

**71 FLRA No. 69**

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 2338  
(Union)

and

UNITED STATES  
DEPARTMENT OF VETERANS AFFAIRS  
JOHN J. PERSHING VAMC  
(Agency)

0-AR-5410

DECISION

October 11, 2019

Before the Authority: Colleen Duffy Kiko, Chairman,  
and Ernest DuBester and James T. Abbott, Members

**I. Statement of the Case**

In this case, Arbitrator Michael S. Jordan denied the Union’s grievance alleging that the Agency refused to bargain over official time for certain bargaining-related activities, in violation of the parties’ master collective-bargaining agreement (master agreement) and mid-term local ground rules agreement (ground rules). The Arbitrator found that a Decision and Order (Order) issued by the Federal Service Impasses Panel (Panel) clarified the parties’ obligations concerning official time, and he directed the parties to comply with the Order.

The questions before us are whether the award: (1) fails to draw its essence from the master agreement and ground rules (collectively, agreements) and (2) is ambiguous and impossible to implement. Because the Union does not demonstrate that the Arbitrator’s interpretation of the parties’ agreements is irrational, unfounded, implausible, or in manifest disregard of the agreements, or that the award is impossible to implement, we deny the Union’s exceptions.

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

The master agreement provides, in pertinent part, that: (1) the parties may engage in mid-term bargaining at the local level; (2) the Union is entitled to an annual allotment of official time; and (3) the parties

may negotiate local agreements providing for more official time than is set forth in the master agreement.

As relevant here, the parties executed the ground rules to govern their mid-term bargaining. One section of the ground rules required the parties to bargain over the amount of official time to which the Union would be entitled to prepare and research before “across the table negotiations,”<sup>1</sup> and the procedures for how the Union would request such time. The parties began bargaining, but reached an impasse over several official time issues, including whether the Union’s preparation and research time would come out of the Union’s annual official-time allotment. The parties therefore requested assistance from the Panel to resolve the impasse.

The Panel issued the Order, which stated that, because the Union has no statutory right to official time for preparation and research, if the Agency grants such time, it must be deducted from the Union’s annual official-time allotment. The Order also imposed procedures for the Union to follow in requesting and tracking official time.

The Union subsequently filed a grievance alleging that the Agency refused to bargain over the amount of official time for preparation and research, in violation of the agreements. The parties could not resolve the grievance and submitted it to arbitration.

The parties disagreed over whether the agreements’ provisions about official time for pre-negotiation preparation and research were supplanted by the Order. Thus, the issue before the Arbitrator was, in pertinent part, whether the Agency violated the ground rules by not negotiating in good faith over official time for preparation and research for bargaining-team members.

The Arbitrator found that the Order resolved most, but not all, issues related to official time. He concluded that the parties’ agreements and the Order require the parties to engage in “honest negotiations” to resolve any outstanding official-time issues.<sup>2</sup> However, he also found that the Order imposed various obligations on the Union – including tracking its official time use – that the Union must fulfill before the Agency is obligated to negotiate. Finding that the Union did not demonstrate

<sup>1</sup> Award at 31.

<sup>2</sup> *Id.* at 40.

that it had fulfilled its obligations under the Order or the agreements, the Arbitrator denied the grievance.<sup>3</sup>

The Union filed exceptions to the award on September 6, 2018. The Agency did not file an opposition.

### III. Analysis and Conclusions: The award is not deficient.

The Union argues that the award fails to draw its essence from the parties' agreements<sup>4</sup> because the Arbitrator did not "rule[] on the contract."<sup>5</sup> The Arbitrator found that the parties had bargained to impasse over official time for preparation and research time.<sup>6</sup> Interpreting the parties' agreements, in conjunction with the Order that resolved the parties' impasse, the Arbitrator determined that the Union must fulfill its obligations under the Order before the Agency was obligated to negotiate.<sup>7</sup> Because the Union does not specify which parts of the agreements it contends the Arbitrator interpreted in a way that is irrational, unfounded, implausible, or in manifest disregard of the agreements, we deny the exception.<sup>8</sup>

<sup>3</sup> *Id.* at 41. The Arbitrator also noted that the Union has the right to continue negotiating for more official time and directed the parties to negotiate in good faith pursuant to the agreements on "continuing issues as they arise." *Id.* On this point, he urged the parties to behave respectfully towards each other and consider the other's reasonable requests. *Id.* at 40-41.

<sup>4</sup> The Authority will find that an award is deficient as failing to draw its essence from the parties' agreement only when the appealing party establishes 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 to the wording and purposes of the collective-bargaining 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 parties' agreement. *U.S. Dep't of VA, Gulf Coast Med. Ctr., Biloxi, Miss.*, 70 FLRA 175, 177 (2017); *see also U.S. Dep't of VA, Malcolm Randall VA Med. Ctr., Gainesville, Fla.*, 71 FLRA 103, 104 & n.13 (2019) (VA).

<sup>5</sup> Exceptions at 10.

<sup>6</sup> Award at 37 ("Clearly the [U]nion initiated the matter involving official time when they filed a request for assistance."); *id.* at 40 ("It is clear . . . that all elements raised in the instant grievance were aired in the submissions sent to the [Panel].").

<sup>7</sup> *See, e.g., id.* at 40 ("Tracking official time is one of many Union obligations that must be fulfilled *before* the [A]gency may be expected to negotiate.").

<sup>8</sup> *See AFGE, Local 1815*, 69 FLRA 621, 623 (2016) (Member Pizzella concurring) (denying essence exception because the excepting party did "not identify a provision of the parties' agreement with which the award conflict[ed]"); *AFGE, Local 2382*, 66 FLRA 664, 666-67 (2012) (denying essence exception where excepting party did "not identify any specific contractual wording to establish that the [challenged] finding

Additionally, the Union argues that the award is ambiguous.<sup>9</sup> For an award to be found deficient as incomplete, ambiguous, or contradictory, the excepting party must show that implementation of the award is impossible because the meaning and effect of the award are too unclear or uncertain.<sup>10</sup> In support of its argument, the Union makes only one general statement that it is "not sure . . . what the arbitrator will implement."<sup>11</sup> But the Arbitrator, in no uncertain terms, denied the grievance and directed the parties to comply with their obligations under the Panel's Order.<sup>12</sup> Thus, the award is neither ambiguous nor impossible to implement.<sup>13</sup> Accordingly, we deny this exception.

### IV. Decision

We deny the Union's exceptions.

[was] irrational, unfounded, implausible, or in manifest disregard of the" parties' agreement).

<sup>9</sup> Exceptions at 1, 10.

<sup>10</sup> VA, 71 FLRA at 105 & n.30.

<sup>11</sup> Exceptions at 10.

<sup>12</sup> Award at 41.

<sup>13</sup> *See, e.g., VA*, 71 FLRA at 105.