UNITED STATES OF AMERICA
BEFORE THE
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C.

FIELD OPERATIONS, BOSTON REGION,
SOCIAL SECURITY ADMINISTRATION

Activity

and

Case No. 0-AR-92

LOCAL 1164, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Union

DECISION

This matter is before the Authority on an exception to the award of Arbitrator Edward C. Pinkus filed by the Agency under section 7122(a) of the Federal Service Labor-Management Relations Statute (5 U.S.C. § 7122(a)) (the Statute).

According to the Arbitrator, the dispute in this matter arose when the grievant filed applications for Activity funding under the Government Employees Training Act[1/] (GETA) of four courses he planned to take at a nongovernment facility,[2/] and the Area Director denied the applications on the ground that the courses were "not job related." The grievant completed the four courses at his own expense and grieved these denials. The dispute was ultimately submitted to arbitration with the parties unable to agree on the issues. Therefore, the Arbitrator stated the issues to be resolved as follows:

> Is the Grievance arbitrable? Did the Employer violate Article 25, Section 1, Article 25, Section 3,

1/ 5 U.S.C. §§ 4101-4118 (1976).

2/ The record indicates that the grievant applied for funding for two courses being offered by a local university during the Fall 1978 Semester and subsequently for two other courses being offered by the same university during the Spring 1979 Semester.

> Article 25, Section 4, and/or Article 6, Section 5 of the parties' 1978-81 collective bargaining agreement when it denied Grievant . . . GETA funding for the four graduate courses in question, and if so, what shall be the remedy?

After determining the matter to be arbitrable, the Arbitrator concluded as to the merits of the grievance that the Agency had "violated express and necessarily implicit requirements of Article 25" of the parties' collective bargaining agreement.[3/] In reaching this conclusion the Arbitrator found that while no specific agreement provisions required GETA funding of the grievant's courses, the agreement did require consultation with and participation by the Union with respect to employee training. Applying these contractual requirements to the grievant's situation, the Arbitrator found that the Activity must be held to a minimum standard of rationality and consistency in applying the criteria for approving or disapproving courses and that it had failed to meet these standards in the grievant's case. The Arbitrator further found that the agreement didn't contemplate an arbitrator applying the GETA criteria in individual cases, "[b]ut the Employer should be required to apply its

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3/ According to the Arbitrator, Article 25 of the collective bargaining agreement provides in pertinent part as follows:

> Article 25
> Training
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> Section 1. The Region and the Union agree that training is of the utmost importance and subscribe to the development of a comprehensive program which will enhance the ability of all individuals, supervisory or otherwise. While the Region bears the responsibility for determining training needs, it shall look to the Union and other employees for their views and experiences in carrying out this responsibility.
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> Section 3. The Region and the Union shall encourage employees to take advantage of appropriate Government and non-Government sponsored training and educational opportunities, including GETA, UPMOCO, STRIDE, and other programs which will add to the skills and qualifications of employees.

own criteria rationally and consistently, and to cooperate with the Union to that end." Accordingly, the Arbitrator made the following "Conclusion and Award":

> [T]he Employer violated Article 25, Sections 1 and 3 of the parties' collective bargaining agreement when it denied [the Grievant] GETA funding for the four graduate courses in question. As the remedy, the Employer is ordered forthwith, in consultation with the Union and Grievant, to reconsider Grievant's GETA applications in light of the present decision, and to cooperate with the Union in the rational and consistent administration of Article 25 of the contract.

The Agency filed an exception to the Arbitrator's award under section 7122(a) of the Statute[4/] and part 2425 of the Authority's Rules and Regulations (5 CFR part 2425). The Union filed an opposition.

In its exception to the award, the Agency contends that the portion of the award which directs the Activity to reconsider the grievant's GETA applications violates "law and the rules of the Comptroller General governing reimbursement for training expenses." In support of this exception, the Agency cites a Comptroller General decision[5/] in which it was held that under section 11(a) of the Government Employees Training Act[6/] expenses for training in a

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4/ 5 U.S.C. § 7122(a) provides:

> § 7122. Exceptions to arbitral awards
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> (a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration (other than an award relating to a matter described in section 7121(f) of this title). If upon review the Authority finds that the award is deficient--
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> (1) because it is contrary to any law, rule, or regulation; or
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> (2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;
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> the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

5/ 40 Comp. Gen. 12 (1960).

6/ 5 U.S.C. § 4108(a) (1976).

nongovernment facility may not be paid unless there has been an authorization for such training by an appropriate administrative official prior to the commencement of the training. Stating that such prior approval was not present in this case, the Agency argues that the "reconsideration" directed by the Arbitrator would be a "futile gesture," and therefore the award is contrary to law.

The Agency's exception that the award is contrary to law states a ground on which the Authority will find an award deficient under section 7122(a) of the Statute. However, in this case the exception does not provide a basis for finding the award deficient.

The remedy directed by the Arbitrator as a result of the contract violation he found was for the Activity to "reconsider" the grievant's GETA applications in consultation with the Union and the grievant. The award does not require payment of the training expenses. Neither the Government Employees Training Act nor the Comptroller General decision cited by the Agency in any manner support a contention that reconsideration of the application would be contrary to law. Accordingly, the Agency's exception provides no basis for finding the award deficient under 5 U.S.C. § 7122(a) and section 2425.3 of the Authority's Rules and Regulations.

Moreover, the Authority does not agree with the Agency's allegation that reconsideration would be a "futile gesture." Contrary to the Agency's assertion that retroactive reimbursement is prohibited, it is noted that the Comptroller General held in Matter of Kiyoshi Kaneshiro, B-187215, July 7, 1977, that the holding in 40 Comp. Gen. 12 (1960) requiring prior approval is not applicable in a case where appropriate regulations dispense with the requirement for the execution of a service agreement by the employee. In this regard, 5 CFR § 410.508(c) provides:

> (c) The head of the agency may except from the requirement in section 4108(a) of title 5, United States Code, for entering into a written agreement:
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> * * * * * * *
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> (2) An employee selected for training by, in, or through a non-Government facility, that does not exceed 80 hours within a single program[.]

Federal Personnel Manual Chapter 410, subchapter 5-4, footnote 1, provides in part:

> Two or more courses at an academic institution having a common purpose and occuring during the same term (quarter or semester) would normally be treated as training within a single program. Two courses of academic instruction taken during successive terms would not be treated collectively as training within a single program, because each such course would normally be approved separately . . . .

Thus, if the grievant's two courses in each of the two semesters did not exceed 80 hours, payment by the Agency for the courses is not precluded in view of the cited regulation and the Comptroller General's decision in Matter of Kiyoshi Kaneshiro, supra. While it is not clear from the Arbitrator's award how many hours were involved in each semester, the Union states in its opposition to the Agency's exception that testimony at the arbitration hearing established that the grievant's two courses in the Fall 1978 semester involved a total of 78 hours as did the two courses taken in the Spring 1979 semester.7/

For the foregoing reasons, the Agency's exceptions are denied.

Issued, Washington, D.C., October 15, 1981

Ronald W. Haughton, Chairman

Henry B. Frazier III, Member

Leon B. Applewhaite, Member

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7/ Under these circumstances, it is not necessary for us to address the question of whether, in any event, the provisions of GETA would prohibit reimbursement where a disapproval later found to be erroneous (as, for example, in violation of a collective bargaining agreement) has prevented an employee from signing the required service agreement in advance.