66 FLRA No. 157

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
HARRY S. TRUMAN
MEMORIAL VETERANS HOSPITAL
COLUMBIA, MISSOURI
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCALS 903 & 3399
(Unions)

0-AR-4837

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DECISION

August 1, 2012

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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 Ira S. Epstein filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute and part 2425 of the Authority's Regulations. The Unions did not file an opposition to the Agency's exceptions.

The Arbitrator concluded that the Agency violated the master collective-bargaining agreement (master CBA), the local supplemental agreement (local agreement), and an Agency handbook (the Handbook) when it denied paid, authorized-absence leave (authorized absences) to employees who did not report to work during a snowstorm.

For the reasons that follow, we deny the Agency's exceptions.

II. Background and Arbitrator's Award

As relevant here, during a snowstorm that lasted three days, the Agency notified employees that it had adopted a liberal leave policy, but would not grant them authorized absences. *See* Award at 9-10. The American Federation of Government Employees (AFGE), Local 903 (Local 903), *see id.* at 8, which represents certain professional employees of the Agency, and AFGE, Local 3399 (Local 3399), which represents non-professional employees of the Agency, *see id.*, filed a joint grievance. The grievance was unresolved and submitted to arbitration, where the Arbitrator framed the issues as follows: "Did the Agency violate the [master CBA, the local agreement, the Handbook], local policy, . . . or past practice when it denied [authorized absences] to employees who were absent from work [during the snowstorm]. If so, what is the remedy?" *Id.* at 2.

The Arbitrator found that the Agency violated the master CBA,[1] the local agreement,[2] and the Handbook,[3] as alleged. *See id.* at 22. As remedies, with certain exceptions, he directed the Agency to: (1) grant authorized absences, without charge to leave, to all employees who were absent from work on the first two days of the storm, *see id.* at 22-23; (2) allow employees who were absent on the third day of the storm the opportunity to present evidence as to their efforts to report to work on that day, *see id.* at 23; and (3) determine whether the employees who did not report on the third day made every reasonable effort to report to work and assess whether those employees were entitled to have their leave converted to authorized absences, *see id.*

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[1] The master CBA provides, in pertinent part:

> Article 32 – Time and Leave
> . . . .
> Section 2 – Annual Leave
> A. Annual leave is provided to allow employees extended leave for rest and recreation and to provide periods of time off for personal and emergency purposes.
> . . . .
> Section 13 – Hazardous Weather/Emergency Conditions
> A. Management and Union at each facility will jointly plan the procedures for hazardous weather/emergency conditions and will annually communicate these procedures to employees.
> B. Facilities under emergency conditions may authorize meals and accommodations for employees who are required to remain on duty.
> . . . .

Award at 3.

[2] The local agreement provides, in pertinent part: "If an emergency condition exists which prevents bargaining unit employees from getting to work but the duty station is not closed, management will adopt a liberal annual leave policy. Usually inclement weather such as flooding or hail storms which impedes traffic or causes hazardous conditions normally [will] constitute[] an emergency." Award at 20.

[3] The Handbook provides, in pertinent part, that "in a rare instance, where certain employees who provide critical services make every reasonable effort to get to work and are unable to do so, the facility Director may approve excused absence without charge to leave . . . ." Award at 6; *accord id.* at 17.

III. Agency's Exceptions

The Agency argues that the award is based on a nonfact, specifically, a finding that the local agreement applies to employees represented by Local 903. *See* Exceptions at 16-17. According to the Agency, the local agreement applies only to employees represented by Local 3399. *See id.* at 16.

In addition, the Agency contends that, as to employees represented by Local 3399, the award fails to draw its essence from the local agreement. *See id.* at 14-16. Specifically, the Agency contends that the local agreement addresses annual leave, not authorized absences. *See id.* at 15.

Further, the Agency claims that the award is contrary to an Agency regulation, specifically, the Handbook. *See id.* at 6-14. According to the Agency, there are no contract provisions that apply to the instant matter. In particular, with respect to the local agreement, the Agency repeats the arguments that it makes to support its essence exception, *see id.* at 8-9, and with respect to the master CBA, the Agency contends that "nowhere in the [master CBA] is excused absence due to weather hazards discussed," *id.* at 7, and that reliance on the master CBA "is inappropriate," *id.* at 8. The Agency contends that, as no contract provisions apply, the Handbook governs the matter, *see id.* at 8-9, and that the award is inconsistent with the terms of that Handbook, *see id.* at 9-14.

IV. Analysis and Conclusions

The Authority has held that, when an arbitrator bases an award on separate and independent grounds, an appealing party must establish that all of the grounds are deficient in order to have the award found deficient. *E.g., U.S. DOJ, Fed. Bureau of Prisons, Fed. Corr. Complex, Florence, Colo.*, 66 FLRA 537, 540 n.6 (2012) (citation omitted) (*DOJ*). In those circumstances, if the excepting party does not demonstrate that the award is deficient on one of the grounds relied on by the arbitrator, then it is unnecessary to address exceptions to the other ground. *Id.* (citation omitted). Further, collective-bargaining agreements, rather than agency-wide regulations, govern the disposition of matters to which they both apply. *E.g., U.S. Dep't of the Treasury, IRS*, 64 FLRA 720, 722 (2010) (*IRS*).

Here, the Arbitrator based his award on three grounds: (1) the master CBA, (2) the local agreement, and (3) the Handbook. *See* Award at 22. In the context of its contrary-to-regulation exception, the Agency states that the master CBA does not address excused absences, *see* Exceptions at 8, and that it was "inappropriate" for the Arbitrator to rely on it, *id.* at 9, rather than the Handbook. But the Agency has not filed an essence exception to the Arbitrator's finding of a master CBA violation.[4] As a result, the Agency has provided no basis for finding that the Arbitrator erred in concluding that the master CBA applies to the matter in dispute and that the Agency's actions violated that CBA. As the Agency has not demonstrated that these conclusions are deficient, the master CBA governs over the Handbook, to the extent they conflict.[5] *See IRS*, 64 FLRA at 722. And because the finding of a master CBA violation provides a separate and independent basis for his award, the Agency's exceptions to the Arbitrator's interpretations of the local agreement and the Handbook cannot provide a basis for finding the award deficient. *See DOJ*, 66 FLRA at 540 n.6. Accordingly, we deny the Agency's exceptions.

V. Decision

The Agency's exceptions are denied.

[4] We note that, by contrast, the Agency expressly raised an essence exception regarding the local agreement. *See* Exceptions at 14-16.

[5] We note that the master CBA provides that, "[w]here any department regulation conflicts with [the master CBA] and/or a Supplemental Agreement, the [master CBA] shall govern." Award at 3.