

**64 FLRA No. 40**

UNITED STATES  
DEPARTMENT OF THE ARMY  
UNITED STATES  
ARMY CORPS OF ENGINEERS  
PORTLAND DISTRICT  
(Agency)

and

UNITED POWER  
TRADES ORGANIZATION  
(Union)

0-AR-4331

DECISION

November 25, 2009

Before the Authority: Carol Waller Pope, Chairman,  
and Thomas M. Beck and Ernest DuBester, Members

**I. Statement of the Case**

This matter is before the Authority on an exception to an award of Arbitrator Joseph R. Weeks filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Union filed an opposition to the Agency's exception.

The Arbitrator sustained a grievance alleging that the grievant had been improperly denied mileage reimbursement for a temporary assignment away from his permanent duty station. For the reasons that follow, we deny the Agency's exception.

**II. Background and Arbitrator's Award**

The grievant submitted an email request for mileage reimbursement for a temporary assignment away from his permanent duty station. His supervisor denied the request because the grievant's normal commute was longer than his commute to the temporary duty location, and, as such, he had not incurred any increase in commuting expenses during his temporary duty assignment. *See Award at 4.*

The Union filed a grievance asserting that the grievant had been improperly denied mileage reimbursement in violation of various provisions of the parties' agreement and applicable statutes and regulations. *See id.* at 5-6. The matter was not resolved and was submitted to arbitration. The parties did not stipulate to the

issue and the Arbitrator framed it as follows: "Is the [g]rievant presently entitled to mileage reimbursement for his commute from Longview, Washington, to the Agency's Portland[, Oregon] office during his temporary assignment to that office . . .?" *Id.* at 15.

As an initial matter, the Arbitrator rejected various Agency contentions that the grievance was not arbitrable. As relevant here, the Arbitrator denied the Agency's claim that the grievance was not arbitrable because the grievant had failed to file the proper claim for reimbursement prior to the filing of the grievance. In this regard, the Arbitrator found that, even assuming the Agency could not lawfully reimburse the grievant based solely on his uncertified email request for reimbursement, at the time the grievant's supervisor denied the request, she could have — but did not — inform him that his mileage would not be paid because it was not submitted on the proper form. *See id.* at 17. The Arbitrator found that the grievant's supervisor denied the grievant's request solely on the ground that his normal commute to his permanent duty station was longer than his commute to the temporary duty station. *See id.* Thus, the Arbitrator concluded that the grievant could have regarded the submission of a certified claim as "simply a waste of his time" and assumed that his request was going to be denied regardless of whether he submitted it on the proper form. *Id.*

The Arbitrator similarly rejected the Agency's claim that the Union attempted to raise issues that were not specifically set forth in its original Step 1 grievance at subsequent stages of the grievance process. *See id.* at 23. According to the Arbitrator, "[w]hat is required [at Step 1] is that the grievance place the Agency on fair notice of the matters complained of together with such factual information relevant to the grievance as the Union has that might permit the supervisor to whom the grievance is submitted to evaluate its merits." *Id.* at 24. Here, the Arbitrator found that, when the grievant's supervisor received the Step 1 grievance, she was aware of the facts underlying the assertion in the grievance that she had erred in denying the grievant reimbursement based on her assumption that the grievant commuted to work every day from Longview. *See id.* at 23-24.

Further, the Arbitrator rejected the Agency's assertion that any claims regarding actions taken by the grievant after the filing of the Step 1 grievance were not arbitrable under the parties' agreement. *See id.* at 24. Specifically, the Arbitrator rejected the Agency's contention that he should not consider the grievant's submission of a certified claim for mileage reimbursement that was submitted to the Agency after the filing of the Step 1 grievance, but before the hearing. The Arbitrator

held that, if the grievant's supervisor had denied the Step 1 grievance based on the grievant's failure to submit a certified claim, then he would have granted the Agency's request. However, as the issue that he framed considered whether the Agency was presently entitled to reimburse the grievant, the Arbitrator held that he was not only permitted, but was required, "to consider the complete factual circumstances as they existed at the moment the record in this proceeding was closed." *Id.* at 24-25.

As to the merits of the grievance, the Arbitrator concluded that the grievant was entitled to mileage reimbursement under the statutes and regulations governing federal employee travel claims and directed the Agency to pay the grievant's claim.

### III. Positions of the Parties

#### A. Agency's Exception

The Agency asserts that the award is contrary to law because the Arbitrator erroneously addressed an issue that was not before him. *See* Exception at 5. Specifically, the Agency argues that the award "impermissibly directs the Agency to pay a request for reimbursement that was not presented as an allowable claim prior to the grievance[.]" *id.*, and impermissibly expands the scope of the grievance in violation of Article 6, Section 6.9 of the parties' agreement, which it asserts "precludes issuing an award based on events that occurred after the grievance was filed."<sup>1</sup> *Id.* at 6. According to the Agency, at the time the grievance was filed, the grievant had not submitted a signed and properly submitted claim for mileage reimbursement.<sup>2</sup> However, the Agency concedes that such a claim was submitted "many months" after the grievance had been processed. *See id.* at 5. Thus, the Agency argues that to direct the Agency to pay a claim that did not exist at any point in the grievance process is to expand the scope of the grievance to include issues that arose after the grievance process. The Agency contends that, because "it is by those steps that the parties define the issue for arbitration, the [Arbitrator's] framing of the issue and direc-

tion to pay the later-filed claim clearly constitutes deciding an issue not presented for arbitration" *Id.* at 6. The Agency argues that the issue framed by the Arbitrator "requires going far beyond the grievance documents, which clearly protested . . . the failure to pay the email request." *Id.* at 8.

In sum, the Agency asserts that "[t]o say that the grievance is about anything other than" the Agency's failure to pay the grievant the amount set forth in the grievant's email request "is to impermissibly alter the grievance[.]" "decide issues not presented for arbitration[.]" and sustain the grievance based on events that had not occurred at the time the grievance was filed. *Id.*

#### B. Union's Opposition

The Union rejects the Agency's exception as "frivolous" and claims that it arises solely from the parties' failure to stipulate to an issue. Opposition at 2. According to the Union, the Authority has routinely held that, in the absence of a stipulated issue, the Authority will defer to an arbitrator's framing of the issue. *See id.* at 2-3. Further, the Union contends that the Agency's exceptions constitute a challenge to the Arbitrator's finding that the grievance was procedurally arbitrable on grounds that challenge the procedural arbitrability determination itself, and, as such, do not provide a basis for finding the award deficient. In addition, the Union asserts that the Agency fails to present any argument or assertion to support its contention that the award is contrary to law. Finally, the Union contends that the Agency fails to dispute the Arbitrator's determination on the merits that the grievant was entitled to mileage reimbursement under the Federal Travel Regulations.

### IV. The Arbitrator did not exceed his authority.

As relevant here, the Arbitrator denied the Agency's claim that the grievance was not arbitrable because the Union had failed to submit a certified claim at the time the grievance was filed. As set forth above, the Arbitrator held that, insofar as the grievant's supervisor's denial of the reimbursement request was based on the grievant's normal commute being farther than the temporary one, the grievant could have regarded the submission of a certified claim as "simply a waste of his time" and assumed his request was going to be denied regardless of whether he submitted it on the proper form. Award at 17. The Arbitrator further rejected the Agency's claim that issues that were not explicitly raised in the Step 1 grievance were not arbitrable. In this respect, the Arbitrator essentially found that, as long as the Agency was on notice of what was being alleged and the factual assertions supporting those allegations,

1. The pertinent language of Article 6 is set forth in the attached Appendix.

2. The Agency asserts that it is "undisputed . . . that the law of mileage reimbursement claims requires a signed, certified claim[.]" but does not cite to any specific law. Exception at 6 (citing Award at 16-17). Insofar as we construe this argument as a claim that the award is contrary to law, we reject it as a bare assertion because the Agency has failed to identify the law with which the award allegedly conflicts. *See, e.g., U.S. Dep't of Homeland Sec., U.S. Immigration & Customs Enforcement*, 61 FLRA 503, 505 n.4 (2006).

any actions taken by the grievant after the filing of the Step 1 grievance were properly before him for resolution.

As an initial matter, we find that the Arbitrator's award constitutes a procedural arbitrability determination. *See, e.g., Fraternal Order of Police, N.J. Lodge 173*, 58 FLRA 384, 385 (2003) (procedural arbitrability involves procedural questions, such as whether the preliminary steps of the grievance procedure have been exhausted or excused); *see also AFGE, Local 104*, 61 FLRA 681, 682 (2006) (determining whether a union could file an institutional grievance on behalf of a group of employees constituted a procedural arbitrability determination); *U.S. Dep't of Def., Dependents Schools*, 55 FLRA 1108, 1110 (1999) (determining whether a grievance was timely constituted a procedural arbitrability determination).

The Authority generally will not find an arbitrator's ruling on the procedural arbitrability of a grievance deficient on grounds that directly challenge the procedural arbitrability ruling itself. *See, e.g., AFGE, Local 3882*, 59 FLRA 469, 470 (2003). However, the Authority has stated that a procedural arbitrability determination may be found deficient on grounds that do not directly challenge the determination itself, which include claims that an arbitrator was biased or that the arbitrator exceeded his or her authority. *See id.* (citing *AFGE, Local 933*, 58 FLRA 480, 481 (2003)); *see also U.S. Equal Employment Opportunity Comm'n*, 60 FLRA 83, 86 (2004) (citing *AFGE, Local 2921*, 50 FLRA 184, 185-86 (1995)).

We construe the Agency's assertion that the award is contrary to law because the Arbitrator addressed an issue that was not before him as a claim that the Arbitrator exceeded his authority. *AFGE, Local 1741*, 61 FLRA 118, 120 (2005). As set forth above, a procedural arbitrability determination may be found deficient on the basis that the arbitrator exceeded his or her authority. Accordingly, we address the Agency's claim that the Arbitrator exceeded his authority.

Arbitrators exceed their authority when they fail to resolve an issue submitted to arbitration, resolve an issue not submitted to arbitration, disregard specific limitations on their authority, or award relief to those not encompassed within the grievance. *See AFGE, Local 1617*, 51 FLRA 1645, 1647 (1996). In the absence of a stipulated issue, the arbitrator's formulation of the issue is accorded substantial deference. *See U.S. Dep't of the Army, Corps of Eng'rs, Memphis Dist., Memphis, Tenn.*, 52 FLRA 920, 924 (1997).

Where, as here, the parties fail to stipulate to an issue, an arbitrator may formulate the issue on the basis of the subject matter of the grievance. *See U.S. Dep't of Def., Educ. Activity, Arlington, Va.*, 56 FLRA 887, 891 (2000). The Authority defers to an arbitrator's framing of an issue. *See, e.g., AFGE, Local 933*, 58 FLRA at 482. Here, the Arbitrator framed the issue as whether the grievant was "presently entitled to mileage reimbursement" for his commute from his permanent duty location to a temporary assignment. Award at 15. In resolving the issue, the Arbitrator found it necessary to address — and ultimately reject — the Agency's claim that the grievance was not procedurally arbitrable because the Union had failed to comply with the procedural requirements set forth in Article 6, Section 9. The award is directly responsive to the issue as framed by the Arbitrator. Accordingly, we find that the Arbitrator did not exceed his authority by addressing and interpreting whether the grievance was arbitrable.

Further, to the extent the issues raised by the Agency's argument involve the Arbitrator's interpretation and application of Article 6 of the parties' agreement, we construe the Agency's exception as a claim that the award fails to draw its essence from the parties' agreement. *See, e.g., Soc. Sec. Admin., Balt., Md.*, 57 FLRA 181, 183 (2001). Such a claim directly challenges the Arbitrator's procedural arbitrability determination, and, as such, provides no basis for finding the award deficient. *See, e.g., U.S. Dep't of Homeland Sec., Customs & Border Prot. Agency, N.Y., N.Y.*, 60 FLRA 813, 815 (2005).

Based on the foregoing, we deny the Agency's exception.

## V. Decision

The Agency's exception is denied.<sup>3</sup>

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3. As the Agency does not dispute the Arbitrator's findings with respect to the merits of the grievance, we do not address them.

## APPENDIX

Article 6 of the parties' agreement provides, in relevant part:

### GRIEVANCE AND ARBITRATION PROCEDURE GRIEVANCE PROCEDURE

....

6.9 The grievance steps shall be as follows:

a. Step 1

(1) The grievant (either employee or Union) shall notify their Operations Manager (OM) of their grievance within thirty (30) calendar days of the grievant becoming aware of the problem. This notification will be in writing. The written presentation of the grievance must contain the following information:

- (a) The identity of the aggrieved employee and the work group in which they are employed;
- (b) The details of the grievance;
- (c) The article of the Agreement allegedly violated;
- (d) The corrective action desired;
- (e) The name of the Union Representative, if any;
- (f) A description of the discussion between their first line supervisor as to why they could not settle the disagreement. Where a statute provides a longer period of time to file a claim than that provided in this Article, the statutory period shall control.

(2) The Operations Manager (OM) shall have twenty (20) calendar days after receipt of the grievance to adjust the grievance and shall notify the grievant of their decision. This notification will be in writing. If the grievant feels the relationship with the immediate supervisor is such that the grievant cannot reasonably discuss the matter with their first line supervisor, the grievant may discuss it with the next level of supervision.

b. Step 2

(1) If the grievant is not satisfied with the adjustment by the Operations Manager (OM), the grievant has twenty (20) calendar days, after receipt of

the OM's response, to submit the matter in writing through the OM to the District Operations Chief. The initial written grievance, as submitted to the OM, will be resubmitted with an explanation of why the grievant was not satisfied with the OM's resolution for the grievance.

(2) When the District Operations Chief receives a written grievance filed without Union representation, he/she will immediately inform the appropriate Union Vice President giving the name of the grievant, Project and nature of the grievance.

(3) The District Operations Chief will examine the grievance and if it is found to be a matter within the exclusion of the negotiated grievance procedure, he/she will so advise the aggrieved employee and inform the grievant of the appropriate statutory grievance procedure. Otherwise, he/she will attempt to resolve the grievance and will give a copy of his written decision to the employee, the employee's representative and to the appropriate Union Vice President within twenty (20) calendar days after receiving the grievance.

c. Step 3

(1) After receipt of the grievance, if either the grievant or the Union is not satisfied with the decision of the District Operations Chief, the written grievance may be submitted to the Senior Operations Hydropower Team Leader, Northwestern Division, within ten (10) calendar days.

(2) When the Senior Operations Hydropower Team Leader, Northwestern Division, receives the written grievance, he/she may meet with the aggrieved employee and a Union Official within ten (10) calendar days after receipt of the grievance. The Senior Operations Hydropower Team Leader, Northwestern Division will give a written decision to the aggrieved employee, the employee's representative, and the Union President within thirty (30) calendar days after receiving the grievance.

d. Step 4

If this decision does not satisfy the Union, the Union may within twenty (20) calendar days after receipt of the grievance, submit a written request to the Division Labor Relations Officer for binding arbitration. Only the Division or the Union may request arbitration.

Exceptions, Union Ex. 1 at 8, 12-15.