F.R. § 2425.7 ("Even absent a [party's] request, the Authority may issue expedited, abbreviated decisions in appropriate cases.").

<sup>10</sup> Award at 4.

<sup>11</sup> Award at 29; *HUD*, 71 FLRA at 721-22; *DOI*, 65 FLRA at 7; see also *Appleberry*, 793 F.3d at 1294-95.

<sup>12</sup> 5 C.F.R. § 2425.7.

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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*).

<sup>5</sup> *U.S. Dep't of HUD*, 71 FLRA 720, 721 (2020) (*HUD*) (Member DuBester concurring) (citing *U.S. Dep't of VA, John J. Pershing VA Med. Ctr.*, 71 FLRA 533, 534 (2020)); *U.S. Dep't of the Air Force, 37th Mission Support Group*,

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.