72 FLRA No. 16

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 3342
(Union)

and

SOCIAL SECURITY ADMINISTRATION
(Agency)

0-AR-5591

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DECISION

February 18, 2021

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

I. Statement of the Case

Arbitrator Timothy W. Gorman denied the Union's grievance, which challenged the Agency's decision to redeploy employees to other offices rather than grant administrative leave the day after a windstorm caused a power outage. The Union argues that the award fails to draw its essence from the parties' collective-bargaining agreement. Because the Union fails to establish that the Arbitrator's interpretation of the parties' agreement is irrational, implausible, or in manifest disregard of the agreement, we deny the Union's exception.

II. Background and Arbitrator's Award

On March 8, 2017,[1] the Agency closed its Batavia, New York office at approximately 2:00 p.m. due to a loss of power caused by a windstorm. The Agency granted employees administrative leave for the rest of the day. The next day, when electricity had not been restored to the Batavia office, the office manager decided to delay opening the office and to redeploy employees to other offices or allow them to not report to work. Six employees decided not to deploy to other offices and requested administrative leave for that day. The Agency denied the employees' requests for administrative leave. The Union filed a grievance on behalf of the employees who were denied administrative leave, and the parties advanced the grievance to arbitration.

The parties were unable to agree on a stipulated issue. As relevant here, the Arbitrator framed the issue as: "Did the Agency violate the [parties' agreement] and/or the grievants' contractual rights when it redeployed field office employees to other field offices when, on March 9, 2017, public utility outages rendered their assigned duty stations temporarily unsafe and/or unhealthy?"[2]

Addressing whether the Agency violated Article 31 of the parties' agreement, the Arbitrator found that Article 31, Section 3.B (Section 3.B) gives management the "sole discretion" to determine what action to take when inclement weather makes travel difficult.[3] Section 3.B states:

> When management determines that exposure to unsafe or unhealthy working conditions which cannot be immediately corrected may result in the likelihood of illness or injury, employees will either be assigned work in a safe and healthy area in the same office or deployed to another installation or granted an excused absence.[4]

The Arbitrator interpreted Section 3.B as giving the Agency the "sole right to determine an unsafe or unhealthy work environment"[5] and the right to decide whether to assign employees to a safe area in the same office, redeploy employees to other offices, or grant an excused absence.

He also rejected the Union's argument that the Agency violated Article 31, Section 3.E.1 (Section 3.E.1) by failing to consider the grievants' health and safety when it made the decision to redeploy employees rather than close on March 9. Section 3.E.1 states, in relevant part, that the decision to close an office "will be based on the Agency's concern for the health and safety of its employees including the hazardous conditions that the majority of employees might face reporting to their workplace or returning home, weighed against the mission of the Agency, including due consideration of the needs of the public."[6]

The Arbitrator found that, while the parties' agreement requires the Agency to make decisions based on concern for employee health and safety weighed against the mission of the Agency, the "determination as

[1] Unless otherwise noted, all dates referenced hereafter occurred in 2017.

[2] Award at 2-3.
[3] *Id.* at 12.
[4] *Id.* (quoting § 3.B).
[5] *Id.*
[6] *Id.* at 6 (quoting § 3.E.1).

to employee health and safety is again made by management alone."[7] He reasoned that "[t]hese decisions, flawed or otherwise, were, under Article 31, exclusively [management's] to make" and that the parties' agreement does not afford a remedy to the Union when it disagrees with the Agency's decisions in these matters.[8]

In further support of this conclusion, the Arbitrator found that the parties' agreement "does not impose . . . an unrealistic requirement" that the Agency's office manager "know the conditions of all of the roads on which Batavia office employees traveled on the day in question" but instead requires Agency management to make a decision "based on the Agency's concern for the health and safety of employees including the hazardous conditions that the majority of employees might face."[9] He found that the office manager considered employee health and safety when she decided to redeploy the grievants on March 9. Thus, the Arbitrator concluded that the Agency did not violate the parties' agreement, and he denied the Union's grievance.

The Union filed exceptions to the award on February 5, 2020, and the Agency filed an opposition to the Union's exceptions on February 26, 2020.

III. Analysis and Conclusion: The award draws its essence from the parties' agreement.

The Union argues that the award fails to draw its essence from the parties' agreement. When reviewing an arbitrator's interpretation of a collective-bargaining agreement, the Authority will find that an arbitration award is deficient as failing to draw its essence from the agreement when the appealing 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.[10]

First, the Union contends that the Arbitrator inappropriately "narrow[ed] the scope of the issue" by failing "to recognize that there was more to the situation that presented itself on March 9, 2017 than public utility outages."[11] And, on this basis, the Union argues that the award fails to draw its essence from the parties' agreement.[12] However, the Union does not cite any provision of the parties' agreement that requires the Arbitrator to frame the issue more broadly than he did. Thus, the Union's argument does not demonstrate that the award fails to draw its essence from the parties' agreement.[13]

The Union also contends that the Arbitrator's interpretation of Section 3.B fails to draw its essence from the parties' agreement because it gives "unfettered rights to the Agency in determining employee health and safety."[14] On this point, the Union argues that the award contradicts Section 3.E.1's requirement that the Agency consider "the health and safety of its employees including the hazardous conditions that the majority of employees might face reporting to their workplaces or returning home."[15] However, this argument merely disagrees with the Arbitrator's finding that Agency management considered the health and safety of the grievants when deciding to redeploy them to another office, and does not demonstrate that his interpretation of Section 3.E.1 is deficient.[16]

As part of its essence exception, the Union also argues that the Arbitrator failed to consider evidence it presented that the parties had a past practice of not redeploying employees or charging them with leave in adverse weather events.[17] To support its argument, the Union cites an award in which a different arbitrator found that employees were entitled to administrative leave following a weather-related office closure in another

[7] *Id.* at 13.
[8] *Id.* at 14; *see also id.* at 12-13 ("the Union has no participation in this process" and "nothing in the [parties' agreement] gives the Union a claim for a violation, or a remedy for what it perceives to be management's inept or poor judgement").
[9] *Id.* at 13-14.
[10] *U.S. Dep't of VA, Gulf Coast Med. Ctr., Biloxi, Miss.*, 70 FLRA 175, 177 (2017); *see also U.S. Dep't of VA, Malcolm Randall VA Med. Ctr., Gainesville, Fla.*, 71 FLRA 103, 104 & n.13 (2019).
[11] Exceptions Br. at 2.
[12] *Id.*
[13] To the extent that the Union's argument could be construed as alleging that the Arbitrator exceeded his authority, the argument fails. An arbitrator exceeds his authority when he fails to resolve an issue submitted to arbitration, resolves an issue not submitted to arbitration, disregards specific limitations on his authority, or awards relief to persons who are not encompassed by the grievance. *AFGE, Nat'l VA Council No. 53*, 67 FLRA 415, 415-16 (2014) (citing *U.S. DOD, Army & Air Force Exch. Serv.*, 51 FLRA 1371, 1378 (1996)). Where, as here, an arbitrator frames the issue absent a stipulation by the parties, that formulation receives substantial deference. *Id.* at 416 (citing *AFGE, Local 3627*, 64 FLRA 547, 549 (2010); *SPORT Air Traffic Controllers Org.*, 55 FLRA 771, 774 (1999)). As we defer to the issue framed by the Arbitrator, and the award is responsive to that issue, the Arbitrator did not exceed his authority.
[14] Exceptions Br. at 2.
[15] *Id.* at 3 (quoting § 3.E.1).
[16] *AFGE, Local 3354*, 64 FLRA 330, 333 (2009) ("disagreement with an arbitrator's factual finding does not provide a basis for concluding that an award fails to draw its essence from an agreement").
[17] Exceptions Br. at 6-7.

office in the same region.[18] However, the Union does not explain how this decision demonstrates the existence of a past practice.[19] Moreover, as the Union acknowledges,[20] the Authority has held that arbitration awards are not precedential.[21]

Here, the Arbitrator noted the Union's past-practice argument,[22] but found that Section 3.B gave the Agency discretion to redeploy employees or grant an excused absence.[23] Moreover, the Union conceded before the Arbitrator that "it is management's discretion whether they want to grant administrative leave or not."[24] The Union's assertion that the parties had established a contrary past practice does not demonstrate that the Arbitrator erred in his evaluation of the evidence or his application of the parties' agreement.[25]

Consequently, the Union has provided no basis for finding that the award is irrational, unfounded, implausible, or in manifest disregard of the parties' agreement.

IV. Decision

We deny the Union's exception.

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[18] *Id.* at 6.
[19] *NTEU, Chapter 207*, 60 FLRA 731, 734 (2005) (Chairman Cabaniss dissenting) (citation omitted) ("to establish the existence of a past practice, there must be a showing that the practice has been consistently exercised over a significant period of time and followed by both parties, or followed by one party and not challenged by the other").
[20] Exceptions Br. at 6.
[21] *See, e.g.*, *AFGE, Council of Prison Locals C-33, Local 720*, 67 FLRA 157, 159 (2013) ("arbitration awards are not precedential, and an arbitrator is not bound to follow prior arbitration awards, even if they involve the interpretation of the same or similar contract provisions" (citing *AFGE, Local 2382*, 66 FLRA 664, 667 (2012))).
[22] Award at 9.
[23] To the extent that the Union is challenging the Arbitrator's failure to cite all the evidence upon which he relied in making his findings, such an argument does not demonstrate that the award is deficient. *Indep. Union of Pension Emps. for Democracy & Justice*, 71 FLRA 822, 823 (2020) (citing *Army Materials & Mechs. Rsch. Ctr.*, 32 FLRA 1156, 1158 (1988)).
[24] Exceptions, Attach. 1, Tr. at 230.
[25] *E.g.*, *U.S. DHS, CBP, El Paso, Tex.*, 61 FLRA 684, 687 (2006) (disagreement with arbitrator's past-practice determination did not demonstrate that the award failed to draw its essence from the agreement); *Letterkenny Army Depot*, 5 FLRA 272, 274 (1981) (finding argument that "the [a]rbitrator failed to recognize a past practice" was mere disagreement with the arbitrator's "interpretation and application" of the parties' collective-bargaining agreement).