

72 FLRA No. 130

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 2119  
(Union)

and

UNITED STATES  
DEPARTMENT OF THE ARMY  
JOINT MANUFACTURING  
AND TECHNOLOGY CENTER  
ROCK ISLAND, ILLINOIS  
(Agency)

0-AR-5717

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February 25, 2022  
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Before the Authority: Ernest DuBester, Chairman, and  
Colleen Duffy Kiko and James T. Abbott, Members  
(Chairman DuBester concurring)

Decision by Member Abbott for the Authority

**I Statement of the Case**

Arbitrator Peter G. Davis ruled that the Agency did not violate the parties’ collective-bargaining agreement (CBA) when it ceased routinely scheduling weekend overtime to tool and parts attendants (attendants) assigned to the tool crib cost center (tool crib) and instead allowed production employees from a different cost center to access the tool crib on the weekend to gather necessary materials.

Because the Union fails to establish that the award is based on a nonfact or fails to draw its essence from the parties’ CBA, we deny the Union’s exceptions and uphold the award.

**II Background and Award**

The grievants are attendants assigned to the tool crib. A primary duty of the attendants is to provide parts and supplies to production employees. The Agency determined that there was not enough work in the tool crib on weekends to justify scheduling overtime for the attendants every weekend. Instead, the Agency instructed the production employees, who worked overtime on the weekends, to gather their own supplies and materials from the tool crib as needed. However,

when there was sufficient tool crib work, the Agency continued to schedule weekend overtime for attendants.

In its grievance, the Union argued that the Agency failed to provide it with contractually required notice concerning the change in weekend overtime procedures and that the purported change violated the parties’ CBA by assigning overtime for tool crib work to employees in other units. The Agency denied the grievance. The parties were unable to resolve the issue and the matter was submitted to arbitration.

At arbitration, the Union argued that the Agency violated the CBA by failing to provide notice and an opportunity to discuss changes in the overtime procedures. The Agency responded that it did not change the overtime procedures because overtime was not being offered. The Arbitrator agreed with the Agency and found that “there has been no change in the procedures applicable to scheduled overtime.”<sup>1</sup> The Arbitrator reasoned that “the work in question is not scheduled. Instead, it consists of the time spent by employees already working weekend overtime on production who are occasionally retrieving needed parts or supplies from the tool crib.”<sup>2</sup> Therefore, the Arbitrator concluded that the Agency was not required to provide notice or an opportunity to discuss changes to the overtime procedures because no change occurred.

Next, the Union argued that when supplies are needed from the tool crib on the weekend, attendants should perform the work and retrieve the supplies. With respect to this argument, the Arbitrator determined that the Union failed to point to any provision in the CBA that prevented production employees from retrieving their own parts and supplies during weekend work. The Arbitrator also rejected the Union’s argument that a 2011 grievance established a contractual requirement to perform the crib work on weekends.<sup>3</sup> According to the Arbitrator, the 2011 grievance resulted in a settlement and “does not provide a persuasive basis for finding a contractual violation here.”<sup>4</sup>

<sup>1</sup> Award at 2.

<sup>2</sup> *Id.*

<sup>3</sup> In 2011, the Union filed a grievance alleging that the Agency violated the parties’ CBA when it requested toolsetters assigned to a different cost center to work overtime in the tool crib and perform the duties of an attendant without first exhausting the overtime roster of the attendants working within the tool crib. An Agency official determined that the Agency failed to adhere to the overtime procedures set forth in the CBA and stated that the Agency would abide by the CBA in the future. Exceptions, Attach. 6,

12001 Grievance Decision (Grievance Decision) at 1. The Union contended that because the grievances are similar, the 2019 grievance should result in the same outcome as the 2011 grievance.

<sup>4</sup> Award at 2.

The Union filed exceptions to the award on March 23, 2021, and the Agency filed an opposition to the exceptions on April 19, 2021.

### III. Analysis and Conclusions

#### A. The award is not based on a nonfact.

The Union argues that the award is based on a nonfact.<sup>5</sup> Specifically, the Union argues that the Arbitrator's categorization of the 2011 grievance decision as a settlement was contrary to the "plain language in the [2011] grievance decision."<sup>6</sup> The Union used the 2011 decision to support its argument that there was a "contractual basis for finding the violation of the overtime procedures."<sup>7</sup> The Union contends that the Arbitrator's labeling of the 2011 grievance decision as a settlement is the reason he found the 2011 outcome nonbinding. Specifically, the Union argues that the mislabeling of the grievance decision contributed to the Arbitrator's failure to adopt or apply the deciding official's interpretation of the CBA from the 2011 grievance decision, including the Agency's concession to violating the overtime procedures within the CBA.

To establish that an award is based on a nonfact, the excepting party must establish that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result.<sup>8</sup> We agree with the Union that the Arbitrator improperly labeled the 2011 grievance decision as a settlement. The record reflects that it was an Agency decision.<sup>9</sup> However the Arbitrator's mischaracterization of an Agency decision sustaining a grievance as "a settlement favoring the Union,"<sup>10</sup> was not central to the Arbitrator's decision. Notwithstanding the 2011 grievance decision, the Arbitrator ultimately found that based on the circumstances surrounding the 2019 grievance, overtime work was not scheduled and there was no change in the overtime procedures warranting notice and an opportunity to discuss the changes.<sup>11</sup> Consequently, the Union fails to demonstrate

<sup>5</sup> Exceptions at 5.

<sup>6</sup> *Id.* at 7.

<sup>7</sup> *Id.*

<sup>8</sup> *U.S. Dep't of HHS, Food & Drug Admin., San Antonio, Tex.*, 72 FLRA 179, 179-80 (2021) (*HHS*) (Chairman DuBester concurring) (citing *U.S. DHS, Citizenship & Immigr. Servs., Dist. 18*, 71 FLRA 167, 167 (2019) (then-Member DuBester dissenting)).

<sup>9</sup> Grievance Decision at 1 ("concur[ring] that management should have requested overtime of a [c]rib [a]ttendant" on the alleged date and stating that "management will abide by the contract in the future").

<sup>10</sup> Award at 2; *see also* Opp'n at 2 (claiming the 2011 grievance "was settled with management agreeing to assign overtime within the tool crib to employees within that cost center").

<sup>11</sup> Award at 2.

that but for the mischaracterization, the Arbitrator would have reached a different result.<sup>12</sup> Accordingly, we deny the Union's nonfact exception.

#### B. The award draws its essence from the CBA.

The Union argues that the award fails to draw its essence<sup>13</sup> from the CBA because the Arbitrator failed to consider explicit language in the CBA that precludes the Agency from assigning tool crib overtime to employees in other work units.<sup>14</sup> Specifically, the Union argues that the Agency improperly changed the procedures for assigning overtime work that are specified in Article 9, Section 3 (Article 9)<sup>15</sup> when it substituted employees from other units to perform weekend tool crib work. We disagree.

Article 9 requires the Agency to give advance notice of changes to overtime procedures. According to the Arbitrator, those procedures only apply when overtime is scheduled for the attendants. Because the Agency did not schedule overtime work for the tool crib, the Agency did not change overtime procedures and advanced notice was not required. Thus, the Union does not show that the award fails to draw its essence from Article 9.

The Union also argues that the award fails to draw its essence from Article 9 because the 2011 grievance decision demonstrated that the pertinent agreement wording "had already been interpreted by the

<sup>12</sup> *See HHS*, 72 FLRA at 180 (denying the agency's nonfact exception because it failed to show that the erroneous fact was a "but for" reason the arbitrator sustained the grievance and that the arbitrator would have reached a different conclusion); *see also U.S. DHS, U.S. CBP, El Paso Tex.*, 72 FLRA 293, 294-95 (2021) (Member Kiko concurring; Member Abbott concurring).

<sup>13</sup> An award fails to draw its essence from a CBA 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. Dep't of Educ., Fed. Student Aid*, 71 FLRA 1166, 1167 n.11 (2020) (then-Member DuBester concurring) (citing *U.S. Dep't of State, Passport Servs.*, 71 FLRA 12, 13 n.18 (2019)).

<sup>14</sup> Exceptions at 11.

<sup>15</sup> Article 9, Section 3 states: "The parties agree to utilize the procedures below in the administration of overtime under this agreement. We recognize that the procedures cannot be all inclusive and there are circumstances which may require modification or exceptions to the procedures below, in those circumstances the Union will be given advance notice." Exceptions, Attach. 8, Current Contract Language at 24.

parties.”<sup>16</sup> Contrary to the Union’s argument that the Arbitrator was bound by the 2011 decision, the circumstances of the 2011 grievance and the instant grievance are distinguishable. In the 2011 grievance, the Agency requested employees assigned to a different cost center to *work overtime* in the tool crib. Here, in contrast, overtime was *not* scheduled for the tool crib. Instead, employees were permitted to retrieve the equipment from the tool crib as needed. As such, unlike the finding in the 2011 grievance decision, there was no contractual requirement for attendants to perform the tool crib work on the weekends. Therefore, the Arbitrator was not bound by the 2011 grievance decision’s interpretation of the CBA that ultimately found that the Agency failed to adhere to overtime procedures.

The Union fails to establish that the Arbitrator’s award is irrational, unfounded, implausible, or in manifest disregard of the parties’ agreement. Accordingly, we deny the Union’s essence exception.

#### **IV. Decision**

We deny the Union’s exceptions.

#### **Chairman DuBester, concurring:**

I agree with the Decision to deny the Union’s exceptions.

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<sup>16</sup> Exceptions at 8.