73 FLRA No. 149

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2369
(Union)

and

SOCIAL SECURITY ADMINISTRATION
(Agency)

0-AR-5919

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DECISION

December 15, 2023

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Before the Authority: Susan Tsui Grundmann, Chairman, and Colleen Duffy Kiko, Member

I. Statement of the Case

Arbitrator Randall M. Kelly issued an award finding the Agency did not violate the parties' collective-bargaining agreement when it denied a part-time employee (the grievant) the opportunity to earn more than three credit hours on a Saturday. The Union filed exceptions challenging the Arbitrator's interpretation of the agreement. For the following reasons, we find the Union sufficiently raises essence exceptions, but we deny those exceptions on the merits.

II. Background and Arbitrator's Award

The grievant is a part-time employee whose regular tour of duty is Monday through Thursday, 7:00 a.m. to 1:00 p.m. When the Agency offered employees the opportunity to earn up to six credit hours on a particular Saturday, the grievant submitted a request to earn four-and-a-half credit hours that day. The Agency permitted the grievant to earn up to three credit hours, but denied her request to earn more. The Union filed a grievance challenging the denial, and the case went to arbitration.

At arbitration, the Union argued Article 10, Section 7 of the parties' agreement (Section 7) controlled the dispute, while the Agency argued Article 10, Appendix A, Section 10(C) (Section 10(C)) controlled. Section 7, entitled "Saturday Credit Hours," pertinently provides, "When overtime is offered in a unit, module, section or office, management may offer up to eight (8) credit hours for those employees who work in that unit, module, section or office."[1] Section 10(C) – part of a section entitled "Credit[-]Hour Provisions" – pertinently provides that "[p]art-time employees may . . . earn up to three (3) credit hours on their non-tour day(s)."[2]

During the arbitration hearing, both parties presented witnesses who had participated in drafting the parties' agreement. The Agency's witness testified Section 7 was added to the agreement in order to limit the earning of credit hours because employees were using too many of those hours to take leave during the workweek, resulting in fewer employees available to serve the public. That witness also testified Section 7 "did not override" any of the specific rules regarding credit hours for part-time employees.[3] The Union's witness testified that, during negotiations, the parties never discussed excluding part-time employees from Section 7.

The Arbitrator stated that "when there is a specific provision in the contract, the specific prevails" over a general provision.[4] In this regard, the Arbitrator found "the specific is that a part-time employee cannot earn more than three . . . credit hours on his or her non-tour day versus the general interpretation that any employee [may] earn an unlimited amount of credit hours on a Saturday."[5] The Arbitrator interpreted the agreement in light of the Agency's goal of limiting employees' ability to earn credit hours. The Arbitrator cited the Agency witness's testimony and noted that even the grievant "admitted that she could be limited to three [credit] hours on Fridays, a non-tour day."[6] The Arbitrator concluded Section 10(C) controlled the dispute and permitted the Agency to preclude the grievant from earning more than three credit hours on Saturday.

Additionally, the Arbitrator rejected a Union claim that the Agency violated Article 3, Section 2(A) of the agreement (Section 2(A)) by treating the grievant differently from full-time employees. Section 2(A) pertinently states, "All employees shall be treated fairly and equitably in all aspects of personnel management."[7] The Arbitrator found the agreement expressly treats part-time employees differently from full-time employees with respect to bidding for, and accrual and payment of, credit hours. Thus, he rejected the Union's argument regarding Section 2(A), and he denied the grievance.

[1] Award at 3.
[2] *Id.*
[3] *Id.* at 9 (internal quotation marks omitted).
[4] *Id.* at 8.
[5] *Id.*
[6] *Id.* at 9.
[7] *Id.* at 3.

On October 10, 2023, the Union filed exceptions to the award, and on November 8, 2023, the Agency filed an opposition.

III. Analysis and Conclusion

According to the Union, the Arbitrator's conclusion that the Agency did not violate the parties' agreement is "inconsistent with the [agreement]'s plain language and must be reversed."[8] Citing several Authority decisions, the Agency contends the Union does not raise a recognized ground for review of arbitration awards under § 2425.6 of the Authority's Regulations.[9]

In *Fraternal Order of Police, Lodge No. 168* (*Lodge 168*),[10] the Authority found a party sufficiently raised an essence exception by asserting that an arbitrator "'interpret[ed]' the [agreement] contrary to its terms and [its] plain meaning," and explaining that assertion.[11] The Union's argument is similar to the one in *Lodge 168* and sufficiently explains why the Arbitrator's interpretation of the parties' agreement is allegedly deficient. Thus, *Lodge 168* supports a conclusion that the Union has raised essence exceptions. The decisions the Agency cites do not support a different conclusion, because they all preceded *Lodge 168*, where the Authority stated it would "no longer follow Authority precedent to the extent that it is . . . contrary" to *Lodge 168*.[12]

Turning to the merits of the Union's exceptions, the Authority will find an award is deficient as failing to draw its essence from a collective-bargaining agreement when the appealing party establishes 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.[13] Disagreement with the weight an arbitrator gives evidence does not provide a basis for finding an award fails to draw its essence from an agreement.[14] Further, mere disagreement with an arbitrator's interpretation and application of an agreement does not provide a basis for finding an award deficient.[15]

The Union argues the Arbitrator erred in finding Section 10(C), rather than Section 7, controlled the dispute.[16] According to the Union, Section 10(C) "applies *only* . . . when credit hours are requested on a part-timer's non-tour day during the regular Monday through Friday tour" – not to Saturdays.[17] By contrast, the Union argues Section 7 is specific to Saturdays[18] and allows all employees – including part-time employees – to earn up to eight credit hours on those days.[19] The Union contends that the Agency's witnesses were not credible,[20] while its own witnesses' testimony was credible and "must therefore be afforded the greatest weight."[21]

As discussed in Section II above, the Arbitrator interpreted the plain wording of Sections 7 and 10(C), relied on witness testimony concerning those provisions' meaning, found Section 10(C) controlled the dispute, and concluded Section 10(C) did not entitle the grievant to earn more than three credit hours on a Saturday. The Union's disagreement with the weight the Arbitrator gave witness testimony does not provide a basis for setting aside the award on essence grounds.[22] The Union's remaining arguments regarding Sections 7 and 10(C) provide no basis for finding the award is irrational, unfounded, implausible, or in manifest disregard of the parties' agreement. Therefore, we deny this essence exception.[23]

The Union also argues the Arbitrator erred in finding the Agency did not violate Section 2(A) by failing to treat the grievant fairly and equitably based on her status as a part-time employee.[24] As discussed in Section II above, the Arbitrator found the parties' agreement explicitly treats part-time employees differently from full-time employees with regard to bidding for, and accrual and payment of, credit hours. Although the Union claims the Arbitrator's reasoning regarding Section 2(A) is "flawed,"[25] it does not explain why; it merely disagrees with the Arbitrator's interpretation and application of the

[8] Exceptions Br. at 5.
[9] Opp'n Br. at 2-3 (citing *AFGE, Nat'l Border Patrol Council, Loc. 2455*, 69 FLRA 171 (2016) (Member Pizzella concurring); *U.S. Dep't of the Treasury, IRS*, 68 FLRA 145, 146 (2014); *AFGE, Loc. 2198*, 67 FLRA 498 (2014) (Member Pizzella concurring); *AFGE, Loc. 1738*, 65 FLRA 975, 976 (2011) (Member Beck concurring in the result)).
[10] 70 FLRA 788 (2018).
[11] *Id.* at 790.
[12] *Id.* at 791 n.43.
[13] *NTEU, Chapter 46*, 73 FLRA 654, 657 (2023) (*Chapter 46*).
[14] *SSA*, 70 FLRA 227, 230 (2017) (*SSA*) (citing *NTEU, Chapter 299*, 68 FLRA 835, 838 (2015)); *see also U.S. Dep't of VA, James J. Peters VA Med. Ctr., Bronx, N.Y.*, 71 FLRA 1003, 1005 (2020) (*VA*) (Member Abbott dissenting on other grounds) (denying essence exception challenging arbitrator's factual finding that was based on determinations regarding witness credibility).
[15] *Consumer Fin. Prot. Bureau*, 73 FLRA 670, 671 (2023) (*CFPB*).
[16] Exceptions Br. at 7.
[17] *Id.*
[18] *Id.* at 8.
[19] *Id.*
[20] *Id.* at 6.
[21] *Id.* at 12.
[22] *SSA*, 70 FLRA at 230; *VA*, 71 FLRA at 1005.
[23] *See Chapter 46*, 73 FLRA at 657 (denying essence exception where excepting party failed to demonstrate award was irrational, unfounded, implausible, or in manifest disregard of agreement).
[24] Exceptions Br. at 13.
[25] *Id.* at 14.

agreement. Accordingly, we also deny this essence exception.[26]

IV. Decision

We deny the Union's exceptions.

[26] *CFPB*, 73 FLRA at 671.