

**Social Security Administration and American Federation of Government  
Employees, Local 1923**

60 FLRA 150

Federal Labor Relations Authority

60 FLRA No. 36  
0-AR-3767

August 18, 2004

The FLRA set aside an award requiring the agency to equally divide overtime work among employees of its three subdivisions. The authority determined that the arbitrator improperly enforced a contractual restriction on the agency's right to determine its organization.

The FLRA concluded the award affected a management right. By treating all overtime within the agency as equally available to employees throughout the agency, the FLRA explained, the award ignored lines separating the organizational components to which management delegated particular functions. The FLRA set aside the award, concluding it improperly interfered with the agency's organizational rights.

One member dissented, determining the award had "absolutely no effect" on the agency's right to determine its organization.

Before the Authority: Dale Cabaniss, Chairman, and Carol Waller Pope and Tony Armendariz, Members.<sup>1</sup>

#### I. Statement of the Case

This matter is before the Authority on exceptions to an award of Arbitrator Joyce M. Klein filed by the Agency under § 7122 (a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Union filed an opposition to the Agency's exceptions.

The Arbitrator sustained in part a grievance alleging that the Agency violated the parties' collective bargaining agreement and carryover provisions by failing to distribute overtime in a fair and equitable manner and awarded backpay. For the following reasons, we find that the award is deficient and set it aside.

#### II. Background and Arbitrator's Award

The grievant works in the Agency's Center for History, Library and Records Management (CHLRM). As its title suggests, the CHLRM is composed of

separate organizational elements, which include the Records Management Team, the Library Services Team and the History Office Team. The grievant works on the Records Management Team.

On numerous occasions, the grievant requested overtime work from the Director of CHLRM, both to complete Records Management projects which he had been assigned and to work on projects assigned to the Library Services Team and to the History Office Team.<sup>2</sup> The grievant's requests were denied, although he was given compensatory time for work on Records Management projects outside of his normal work hours. The grievant did, however, work overtime on projects that involved moving Records Management Team materials. The Director of CHLRM explained that he denied the requests because: (1) CHLRM receives an annual allotment of overtime and that overtime is used, as needed, for specific projects on the various teams; and (2) the projects require specialized skills. The Director indicated that the Library Services Team receives most of the overtime work because it has "the most critical workload." Award at 4. He also indicated that the History Team had needed overtime work in order to complete a project related to the 65th anniversary of the Agency.

The Union filed a grievance alleging that the Agency violated Articles 3 and 10 of the parties' agreement and the "carryover provisions" by denying the grievant overtime and not assigning overtime fairly and equitably.<sup>3</sup> The grievance was unresolved and submitted to arbitration, where, as relevant here, the parties stipulated the issues as follows:

Whether the Agency violated the National Agreement or other law, rule or regulation by failing to distribute overtime in a fair and equitable manner vis-a-vis the [g]rievant?

If so, what is the remedy? Id. at 2.4

Before the Arbitrator, the Agency argued that, under the "carryover provisions," it is responsible to distribute overtime in a fair and equitable manner within each "operating function," and that the grievant's "operating function" is the Records Management Team. Relying on the definition of an "operating function" taken from the parties' 1977 term agreement, the Agency asserted that an "operating function" is "an activity or a group of interrelated activities in which employees perform related or homogeneous tasks which can be identified as distinct steps of a complete work operation." Id. at 18. The Arbitrator determined that evidence and testimony established that this definition was not included in the carryover provisions and "leads to the conclusion" that the term "operating function" means CHLRM as a whole. Id. Therefore, according to the Arbitrator, "overtime opportunities within CHLRM must be made available to all qualified CHLRM employees in accordance with the [c]arryover [p]rovisions." Id. The Arbitrator also determined that under the carryover provisions, "when there is a limited amount

of overtime available, a roster of qualified employees is to be created to allow for the equitable distribution of overtime." Id. at 19.

Addressing the disputed overtime worked in the History Office and Library, the Arbitrator found that the grievant "was qualified" to perform that work and that Agency testimony did not indicate otherwise. Award at 19, 20. In addition, the Arbitrator determined that the grievant "would have worked [such] overtime" if given the opportunity. Id. at 3, 20. The Arbitrator found that the Agency had not created a roster of qualified employees within CHLRM for the equitable distribution of this overtime work, which would have included the grievant. The Arbitrator concluded that, by failing "to make CHLRM overtime for which he was qualified available to the [grievant]," the Agency violated Article 10 of the parties' agreement and Article 10 of the carryover provisions. As a remedy, the Arbitrator ordered the Agency to provide the grievant overtime compensation for a pro rata share of any overtime worked in the History Office in Fiscal Year 2001 and any overtime worked in the Library performing general library tasks from April 1998 through Fiscal Year 2000.

### III. Positions of the Parties

#### A. Agency's Exceptions

The Agency contends that the award affects management's right to assign work under § 7106(a)(2)(B) of the Statute. In this regard, the Agency claims that by defining the term "operating function," the Arbitrator essentially established to whom, and the organizational entity in which, overtime work is to be assigned.

The Agency argues that the award fails to satisfy the two-prong test set forth in United States Dep't of the Treasury, Bureau of Engraving and Printing, Washington, D.C., 53 FLRA 146 (1997) (BEP). With respect to Prong I, the Agency contends that Article 10 of the carryover provisions is not a procedure pursuant to § 7106(b)(2) of the Statute because it directly interferes with a management right and is not an arrangement under § 7106(b)(3) because it dictates the employees to whom, and the organizational entity in which, overtime must be made available. The Agency also asserts that the contract provision excessively interferes with the Agency's right to assign work based on the Authority's decision in AFGE, AFL-CIO, Int'l Council of United States Marshals Serv. Locals, 11 FLRA 672, 675-76 (1983) (U.S. Marshals). Moreover, the Agency asserts that the award "abrogates the Agency's right to determine the organizational element that will perform the work." Exceptions at 13. The Agency further contends that the award does not satisfy Prong II because by not determining that the grievant is qualified to perform the disputed overtime work, there is no guarantee that [he] would have been assigned the overtime work." Id. at 17.

The Agency next claims that the award is contrary to the Back Pay Act because the Arbitrator failed to find a direct causal connection between the violation of the agreement and the grievant's failure to be offered overtime opportunities. In addition, the Agency asserts that the Arbitrator exceeded her authority by negating management's right to determine to whom to assign overtime and by applying her own determination concerning qualifications.

The Agency further contends that the award fails to draw its essence from the agreement because the agreement "is devoid of any lawful standards" to determine the qualifications of employees. *Id.* at 19-20.

#### B. Union's Opposition

The Union asserts that the Arbitrator's definition of "operating function" does not affect management's ability to set qualifications for performance of overtime work. According to the Union, by assuring that overtime is assigned fairly, Article 10 of the carryover provisions is an arrangement. The Union also asserts that Article 10 applies only to qualified employees in the "operating function." In addition, the Union claims that the Agency does not claim that the grievant was not qualified to perform the overtime, and the award does not excessively interfere with management's right to assign work because it does not establish qualifications.

The Union further maintains that the Arbitrator found a causal connection between the violation and the overtime awarded by determining that the grievant was qualified to perform the overtime work, would have accepted the work if offered, and was unlawfully denied overtime opportunities. The Union also argues that the Arbitrator did not exceed her authority by addressing the definition of the term "operating function" because that was an issue before the Arbitrator. Finally, according to the Union, the award does not fail to draw its essence from the parties' agreement.

#### IV. Analysis and Conclusions

The Agency claims that the award violates management's rights under § 7106(a) of the Statute. Because the Agency's exception challenges the award's consistency with law, the Authority reviews the questions of law raised in the exception and the arbitrator's award *de novo*. See, e.g., *NFFE, Local 1437*, 53 FLRA 1703, 1709 (1998). In applying a standard of *de novo* review, the Authority determines whether the arbitrator's legal conclusions are consistent with the applicable standard of law. See *id.* at 1710. In making that assessment, the Authority defers to the arbitrator's underlying factual findings. See *NTEU, Chapter 50*, 54 FLRA 250, 253 (1998).

When resolving an exception alleging that an award violates management's rights under § 7106 of the Statute, the Authority first determines whether the

award affects a management right under § 7106(a). See United States Small Bus. Admin., 55 FLRA 179, 184 (1999). If it does, then the Authority applies the framework established in BEP, 53 FLRA 146. Under prong I of the BEP framework, the Authority examines whether an award provides a remedy for a violation of either an applicable law, within the meaning of § 7106(a)(2) of the Statute, or a contract provision that was negotiated pursuant to § 7106(b) of the Statute. Id. at 153-54. Under prong II, the Authority considers whether the award reflects a reconstruction of what management would have done if management had not violated the contractual provision at issue. Id. at 154.

The Arbitrator's award turns on her conclusion that any overtime worked in CHLRM is "CHLRM overtime;" that is, overtime work available within CHLRM must be distributed to employees throughout CHLRM without distinction as to the team to which the employees are assigned or the team within which the work will be performed. The Agency challenges the Arbitrator's interpretation and application of Article 10 (E) of the carryover provisions on the ground that the Arbitrator failed to recognize that the distribution of overtime work within team boundaries constitutes an exercise of management's rights. Although the Agency argues principally that the award affects the right to assign work under § 7106(a)(2)(B), the Agency also argues that the award violates management's right to determine its organization under § 7106(a)(1) of the Statute.

Management's right to determine its organization under § 7106(a) (1) of the Statute encompasses the right to determine the administrative and functional structures of the agency, including the relationship of personnel through lines of authority and the distribution of responsibilities for delegated and assigned duties. See United States Dep't of Transportation, FAA, 58 FLRA 175, 178 (2002) (FAA), citing ACT, New York State Council, 56 FLRA 444, 449 (2000), request for reconsideration denied, 58 FLRA 389 (2002) (award precluding management from consolidating supervisory functions from various operational areas on the midnight shift affects management's right to determine its organization under § 7106(a) (1) ). See also AFGE, Local 3129, SSA General Committee, 58 FLRA 273, 274 (2002) (proposal dictating how agency distributes responsibility of conducting pilot program among its organizational components affects right to determine organization); AFGE, Local 2004, 56 FLRA 660, 661-62 (2000) (Local 2004); AFGE, Local 3529, 55 FLRA 830, 831-32 (1999) (Local 3529) (proposals seeking to transfer functions from one component to another affect right to determine organization by dictating where, organizationally, functions be performed).

The Arbitrator's award, by treating all overtime within CHLRM as equally available to employees throughout CHLRM, regardless of the team to which such responsibilities had been assigned, ignores the lines separating the organizational components to which Agency management delegated a given function. In effect, the award in this case is the converse of the award in FAA. Whereas the award in FAA precluded management from consolidating the

supervisory functions of various operational areas, the award in this case effectively consolidates the functions management assigned to the various teams within CHLRM into one overtime pool. In both instances, the award affects management's ability to determine the organizational component which will be responsible for that function and the work involved in performing that function. In sum, by creating a pool of "CHLRM overtime," the Arbitrator's award affects management's right to determine its organization under § 7106(a)(1) of the Statute.

Having determined that the award affects a management right under § 7106(a) of the Statute, we turn next to the relevant questions raised by prong I of the BEP analysis, that is, whether the award enforces a contractual provision that constitutes a procedure under § 7106 (b) (2) of the Statute or an appropriate arrangement under § 7106 (b) (3).<sup>5</sup> In this regard, the Arbitrator did not find that Article 10 (E) of the carryover provisions constitutes a procedure within the meaning of § 7106 (b) (2) and the Union does not claim that it is. Moreover, nothing in the record supports the conclusion that the restriction on management's right to determine the particular functions that will be assigned to the organizational components of CHLRM found by the Arbitrator in that provision constitutes a procedure. See FAA, 58 FLRA at 179.

As to § 7106(b)(3), the Authority has consistently held that proposals or provisions which determine the organizational subdivision to which a particular function, and the work associated therewith, will be assigned excessively interfere with management's right to determine its organization and do not constitute appropriate arrangements within the meaning of § 7106(b)(3) of the Statute. See, e.g., Local 2004, 56 FLRA at 662; Local 3529, 55 FLRA at 832 n.3.

Accordingly, because: (1) the Arbitrator improperly enforced a contractual restriction on the exercise of management's right to determine its organization under § 7106(a)(1) of the Statute; and (2) that restriction does not constitute an enforceable limitation on the exercise of a management right under § 7106(b) of the Statute, the award fails to satisfy prong I of BEP. See FAA, 58 FLRA at 179. Consequently, as the award fails to satisfy prong I of BEP, we find that the award is contrary to law under § 7122(a)(1) of the Statute. 6Id.

## V. Decision

The award is set aside.

## Appendix

1. Relevant provisions of the parties' current term agreement provide as follows:

### ARTICLE 3 EMPLOYEE RIGHTS

## Section 2. Personal Rights

A. All employees shall be treated fairly and equitably in all aspects of personnel management

## ARTICLE 10

### HOURS OF WORK, FLEXTIME, ALTERNATE WORK ARRANGEMENTS AND CREDIT HOURS

## Section 3 - General Overtime Provisions

A. Overtime shall be distributed to bargaining unit employees whose performance is fully successful.

Exceptions, Ex. 2.

2. Article 10 of the "carryover provisions" provide, in relevant part, as follows:

## ARTICLE 10 - HOURS OF WORK AND OVERTIME

### Section E, Order of Overtime Assignment.

1. In order to work overtime, an employee's work must be fully satisfactory. ... When overtime assignments are limited to a need for less than the full work force, assignments will be spread across the entire operating function within each level of priority that is utilized. When volunteers for overtime work exceed the requirements, it is agreed that the following order of priorities will apply to all employees.

- a. journeypersons in the operating function;
- b. employees in successively lower grades of the career ladder or sequential job series in the operating function;
- c. employees in the operating function who previously performed the work, and journeypersons who do not fall in the above two groups; and
- d. other qualified employees from outside the operating function.

2. Overtime will be offered to employees on a[n] equitable basis. Overtime will be offered on a rotating basis to employees on the roster established under Section E.B.a.

5. ... the following provisions will apply to overtime work in limited overtime situations.

a. Rosters of employees eligible for overtime will be maintained by the supervisor, arranged by service computation date. The rosters will be established according to the order of priorities in E.I. above. ...

Exceptions, Ex. 3.

**Dissenting opinion of Member Pope:**

The majority improperly sets aside the award. In doing so, the majority makes an unwarranted, wholesale expansion of the right to determine organization under § 7106(a)(1) of the Statute. Accordingly, I dissent.

The facts in this case are clear and undisputed. The grievant, a member of one of the Agency's teams, claimed he was qualified for and had a contractual right to be offered overtime assigned to another team. The Arbitrator agreed that the grievant was qualified and should have been offered the overtime pursuant to the parties' agreement that overtime would be offered in a fair and equitable manner. As the grievant testified without dispute that he would have accepted the disputed overtime if it had been offered, the Arbitrator, as her award, directed the Agency to pay the grievant for a pro rata share of the overtime.

This is a garden-variety overtime dispute, the likes of which have been resolved for decades through application of well-settled principles. In particular, it is abundantly clear that this award affects the Agency's right to assign work but, nevertheless, is not deficient because it enforces a procedure within the meaning of § 7106(b)(2). See, e.g., United States Dep't of the Navy, Naval Surface Warfare Ctr., Indian Head, Md., 55 FLRA 596, 600 (1999) (Indian Head).

It also is abundantly clear that the award does not affect the Agency's right to determine its organization. This right encompasses:

the determination of the administrative and functional structure of the agency, including the relationship of personnel through lines of authority and the distribution of responsibilities for delegated and assigned duties. ... That is, this right encompasses the determination of how an agency will structure itself to accomplish its mission and functions. ... This determination includes such matters as the geographical locations in which an agency will provide services or otherwise conduct its operations; how various responsibilities will be distributed among the agency's organizational subdivisions; how an agency's organizational grade-level structure will be designed; and how the agency will be divided into organizational entities such as sections.

AFGE, Local 1336, 52 FLRA 794, 802-03 (1996) (emphasis omitted).

Thus, as its name implies, an agency's right to determine its organization relates to the organizational structure of an agency. Viewed in this context, it becomes apparent that the award has absolutely no effect on the Agency's right to determine its organization. As set forth above, the award enforces the parties' agreement that qualified employees assigned to one team would be offered opportunities to work overtime assigned to other teams. Nothing in the award either determines how the Agency structures itself to perform its work or requires the Agency to assign, or not assign, any particular work to any particular team. The majority's conclusion that the award affects the right to determine organization expands the right beyond all recognition, casting doubt on contract terms that have existed for ages. The reason for the majority's determination to so distort this right is unclear.

Consistent with the foregoing, I would also reject the Agency's remaining exceptions. With regard to the Back Pay Act, the Agency's contract violation constituted an unjustified and unwarranted personnel action and the Arbitrator's finding that the grievant was qualified for, and would have accepted, the overtime work satisfies the requirement that the violation resulted in a reduction of the employee's pay. See United States Dep't of Labor, Wash., D.C., 55 FLRA 1019, 1022-23 (1999); United States Dep't of the Navy, Naval Aviation Depot, Cherry Point, N.C., 45 FLRA 1324, 1330 (1992). Further, the Arbitrator's award is directly responsive to the issue stipulated by the parties and, as a result, the Arbitrator did not exceed her authority. Finally, I would reject as unsupported the Agency's claim that the award fails to draw its essence from the parties' agreement. See United States Dep't of Labor (OSHA), 34 FLRA 573, 575 (1990).

In sum, I would deny the Agency's exceptions in their entirety.

1Member Pope's dissenting opinion is set forth at the end of this decision.

2The Arbitrator found that employees outside the Library Services Team had performed "general" overtime work for that team, such as covering books, labeling books, shelving books, or shifting books. Award at 3 and 7. The grievant, however, conceded that he did not learn about that work until after filing the grievance. Id. at 3.

3The phrase "carryover provisions" refers to contract terms which the parties have "carried over" from their 1977 term agreement. Although the parties' current term agreement contains some basic overtime clauses, the carryover provisions contain most of the overtime rules. Relevant provisions are set forth in the Appendix to this decision.

4The Arbitrator found that the grievance concerned the Agency's continuing practice of distributing overtime over a several year period. In addition, the Arbitrator denied the grievance with respect to: (1) certain overtime opportunities

in CHLRM; and (2) the allegation that the Agency violated the parties' agreement by not allowing the grievant to elect his choice of overtime or compensatory time. As these determinations were not excepted to, they will not be addressed further in this decision.

5As management's rights under § 7106 (a) (1) of the Statute are not subject to the applicable law exception that applies to rights under § 7106(a)(2), that aspect of the BEP framework does not apply herein. See FAA, 58 FLRA at 178.

6Because we find the award deficient as contrary to law on these grounds, we do not address the Agency's other exceptions.