

66 FLRA No. 118

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1235
(Union)

and

UNITED STATES
DEPARTMENT OF THE NAVY
COMMANDER NAVY REGION SOUTHWEST
(Agency)

0-AR-4786

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DECISION

April 27, 2012

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

Decision by Member Thomas M. Beck for the Authority

I. Introduction and Background

Article 27, Section 5 of the parties' collective bargaining agreement provides that a grievance must state the specific nature of the grievance; any provision of the collective bargaining agreement, law, rule, and/or regulation alleged to have been violated; and the relief requested. Arbitrator Douglas P. Hammond determined that a grievance lacked the required specificity because it failed to state which provisions of an Agency rule allegedly had been violated and referred only generally to a group of employees that allegedly had been harmed. *See* Award at 9-10. As a result, the Arbitrator concluded that the grievance was not arbitrable and ordered that it be withdrawn.

In exceptions to the Arbitrator's award filed under § 7122(a) of the Federal Service Labor-Management Relations Statute, the Union argues that, by requiring that more detailed information be included in its grievance, the Arbitrator's award conflicts with 5 U.S.C. § 7121(b)(1)(A) and (B), which require negotiated grievance procedures to be "fair and simple" and "provide for expeditious processing."¹ Contrary to

¹ 5 U.S.C. § 7121(b)(1)(A) and (B) states:

(b)(1) Any negotiated grievance procedure . . . shall –
(A) be fair and simple,
(B) provide for expeditious processing.

the Union's contention, the Arbitrator's award – which merely requires the Union to state which specific provisions of the Agency rule allegedly had been violated and provide more information regarding the employees who allegedly had been harmed – is not inconsistent with these statutory objectives. The Union also contends that the Arbitrator exceeded his authority because, by adding new requirements to Article 27, Section 5, he considered an issue that was not before him. The Arbitrator's award, however, directly responds to an issue the parties placed before him; accordingly, the Arbitrator did not exceed his authority. Consequently, we deny the Union's exceptions.

II. Analysis and Conclusions

The Union contends that the Arbitrator's conclusion that the grievance lacked the required specificity is deficient because: (1) such conclusion is contrary to law and (2) the Arbitrator exceeded his authority. These are challenges to the arbitrator's procedural arbitrability determination. *See, e.g., AFGE, Local 3615*, 65 FLRA 647, 649 (2011) (citations omitted).

The Authority generally will not find an arbitrator's ruling on procedural arbitrability deficient on grounds that directly challenge the procedural arbitrability ruling itself. *See AFGE, Local 3882*, 59 FLRA 469, 470 (2003). However, a procedural arbitrability determination may be found deficient on the ground that it is contrary to law. *See id.* (citing *AFGE, Local 933*, 58 FLRA 480, 481 (2003)). For a procedural arbitrability determination to be found deficient as contrary to law, the appealing party must establish that the ruling conflicts with statutory procedural requirements that apply to the parties' negotiated grievance procedure. *See U.S. Dep't of Homeland Sec., U.S. Customs & Border Prot., U.S. Border Patrol, El Paso, Tex.*, 61 FLRA 122, 124 (2005). A procedural arbitrability determination also may be found deficient on grounds that do not directly challenge the determination itself, which include claims that the arbitrator exceeded his or her authority. *U.S. Dep't of Veterans Affairs, Reg'l Office, Winston-Salem, N.C.*, 66 FLRA 34, 37 (2011).

A. The award is not contrary to law.

The Union argues that the award is contrary to 5 U.S.C. § 7121(b)(1). Exceptions at 6. The Union contends that the detail required by the Arbitrator's award renders the grievance process "complicated and unfair" and fails to promote the expeditious processing of grievances. *Id.* at 7.

The Arbitrator interpreted Article 27, Section 5 as requiring the Union, in its grievance, to state which

specific provisions of the Agency rule allegedly had been violated and to provide more information regarding the employees who allegedly had been harmed. Requiring the Union to include this additional information in its grievance is not inconsistent with § 7121(b)(1), which merely sets forth “broad general criteria,” *AFGE, Local 1741*, 61 FLRA 118, 121 (2005) (*AFGE*) (citation omitted), that any negotiated grievance procedure be “fair and simple” and “provide for expeditious processing.” 5 U.S.C. § 7121(b)(1)(A) and (B). The Union’s argument, therefore, does not establish that the award is contrary to law. *Cf. AFGE*, 61 FLRA at 121 (denying challenge to arbitrator’s procedural arbitrability determination because party failed to demonstrate that parties’ negotiated grievance procedure was not “fair and simple” as required by § 7121(b)(1)).

The Union also contends that the award is contrary to law because it is inconsistent with other arbitration awards that have addressed similar contract provisions. But arbitration decisions are not binding precedent. *See, e.g., NFFE, Local 259*, 45 FLRA 773, 780 (1992). Consequently, this argument also does not provide a basis for finding the award deficient. *See id.*

Accordingly, we find that the award is not contrary to law.

- B. The Arbitrator did not exceed his authority because his award was directly responsive to the stipulated issue.

The Union asserts that the Arbitrator exceeded his authority because he considered an issue that was not submitted to arbitration. The Union argues that the Arbitrator was asked to consider only whether the grievance satisfied the specificity requirements of Article 27, Section 5 of the parties’ agreement. Exceptions at 9-10. According to the Union, the Arbitrator went beyond this issue by “add[ing] entirely new [specificity] requirements to the parties’ [a]greement” and basing his decision on those requirements. *Id.* at 10.

It is well established that an arbitrator exceeds his authority when he resolves an issue not submitted to arbitration. *See AFGE, Local 1617*, 51 FLRA 1645, 1647 (1996). The Arbitrator here, however, limited his review to the issues the parties placed before him. Included in those issues was whether the Union’s grievance satisfied the specificity requirement of Article 27, Section 5 of the parties’ agreement. *See Award at 2* (stating that one of the issues was whether the Union “violated and did not follow Article 27, Section 5 . . . by failing to state the specific nature of the grievance”). In resolving this issue, the Arbitrator addressed whether the Union had complied

with Section 5 and found that it had not done so. *See id.* at 9-11. The award is thus directly responsive to an issue before the Arbitrator, and the Arbitrator did not exceed his authority by addressing this matter. *See, e.g., Soc. Sec. Admin., Balt., Md.*, 57 FLRA 181, 183 (2001) (arbitrator did not exceed his authority because award was directly responsive to stipulated issue); *see also AFGE*, 61 FLRA at 120-21 (rejecting argument that arbitrator exceeded his authority by adding requirements to parties’ negotiated grievance procedure because award was directly responsive to framed issue of whether grievance was arbitrable).

Accordingly, we find that the Arbitrator did not exceed his authority.

III. Decision

The Union’s exceptions are denied.