

73 FLRA No. 172

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 4010
COUNCIL OF PRISON LOCALS #33
(Union)

and

UNITED STATES
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
CUMBERLAND, MARYLAND
(Agency)

0-AR-5944

DECISION

May 21, 2024

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

I. Statement of the Case

Arbitrator Gary L. Eder issued an award denying a grievance alleging the Agency improperly denied an employee (the grievant) opportunities to work overtime while he was on paid parental leave. The Union filed contrary-to-government-wide-regulation and essence exceptions to the award. For the reasons discussed below, we deny the Union’s exceptions as unsupported.

II. Background and Arbitrator’s Award

Following the birth of his child, the grievant requested, and the Agency granted him, authorization to take twelve weeks of paid parental leave under the Federal Employee Paid Leave Act (FEPLA).¹ Subsequently, the grievant submitted requests to work voluntary overtime on days when he was on paid parental leave. The Agency denied the requests, claiming he could

not work overtime on those days because paid parental leave under FEPLA is akin to unearned leave under the Family and Medical Leave Act (FMLA).²

The Union filed a grievance that proceeded to arbitration. The Arbitrator stated the issue involved a “[d]ispute on overtime[-]procedure qualification while on extend[ed] or sporadic leave.”³ The Arbitrator stated that paid parental leave “is a substitute for FMLA special circumstances [-] as described[,] it is not earned.”⁴ Consequently, he declined to award “back payment or ‘make[-]whole payments,’” and – “[except] for reasonable legal fees,” which he awarded the Union – he denied the grievance.⁵

On January 9, 2024, the Union filed exceptions to the award. The Agency filed an opposition on February 13, 2024.

III. Analysis and Conclusions

A. The Union does not demonstrate the award is contrary to government-wide regulations.

The Union argues the award is contrary to government-wide regulations.⁶ The Union asserts that FMLA and FEPLA leave are “only for [an employee’s] regular scheduled tour of duty,”⁷ and that nothing in law or government-wide regulations prevents an employee from earning overtime for working on their time off while using paid time off for their regular tour of duty.⁸ According to the Union, the Arbitrator “fail[ed] to frame the issue” or give a “legal basis for his decision,”⁹ because paid parental leave should be treated the same way as regular leave.¹⁰ The Union claims 5 C.F.R. subpart Q – which comprises 5 C.F.R. §§ 630.1701-630.1708 – grants twelve administrative workweeks, or 480 hours, of leave from an employee’s regular scheduled tour of duty.¹¹ The Union also quotes 5 C.F.R. §§ 630.1702 and 630.1703 in their entirety,¹² quotes 5 C.F.R § 630.1202’s definition of “[s]cheduled tour of duty” in its entirety,¹³ and cites 5 C.F.R. § 550.112.¹⁴

Section 2425.6(e)(1) of the Authority’s Regulations provides that an exception “may be subject to . . . denial if . . . [t]he excepting party fails to . . . support a ground” listed in § 2425.6(a)-(c).¹⁵ Although the Union makes certain claims, and cites and quotes various

¹ 5 U.S.C. § 6382(d)(2).

² *Id.* § 6384(a).

³ Award at 1.

⁴ *Id.* at 3.

⁵ *Id.* at 4.

⁶ Exceptions at 4-6.

⁷ *Id.* at 5.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 6.

¹¹ *Id.* at 5.

¹² *Id.* at 4-5.

¹³ *Id.* at 5.

¹⁴ *Id.*

¹⁵ 5 C.F.R. § 2425.6(e)(1).

regulations, the Union does not explain how its claims relate to the regulations, or how the Arbitrator's award conflicts with the terms of any of those regulations. In these circumstances, we find the Union has failed to support its contrary-to-government-wide-regulation exception, and we deny that exception under § 2425.6(e)(1) of the Authority's Regulations.¹⁶

- B. The Union does not demonstrate the award fails to draw its essence from the parties' agreement.

The Union argues the award fails to draw its essence from the parties' agreement.¹⁷ In this connection, the Union cites the Arbitrator's statement that paid parental leave "is a substitute for FMLA special circumstances [-] as described[,] it is not earned."¹⁸ The

Union quotes Article 18, section p and Article 6, section b of the parties' agreement,¹⁹ and contends the Arbitrator's statement "has nothing to do with the [A]gency not abiding by . . . [A]rticle 18 when hiring overtime."²⁰ The Union contends the Arbitrator "did not frame the issues as presented by the [U]nion in the closing brief and in testimony[, n]or did he have any legal justification in the award for his decision."²¹ Further, the Union asserts that the Agency authorized overtime for other employees who used paid leave during their regular tour of duty, and that the Agency should not "skip[] over [employees] for arbitrary reasons such as being on [paid p]arental [l]eave for their regular scheduled tour of duty."²²

Under § 2425.6(b) of the Authority's Regulations, a party arguing that the award fails to draw its essence from the parties' collective-bargaining

¹⁶ See, e.g., *AFGE, Loc. 480, Council of Prison Locs. # 33*, 73 FLRA 839, 840 (2024) (Chairman Grundmann concurring) (denying contrary-to-law exception as unsupported where excepting party cited an executive order and statute but "d[id] not explain how the [a]rbitrator's application of either of those authorities was erroneous or offer any rationale as to how those authorities" required a different conclusion than the arbitrator reached); *AFGE, Loc. 2328*, 70 FLRA 797, 798 (2018) (denying contrary-to-law exception as unsupported where excepting party "merely list[ed] and summarize[d] cases it cited to the [a]rbitrator, without any explanation or argument about the cases' applicability to th[e] matter"); *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Bennettsville, S.C.*, 70 FLRA 342, 344 (2017) (denying exception as unsupported where excepting party argued the award was contrary to specific management rights under the Federal Service Labor-Management Relations Statute (the Statute), but "only quote[d] the language of the Statute and cases that generally outline an agency's right to assign work," and – "[o]ther than stating that [an article of the parties' agreement] preserve[d] those] rights for the [a]gency and sweeping references to" those rights, the excepting party "d[id] not provide arguments as to how the award, the [a]rbitrator's interpretation of the parties' agreement[s] . . . , or the remedy violate[d] . . . management rights"); *USDA, U.S. Forest Serv., Law Enft & Investigations, Region 8*, 68 FLRA 90, 93 (2014) (*USDA*) (denying exception as unsupported where excepting party asserted award was contrary to a cited statute and cited regulation, but "never explain[ed] how the award conflict[ed] with either" the statute or the regulation); *AFGE, Loc. 922*, 67 FLRA 458, 459 (2014) (denying contrary-to-law exception as unsupported where, among other things, excepting party quoted and cited statutes but "ma[de] no argument as to how the award [was] deficient under" those statutes); *AFGE, Loc. 1858*, 67 FLRA 327, 328 (2014) (Member Pizzella concurring on unrelated grounds) (denying contrary-to-law exception as unsupported where excepting party "cite[d] federal law that the award allegedly violate[d]," but "d[id] not explain the alleged violation, or how the award [was] otherwise deficient"); *AFGE, Loc. 1938*, 66 FLRA 741, 743 (2012) (denying exceptions as unsupported where excepting party "cite[d] various laws, government-wide regulations, and [a]gency regulations, and assert[ed] that the award conflict[ed] with . . . them," but did not "explain the alleged conflict, or how the award [was] deficient on any of [those] grounds under [the cited] laws and regulations").

¹⁷ Exceptions at 6-7.

¹⁸ *Id.* at 7 (quoting Award at 3).

¹⁹ *Id.* at 6-7.

²⁰ *Id.* at 7.

²¹ *Id.* We note that the Union did not assert the Arbitrator exceeded his authority by failing to address an issue. *Id.* (responding "[n]o" to question of whether Union is alleging the Arbitrator exceeded his authority).

²² *Id.*

agreement has an express duty to “explain how, under standards set forth in the decisional law of the Authority or [f]ederal courts,” the award is deficient.²³ Thus, the excepting party must demonstrate 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 purpose 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.²⁴ If the excepting party fails to do so, then the Authority will deny the essence exception as unsupported under § 2425.6(e)(1) of the Authority’s Regulations.²⁵

The Union cites certain provisions of the parties’ agreement and makes particular arguments, but does not explain how the award is deficient under the above essence standard. Therefore, the Union has not met its burden under § 2425.6(b) of the Authority’s Regulations, and we deny the essence exception as unsupported under § 2425.6(e)(1) of the Authority’s Regulations.²⁶

IV. Decision

We deny the Union’s exceptions.

²³ 5 C.F.R. § 2425.6(b); *see also* *USDA*, 68 FLRA at 93; *USDA, Forest Serv.*, 67 FLRA 558, 560 (2014) (*Forest Serv.*).

²⁴ *USDA*, 68 FLRA at 93; *see also* *U.S. Dep’t of VA, John J. Pershing Veterans’ Admin. Ctr., Poplar Bluff, Mo.*, 73 FLRA 842, 842-43 (2024).

²⁵ *See, e.g., USDA*, 68 FLRA at 93-94.

²⁶ *See, e.g., Bremerton Metal Trades Council*, 71 FLRA 569, 570 (2020) (denying essence exception as unsupported where excepting party contended the award “fail[ed] to recognize the scope of” a particular section of the parties’ agreement, and made “a conclusory statement that [a] prior arbitration award referenced by the [a]rbitrator ‘was derived’ from [the cited section] while the [a]rbitrator’s award was not,” but otherwise “ma[de] no argument in support of its exception” (internal quotation mark omitted)); *USDA*, 68 FLRA at 93-94 (denying essence exception as unsupported where excepting party made certain arguments about the parties’ agreement and the award but “d[id] not explain how the award [was] deficient under the essence standard”); *Forest Serv.*, 67 FLRA at 560 (denying essence exception as unsupported where excepting party “mention[ed]” two articles of the parties’ agreement but “d[id] not explain how the award fail[ed] to draw its essence” under the relevant standard).