

64 FLRA No. 55

NATIONAL ASSOCIATION
OF GOVERNMENT EMPLOYEES
(Union)

and

UNITED STATES
DEPARTMENT OF THE NAVY
NAVAL BASE VENTURA COUNTY
(Agency)

0-AR-4407

DECISION

December 30, 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 exceptions to an award of Arbitrator Sara Adler filed by the Union under § 7122 (a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Agency filed an untimely opposition to the Union's exceptions.¹

The Arbitrator found that the Agency did not violate the parties' agreement by failing to amend the grievant's SF-50 to reflect a schedule change. For the reasons set forth below, we deny the Union's exceptions.

II. Background and Arbitrator's Award

The grievant, a firefighter, worked a 6 day on and 8 day off schedule per pay period (6/8 day schedule). Award at 2. He was switched to a temporary 7 day on and 7 day off work schedule per pay period (7/7 day schedule) to accommodate a training need. He remained on that schedule for more than 2 years. *Id.* The grievant was then returned to his 6/8 day schedule. *Id.* The grievant then filed a grievance requesting that his SF-50 be amended to reflect his time working the 7/7 day

schedule because he believed it would increase his retirement pay. *Id.*

The grievance was unresolved and submitted to arbitration. The Arbitrator defined the issues as:

1. Is this grievance timely?
2. If so, did the [Agency] violate any negotiated agreement, law, rule or regulation in not issuing an SF-50?
3. If so, what is the appropriate remedy?

Id. at 3. The Arbitrator found that the grievance was untimely regarding the commencement of the 7/7 day schedule because it was filed more than 2 years after that schedule began. *Id.* at 3-4. However, the Arbitrator found that the grievance was timely for the end of the 7/7 day schedule. *Id.* at 4. The Arbitrator noted that, "in theory, [this] could lead to the absurd result" that the Agency would note the end date, but not the beginning date of the 7/7 day schedule. *Id.* The Arbitrator held that it was unnecessary to reach a conclusion regarding this point, however, because the grievance must be denied on its merits. *Id.*

The Arbitrator found that the Agency's Guide for Processing Personnel Actions did not include any provision that would provide for altering an SF-50 for a full-time shift change. *Id.* In addition, the Arbitrator found that, although the Union persuasively argued that the Agency could amend an SF-50 to record full-time shift changes, the Union failed to show that the Agency's failure to document the time the grievant spent on the 7/7 day schedule violated the parties' agreement, or any law, rule, or regulation. *Id.* The Arbitrator concluded that because the grievant's claim is "grounded in the notion that the [Agency] could have, and should have," provided the requested documentation — rather than it must have — she "lack[ed] the jurisdiction" to grant the grievant's claim and denied the grievance. *Id.* at 5.

III. Union's Exception

The Union asserts that the award is contrary to law because it did not order the grievant's SF-50 to be amended as required by Chapter 4 of the OPM Guide to Processing Personnel Actions (OPM Guide).² Exceptions at 3-4. The Union further argues that it provided sufficient evidence that the Agency was required to amend the grievant's SF-50 to reflect the time worked in a 7/7 schedule. *Id.* at 4. The Union also contends that

1. On October 9, 2008 the Office of Case Intake and Publication issued an Order on behalf of the Authority denying the Agency's "Request to Waive Expired Time Limit for Filing Agency's Opposition" because the Agency failed to show the existence of extraordinary circumstances warranting waiver of the expired time limit. Accordingly, we do not consider the Agency's submitted Opposition.

2. The Office of Personnel Management Guide to Processing Personnel Actions (OPM Guide) contains the Office of Personnel Management's instructions on how to prepare personnel actions. <http://www.opm.gov/feddata/gppa/gppa.asp>

the award is contrary to law because the Arbitrator failed to grant an equitable remedy on the grounds that she did not have the authority to do so. The Union contends that this interpretation is contrary to law because an arbitrator has the inherent power to fashion a remedy as long as the award draws its essence from the parties' agreement. *Id.* The Union alleges that granting the grievant's requested remedy — amending his SF-50 to reflect the time in the 7/7 schedule — draws its essence from the parties' agreement because it would “preserve and promote the efficiency of the Agency.” *Id.* at 5.

IV. The award is not contrary to law.

When an exception involves an award's consistency with law, the Authority reviews any question of law raised by the exception and the award *de novo*. See *NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)). In applying the standard of *de novo* review, the Authority assesses whether an arbitrator's legal conclusions are consistent with the applicable standard of law. See *U.S. Dep't of Def., Dep'ts of the Army and the Air Force, Ala. Nat'l Guard, Northport, Ala.*, 55 FLRA 37, 40 (1998). In making that assessment, the Authority defers to the arbitrator's underlying factual findings. See *id.*

The Union argues that Chapter 4 of the OPM Guide requires that the grievant's SF-50 be amended to reflect the time he worked a 7/7 day schedule. Asserting that the award is contrary to law, the Union relies on Chapter 4 of the OPM Guide page 4-4, paragraph 3(a), which states that “all other actions in this guide are to be documented for long-term retention” Exceptions at 3-4. However, as the Arbitrator found, nothing in the OPM Guide Chapter 4 provides that the Agency must amend the grievant's SF-50 to reflect a full-time schedule change. Award at 5. As such, the Union has failed to demonstrate that the Arbitrator's award is contrary to law, rule, or regulation. Accordingly, we deny this exception.

The Union's related argument — that the Arbitrator erred in finding that she did not have the authority to grant the Union's requested remedy — fails for similar reasons. As the Union correctly noted, an arbitrator has broad discretion in fashioning an appropriate remedy when a violation of law or contract is found; however, an arbitrator may not award a remedy in the absence of finding a violation. See *AFGE, Local 2274*, 57 FLRA 586, 589 (2001); *U.S. Dep't of the Interior, U.S. Geological Survey, Nat'l Mapping Div., Mapping Applications Ctr.*, 55 FLRA 30, 33 (1998). Here, although the Arbitrator noted that the Agency could have documented the

schedule change, the Arbitrator found the Agency was not contractually or legally required to do so. Award at 4-5. Because the Agency did not violate any law or provision of the parties' agreement, the Arbitrator correctly held that she was without the authority to grant the Union's requested relief. Accordingly, we deny this exception.

V. Decision

The Union's exceptions are denied.