

71 FLRA No. 181

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2206
(Union)

and

SOCIAL SECURITY ADMINISTRATION
SOUTHEAST PROGRAM SERVICE CENTER
(Agency)

0-AR-5629

ORDER DISMISSING EXCEPTIONS

August 31, 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 Mark C. Travis filed by the grievant under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute)¹ and part 2425 of the Authority's Regulations.² In the award, the Arbitrator sustained certain disciplinary charges against the grievant, found that the Agency's removal of the grievant was reasonable, and denied the grievance. The Agency filed an opposition to the grievant's exceptions.

Under § 7122(a) of the Statute and § 2425.2(a) of the Authority's Regulations, "[e]ither party to arbitration under [the Statute] may file with the Authority an exception to any arbitrator's award."³ The Authority's Regulations define "party" to include any person who "participated as a party" in a matter where an arbitration award was issued.⁴ Generally, an agency and a union are the only parties to an arbitration proceeding. Thus, a

grievant cannot file exceptions to an arbitration award unless authorized by his or her union to do so.⁵

Furthermore, 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.⁶ The matters described in § 7121(f) include adverse actions, such as removals, which are covered under 5 U.S.C. §§ 4303 or 7512.⁷ 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 (Federal Circuit).⁸ Arbitration awards resolving these matters are reviewable by the Federal Circuit, rather than the Authority.⁹

Consequently, the Authority issued a show-cause order (order) directing the Union to show cause why its exceptions should not be dismissed for lack of standing and for lack of jurisdiction.¹⁰ In its timely response to the order, the Union argued that the grievant has standing to file his exceptions because the Union authorized him to do so.¹¹ Because the Union authorized the grievant to file his exceptions, we find that the grievant has standing.¹²

⁵ Compare *AFGE, Local 3495*, 60 FLRA 509, 509 n.1 (2004) (*Local 3495*) (granting grievant standing where union authorized grievant to file exceptions), with *U.S. Dep't of the Treasury, U.S. Customs Serv.*, 40 FLRA 1254, 1255 (1991) (*Customs Serv.*) (finding grievant lacked standing where union did not authorize grievant to file exceptions). A Union's "mere acquiescence" to a grievant's request to file exceptions on their own behalf does not confer standing to file exceptions. *AFGE, Nat'l INS Serv. Council*, 69 FLRA 549, 550 (2016) (*INS Council*) (citing *U.S. DOD, Military Entrance Processing Station, Pittsburgh, Pa.*, 45 FLRA 976, 976-77 (1992), *recons. denied*, 46 FLRA 101 (1992)).

⁶ 5 U.S.C. § 7122(a).

⁷ *AFGE, Local 933*, 71 FLRA 521, 521 (2020) (*Local 933*); *AFGE, Local 491*, 63 FLRA 307, 308 (2009) (*Local 491*).

⁸ *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, 37th Servs. Div., Lackland Air Force Base*, 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); *Local 491*, 63 FLRA at 308.

⁹ *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) (noting that the Federal Circuit had jurisdiction to review an arbitral determination of procedural arbitrability in a removal claim).

¹⁰ Order to Show Cause at 2-3.

¹¹ Resp. to Order (Resp.) at 3; Resp., Attach., Declaration at 1.

¹² *INS Council*, 69 FLRA at 550-51.

¹ 5 U.S.C. § 7122(a).

² 5 C.F.R. pt. 2425.

³ 5 U.S.C. § 7122(a) (emphasis added); see also 5 C.F.R. § 2425.2(a).

⁴ 5 C.F.R. § 2421.11(b)(3)(ii) (emphasis added).

The Union also argued that the Authority has jurisdiction over the exceptions because the exceptions concern credibility determinations and the denial of an information request, and these issues are not inextricably intertwined with the issue of removal.¹³

We have determined that this case is appropriate for issuance as an expedited, abbreviated decision under § 2425.7 of the Authority's Regulations.¹⁴

The Arbitrator framed the issue, in part, as "whether [the] [g]rievant's removal was reasonable."¹⁵ Because the issue advanced at arbitration is a removal claim, and the Arbitrator's determination is dispositive of the removal claim, the award relates to a matter described in § 7121(f).¹⁶

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,¹⁷ we conclude that the Union's exceptions are not within the Authority's jurisdiction and we dismiss the Union's exceptions on that ground.

Accordingly, we dismiss the Union's exceptions.

¹³ Resp. at 1-2.

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

¹⁵ Award at 7-8.

¹⁶ *Id.* at 34; *HUD*, 71 FLRA at 721-22; *DOI*, 65 FLRA at 7; *see also Appleberry*, 793 F.3d at 1294-95.

¹⁷ 5 C.F.R. § 2425.7.