

73 FLRA No. 27

INTERNATIONAL ASSOCIATION
OF MACHINISTS AND
AEROSPACE WORKERS
FRANKLIN LODGE No. 2135
(Union)

and

UNITED STATES
DEPARTMENT OF THE TREASURY
BUREAU OF ENGRAVING AND PRINTING
(Agency)

0-AR-5763

DECISION

July 7, 2022

Before the Authority: Ernest DuBester, Chairman, and
Colleen Duffy Kiko and Susan Tsui Grundmann,
Members

I. Statement of the Case

Arbitrator Daniel G. Zeiser found that the Agency did not violate the parties' collective-bargaining agreement or shop policies by requiring employees to use part of their weather-and-safety leave for personal cleanup time (cleanup time) at the ends of their shifts. The Union filed an exception contending that the award is contrary to the Administrative Leave Act of 2016 (the Act)¹ because the Agency may not require employees to perform work during periods that the Act designates as leave. We find the Union's argument unpersuasive because the Arbitrator did not find that cleanup time is work, and the Union does not establish that the Agency required employees to clean up before leaving their work sites.

II. Background and Arbitrator's Award

The Agency prints paper money at two production sites, where Union-represented employees (employees) work to keep the machinery running. The Agency designated the employees as mission critical,

which required them to report to the production sites during the COVID-19 pandemic.

Early in the pandemic, the Agency replaced the final hour of employees' shifts with one hour of weather-and-safety leave. This leave reduced congregating near entrances and exits and minimized intermingling between shifts. Before the pandemic, the Agency had required employees to remain at the production sites until their shifts ended, but, after instituting weather-and-safety leave at the ends of shifts, the Agency permitted – but did not require – employees to leave the production sites as soon as weather-and-safety leave began. Later, the Agency reduced the amount of weather-and-safety leave so that the leave replaced only the last thirty minutes of employees' shifts.

The Union filed two grievances – one for each production site – contending that the Agency had to provide employees with cleanup time that was distinct from weather-and-safety leave. The Agency responded that, because employees could use their weather-and-safety leave for cleanup time, the Agency had satisfied its obligations. Accordingly, the Agency denied the grievances, which were consolidated and advanced to arbitration.

As relevant here, the Arbitrator framed the issue as whether the Agency violated the parties' agreement or shop policies when it provided weather-and-safety leave and then reduced that leave without allowing for cleanup time prior to the leave. Under the parties' agreement, "[f]ifteen minutes personal cleanup time will be allowed [at the end of each shift] for those employees required to change clothes."² Further, according to shop policies, every employee "is entitled to . . . twenty minute[s] personal cleanup time before the end of their shift."³ As for weather-and-safety leave, the parties agreed that it was a unique form of leave governed by statute – specifically, the Act.⁴

Beginning with the agreement, the Arbitrator found that the intent of the provision regarding cleanup time was "for employees to be able to clean up during paid time."⁵ Because the Act specified that weather-and-safety leave was paid time, the Arbitrator found that requiring employees to use some of their weather-and-safety leave for cleanup time was consistent with the agreement's intent. Thus, the Arbitrator held that the Agency did not violate the agreement. For the same reasons, the Arbitrator concluded that the Agency did not violate the shop policies.

¹ 5 U.S.C. §§ 6329a-6329c.

² Award at 4 (quoting Collective-Bargaining Agreement Art. 5, § 6).

³ *Id.* (quoting Electro-Mach. Div. Shop Policies (Apr. 17, 2018)).

⁴ 5 U.S.C. §§ 6329a-6329c. However, the Union asserted that the Act's implementing regulations did not apply to the dispute, because the parties' agreement was in effect before those regulations were prescribed.

⁵ Award at 15.

Consequently, the Arbitrator denied the grievances.

On September 10, 2021, the Union filed an exception to the award, and on October 12, 2021, the Agency filed an opposition.

III. Analysis and Conclusion: The award is not contrary to the Act.

The Union argues that the award is contrary to the Act⁶ because the Agency may not require employees to perform work during a period designated as leave, and, according to the Union, cleanup time is work.⁷ However, the Arbitrator did not find that cleanup time is work – merely that cleanup time must occur during paid time, and weather-and-safety leave is paid time.⁸ Further, it is undisputed that the Agency does *not require* employees to clean up before they leave the production sites.⁹ Thus, the record in this case is inconsistent with the premise of the Union’s argument. Moreover, the Union does not identify a provision of the Act that required the Arbitrator to treat cleanup time as work.

As the Union fails to establish that the award is contrary to the Act, we deny this portion of the Union’s exception.

IV. Decision

We dismiss, in part, and deny, in part, the Union’s exception.

⁶ In particular, the Union relies on 5 U.S.C. § 6329c, which concerns weather-and-safety leave. Exception at 4, 6. 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. 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. *E.g., AFGE, Council of Locs. 222*, 72 FLRA 738, 741 (2022).

⁷ Exception at 4, 6-7. The Union’s argument relies on not only the Act, but also the Act’s implementing regulations. *Id.* Under §§ 2425.4(c) and 2429.5 of the Authority’s Regulations, 5 C.F.R. §§ 2425.4(c), 2429.5, the Authority will not consider an argument that is inconsistent with a party’s arguments to the arbitrator. *NLRB*, 72 FLRA 334, 336 & nn.28 & 31 (2021). The Union argued to the Arbitrator that the Act’s implementing regulations did not apply to this dispute, Award at 12-13, and the Union’s reliance on those regulations in its exception is inconsistent with the Union’s argument at arbitration. Accordingly, §§ 2425.4(c) and 2429.5 bar consideration of the parts of the exception that rely on the implementing regulations, and we dismiss those parts of the exception. *See, e.g., NLRB*, 72 FLRA at 336.

⁸ Award at 15-16. We emphasize that we are recounting the Arbitrator’s findings about the particular circumstances of this dispute, and our analysis should not be read as prohibiting other arbitrators from treating employee-cleanup periods as work, based on the specific facts, agreements, and legal provisions at issue before those arbitrators.

⁹ Opp’n Br. at 6; *see also* Award at 6 (recounting Agency witness’s testimony that, during weather-and-safety leave, “employees *could* leave the building, shower, change clothes, or clean up” (emphasis added)).