65 FLRA No. 84

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 987
(Union)

and

UNITED STATES
DEPARTMENT OF THE AIR FORCE
WARNER ROBINS AIR LOGISTICS CENTER
WARNER ROBINS AIR FORCE BASE, GEORGIA
(Agency)

0-AR-4653

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DECISION

December 23, 2010

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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 William H. Holley, Jr. 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 opposition to the Union's exceptions.

The Arbitrator issued an award finding the grievance arbitrable and also finding that the Agency violated the parties' Master Labor Agreement (MLA). However, the Arbitrator did not discuss remedy issues and the award does not provide a remedy.

For the reasons discussed below, we grant the Union's exception that the Arbitrator exceeded his authority when he found a violation of the MLA. Consequently, we set aside the award with respect to that finding, and remand the award to the parties, absent settlement, for resubmission to the Arbitrator for further proceedings consistent with this decision.

II. Background and Arbitrator's Award

The Union's grievance concerns the Agency's failure to bargain with the Union over the implementation of a Multi-skill Training Program (MTP). The MTP was the subject of a 1997 Federal Service Impasses Panel (FSIP) decision, which was incorporated into a Memorandum of Agreement (MOA) between the parties. Award at 20-21 (citing *Dep't of the Air Force, Wright-Patterson Air Force Base, Headquarters, Air Force Materiel Command, Wright-Patterson Air Force Base, Ohio*, 97 FSIP 88 (1997)). In a subsequent proceeding, the Authority ruled that the MOA was binding on the parties and upheld an arbitrator's award finding that the Agency was compelled to implement the MOA pursuant to the FSIP-imposed agreement. *Id.* at 21, (citing *U.S. Dep't of the Air Force, Warner Robins Air Logistics Ctr., Robins Air Force Base, Ga.*, 56 FLRA 498, 499, 501 (2000)).

In February 2008, the Agency notified the Union that it intended to implement the MTP at the local level. The Union demanded to bargain with the Agency over the program's implementation. Award at 2. The Agency refused and responded that the demand to bargain was untimely. *Id*. at 6. The Union filed a grievance. When the parties could not resolve the grievance, the matter was submitted to arbitration.

Prior to the arbitration hearing, the Arbitrator and the parties agreed that the proceeding would be bifurcated: one hearing would be held on the grievance's arbitrability and another on its merits. Exceptions, Ex.6 at 7-8, 13-14. The Union's exceptions concern the Arbitrator's award following the arbitrability hearing. A separate hearing on the merits never occurred.

Based on the issues the parties proposed, the Arbitrator framed the issues as follows:

> Whether the [g]rievance is arbitrable.
>
> Whether the demand to bargain was timely.
>
> Whether the FSIP Imposed Agreement is still in effect. If so, does the FSIP Imposed Agreement allow for negotiations at the local level.

Award at 13.

The Arbitrator resolved the issues he framed. The Arbitrator found that the grievance was arbitrable, that the demand to bargain was timely, that the FSIP-imposed agreement was still in effect, and that the agreement allowed for negotiations at the local level. Award at 35, 38-39. However, the Arbitrator not only ruled on the issues he framed, he also ruled on a merits issue that was not among the framed issues. As to this additional merits issue, the Arbitrator found that the Agency's refusal to bargain with the Union over the implementation of the MTP was a violation of Article 33 of the MLA.[1] *Id.* at 38, 39. The Arbitrator also found that the Union's request to maintain the status quo until the completion of negotiations went beyond the requirements of Article 33. *Id.* at 38.

Although the Arbitrator concluded that the grievance was properly before him and that the Agency violated the MLA, the Arbitrator did not discuss remedy issues and the award does not provide a remedy.

III. Positions of the Parties

A. Union's Exceptions

The Union excepts to the award on three bases. The Union contends that the award fails to draw its essence from the parties' agreement, that the Arbitrator exceeded his authority, and that the Arbitrator failed to conduct a fair hearing. Exceptions at 5-8. However, the three exceptions raise a common complaint. With all three exceptions, the Union argues that when the Arbitrator reached the merits of the Union's contract violation claim, he went beyond the issues that he framed for the arbitration hearing. The Union asserts that, in doing so, the Arbitrator resolved a merits issue not before him. *E.g.*, *id.* at 6-8. The Union requests that the award be remanded to the Arbitrator "to conduct a full hearing on the merits of the Union's grievance, including remedies."[2] *Id*. at 8.

B. Agency's Opposition

The Agency contends that the Union's exceptions are nothing more than disagreement with the Arbitrator's award. Opposition at 3. The Agency's position with regard to all three exceptions is that the proceeding involved only arbitrability issues, and that this is all the Arbitrator ruled on. *Id.* at 3-5. Therefore, the Agency asks the Authority to deny the Union's exceptions.

IV. Analysis and Conclusions

The Union claims that the Arbitrator exceeded his authority when he found a violation of Article 33 of the MLA. 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). However, although "[a]rbitrators may legitimately bring their judgment to bear in reaching a fair resolution of a dispute as submitted to or formulated by them, . . . they may not decide matters which are not before them." *Veterans Admin.*, 24 FLRA 447, 451 (1986).

It is undisputed that the issues before the Arbitrator did not include the merits of the Union's claim that the Agency violated Article 33 of the MLA.[3] Nevertheless, the Arbitrator resolved that claim. In these circumstances, we find that the Arbitrator exceeded his authority when he decided, prior to a hearing on the merits, that the Agency committed a contract violation.

Accordingly, the award is set aside with respect to the finding of a violation of Article 33 of the MLA and remanded to the parties, absent settlement, for resubmission to the Arbitrator to conduct a full hearing on the merits of the Union's grievance, including the remedies requested by the Union.[4] *U.S. Dep't of Def. Dependents Schools,* 49 FLRA

1. Article 33 sets forth the ground rules for negotiations during the term of the agreement. Article 33 is set forth in the appendix to this decision.

2. The remedies sought in the grievance are set forth in the Award at 9. They include a cease and desist order, a posting, and discipline of the Agency officials responsible for the failure to bargain.

3. There is nothing in the record that would explain why the Arbitrator went beyond the issues he framed. As we are constrained by the record before us, we must decide accordingly.

4. In light of this decision, it is unnecessary to address the Union's remaining exceptions.

120, 124 (1994) (where arbitrator exceeded authority award remanded to parties for resubmission to arbitrator in order to properly resolve grievance's remaining issues).

V. Decision

The Union's exception is granted. The award is set aside in part, and the matter is remanded to the parties, absent settlement, for resubmission to the Arbitrator for further proceedings consistent with this decision.

APPENDIX

Article 33-Ground Rules for Negotiations During the Term of the Agreement

Section 33.01: General

In an effort to continue to develop a productive labor-management relationship which benefits employees and their Union and the Employer, it is the intent of this article to encourage negotiations between the parties.

a. It is understood that neither party waives any rights under the Federal Service Labor-Management Relations Statute.

b. The parties do not intend to renegotiate the articles and provisions which already have been negotiated in this Agreement. The Parties agree to give notice and bargain over proposed changes in conditions of employment unless the matter is expressly contained in the contract.

c. The parties are committed to utilizing an interest-based, problem-solving approach to reach agreement during these negotiations. In this respect, during these negotiations neither party will file a grievance, institute any proceeding under the Stature, or declare a proposal nonnegotiable under the Statute concerning the matter. This process terminates when there is an agreement on the matter or either of the parties determines that it intends to rely on its statutory rights.

Section 33.02: Negotiations at Command Level

The Union will designate an official(s) to represent it in mid-term bargaining matters at Command level. The Union will provide an adequate staff to be located at HQ AFMC, WPAFB OH with authority to facilitate prompt response to the negotiations undertaken at Command level.

a. When a bargaining obligation is generated by a proposed directive at Command level or a directive issued

above Command level, the following procedures will apply:

1. The Labor Relations Office will notify the designated Union official above of the intended changes in conditions of employment. A reasonable time period/date following the notification will be identified as the date management intends to implement. The union official designated above may request and be granted a meeting to discuss the change.

2. If the Union wishes to negotiate, in accordance with entitlements under CSRA, concerning proposed changes, the Union will submit written proposals to the Labor Relations Office not later than 15 workdays after receipt of Employer's notifications. The parties will determine a date on which negotiations will take place, the persons to be involved, the location, and the implementation procedures. Negotiations will normally begin within five workdays after receipt by the Labor Relations Office of the timely Union proposals. If necessary, the identified implementation date may be postponed by the Employer to complete negotiations.

b. When a bargaining obligation is generated by the union over a condition of employment which has not been covered by the contract and was not the subject of a matter previously submitted, but withdrawn, during negotiations, the following procedures will apply:

1. The union will notify, in writing, the Labor Relations Officer of the intended changes in conditions of employment. A reasonable time period/date following the notification will be identified as the implementation date. The Labor Relations Officer or designee may request and be granted a meeting to discuss the change.

2. If management wishes to negotiate, in accordance with entitlements under the CSRA, concerning the union's proposed changes, management will submit written counterproposals to the union not later than 15 workdays after receipt of the union's written notification. Negotiations will normally begin within five workdays after receipt by the union of the timely proposals. If necessary, the identified implementation date may be postponed to complete negotiations.

c. There shall be no implied consent or constructive implementation of any union proposal.

d. The parties may mutually agree to delegate responsibility for negotiations to subordinate activities and local Union officials.

e. Agreements reached under this Section will be promptly implemented by the Employer in the appropriate form such as regulation, letter, or operating instruction. Disputes over the application of the implementing directive will be subject to resolution under Article 6 (Grievance Procedure).

Section 33.03: Negotiations at Activity Level

a. Activity-wide changes in local conditions of employment, not covered by this MLA nor as a result of Command-wide negotiations under Section 33.02a above, which are within the discretion of the subordinate activity commander, will be brought to the attention of local Union officials prior to implementation in accordance with law and regulations. The Union will

be given a specified reasonable implementation date as determined by mission requirements and the urgency for implementation.

1. If the Union wishes to negotiate, in accordance within Title VII, CSRA, the Union will submit written proposals to the activity labor relations office within ten calendar days of the date of notification if circumstances permit that much time. The local parties will determine a date on which negotiations will take place, the persons to be involved, the location, and the implementation procedures.

2. Upon notification that activities and local Unions have been delegated negotiation responsibilities in accordance with Section 33.02d, the activity will provide notice of the new or revised issuance or directive to the local president together with a specified reasonable implementation date. If the Union wishes to negotiate, it will respond in accordance with Section 33.03a(1) above and the provisions of that Section will be followed in discharging the bargaining obligations.

b. Changes in local conditions of employment at echelons below the activity commander will be brought to the attention of the Union representative designated to be contacted by the supervisor or manager making the changes. Arrangements will be made by such officials, if bargaining is requested, to discharge the bargaining obligation in a time frame consistent with the circumstances causing the needed change. Agreements reached may not violate any provisions of this MLA or Local Supplements.

c. When a bargaining obligation is generated by the union over a condition of employment which has not been covered by the contract and was not the subject of a matter previously submitted, but withdrawn, during negotiations, the following procedures will apply:

1. After review by the Council 214 President, the local Union President will notify, in writing, the Labor Relations Officer of the intended changes in conditions of employment. A reasonable time period/date following the notification will be identified as the proposed implementation date. The Labor Relations Officer or designee may request and be granted a meeting to discuss the change.

2. If management wishes to negotiate, in accordance with entitlements under the CSRA, concerning the union's proposed changes, management will submit written counterproposals to the union not later than 15 workdays after receipt of the union's written notification. Negotiations will normally begin within five workdays after receipt by the union of the timely proposals. If necessary, the identified implementation date may be postponed to complete registrations.

Award at 15-18.