

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

Department of the Treasury, Office of Chief Counsel v. Federal Labor
Relations Authority, National Treasury Employees Union, Intervenor

277 U.S. App. D.C. 210 (D.C. Cir. 1989) · No. No. 88-1159 · Decided July 17, 1989

SUMMARY

The United States Court of Appeals for the District of Columbia Circuit held that nonpreference-eligible excepted service employees could not obtain, through collective bargaining, arbitration procedures for reviewing adverse personnel actions under chapters 43 and 75 of the Civil Service Reform Act. The court concluded that allowing such arbitration would undermine the CSRA's integrated remedial structure, including MSPB primacy, Federal Circuit review, and Congress's preference for competitive-service and preference-eligible employees. The court granted the Treasury Department's petition for review and issued a supplemental opinion addressing the limited judicial review of FLRA decisions concerning arbitration awards.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	Laurence H. Silberman; Ruth Bader Ginsburg; Thomas B. Buckley
JURISDICTION	Federal
DECIDED	July 17, 1989
DOCKET	No. 88-1159
DISPOSITION	other
PROCEDURAL POSTURE	The Treasury Department petitioned for review of a Federal Labor Relations Authority decision holding negotiable a proposed collective-bargaining provision that would permit nonpreference-eligible excepted-service employees to arbitrate adverse personnel actions.
STANDARD OF REVIEW	The court independently interpreted the Civil Service Reform Act because the FLRA was not entitled to deference when interpreting CSRA provisions outside its own organic labor-relations statute.
PRECEDENTIAL VALUE	Published federal circuit opinion
PARTIES	Department of the Treasury, Office of Chief Counsel v. Federal Labor Relations Authority

TOPICS

federal labor relations federal employment law administrative law statutory interpretation
judicial review of agency action

PRACTICE AREAS

federal labor relations federal employment law administrative law

QUESTIONS PRESENTED

1. Whether nonpreference-eligible excepted-service employees who lack a statutory right to appeal adverse personnel actions to the MSPB may obtain that review through a collectively bargained grievance-arbitration procedure.
2. Whether the CSRA's remedial structure and allocation of review authority make arbitration of adverse personnel actions involving those employees inconsistent with federal law and therefore nonnegotiable.
3. Whether the FLRA could ensure statutory uniformity by requiring itself to apply MSPB precedent when reviewing arbitration awards involving nonpreference-eligible excepted-service employees.

HOLDINGS

1. The CSRA does not permit nonpreference-eligible excepted-service employees who lack statutory MSPB appeal rights to obtain equivalent arbitral review of adverse personnel actions through a negotiated grievance procedure.
2. The court could not adopt the FLRA's proposed requirement that it apply MSPB law when reviewing such arbitration awards because that approach would effectively amend the statute and, under Griffith, most FLRA review of arbitration awards would not be reviewable in federal court.

KEY QUOTATIONS

“We conclude that the legislative history and structure of the CSRA do show that Congress intended these excepted service employees to have no right to arbitral review, and therefore grant the petition for review.”
(873 F.2d at 1467)

“The CSRA establishes a comprehensive remedial framework governing the civil service. Congress carefully constructed a scheme that would ensure uniformity in personnel decisions and promote efficiency of administration.” (873 F.2d at 1471)

FACTUAL BACKGROUND

The CSRA grants competitive-service employees and preference-eligible excepted-service employees statutory rights to appeal adverse personnel actions to the Merit Systems Protection Board and, ultimately, the Federal Circuit. Nonpreference-eligible excepted-service employees involved in the case lacked those statutory appeal rights, and the Office of Personnel Management had not extended chapter 75 appeal coverage to them. Their union nevertheless sought to negotiate a grievance-arbitration procedure allowing them to challenge adverse actions under chapters 43 and 75.

PROCEDURAL HISTORY

The National Treasury Employees Union proposed a collective-bargaining agreement covering competitive-service and nonpreference-eligible excepted-service employees in the IRS Chief Counsel's Office. Treasury rejected the provisions granting the excepted-service employees arbitration rights for adverse actions as inconsistent with federal law. The FLRA found the proposal negotiable, and Treasury sought review in the D.C. Circuit, which granted the petition.

DISPOSITION

other

CASES CITED

- NTEU v. FLRA, 848 F.2d 1273, 1275 (D.C. Cir. 1988)
- Department of Justice v. FLRA, 709 F.2d 724, 728-29 & n.21 (D.C. Cir. 1983)
- Department of Health and Human Services v. FLRA, 858 F.2d 1278 (7th Cir. 1988)
- United States v. Fausto, 484 U.S. 439, 108 S. Ct. 668, 98 L. Ed. 2d 830 (1988)
- Harrison v. Bowen, 815 F.2d 1505, 1510 (D.C. Cir. 1987)
- U.S. Soldiers and Airmen's Home and AFGE, Local 3090, 11 F.L.R.A. 692 n.* (1983)
- United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960)
- Wade v. Department of the Navy, 829 F.2d 1106, 1108-10 (Fed. Cir. 1987)
- Griffith v. FLRA, 842 F.2d 487, 490-92 (D.C. Cir. 1988)
- Leedom v. Kyne, 358 U.S. 184, 79 S. Ct. 180, 3 L. Ed. 2d 210 (1958)

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