65 FLRA No. 78

NATIONAL ASSOCIATION
OF INDEPENDENT LABOR
LOCAL 7
(Union)

and

UNITED STATES
DEPARTMENT OF THE AIR FORCE
SEYMOUR JOHNSON AIR FORCE BASE
GOLDSBORO, NORTH CAROLINA
(Agency)

0-AR-4390

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DECISION

December 22, 2010

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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 Glen M. Bendixsen filed by the Union under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Agency filed an opposition to the Union's exceptions.

The Agency selected an employee (the selectee) to fill a vacant supervisory position. The Union subsequently filed grievances on behalf of two other candidates for the position, claiming that the Agency violated the parties' collective bargaining agreement (CBA) and an Agency regulation by improperly including the selectee on the referral certificate for the vacant position. The Arbitrator denied the grievances.

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

II. Background and Arbitrator's Award

The Agency posted a vacancy announcement for the Air Force Reserve Technician (ART) position of Sheet Metal Mechanic (Aircraft) Supervisor. Award at 8. As the vacancy was an ART position, it required both civilian and military (Air Force Reserve) qualifications.[1] *Id.* at 4.

In response to the vacancy announcement, the Agency received twenty applications, including those of the two grievants. Both grievants work in the Sheet Metal Shop as Aircraft Sheet Metal Technicians. *Id.* at 8.

The Agency evaluated the skills of the applicants to determine whether any met the civilian qualifications for the supervisory position. The Agency used a four-category rating system, rating applicants as unqualified, minimally qualified, best qualified, or the highest rating, highly qualified. *Id.* at 7-8. Applicants rated as minimally qualified, best qualified, or highly qualified were eligible to be placed on the referral list of qualified applicants for consideration by the selecting official. *See id.* at 9.

The evaluation panel ranked three applicants, including the two grievants, as "best qualified." *Id.* No applicants were rated "highly qualified," and one applicant was rated "minimally qualified." *Id.*

Due to the small number of best qualified applicants and the lack of any highly qualified applicants, the evaluation panel asked the selecting official whether he wished to include on the referral list applicants who were ranked as "minimally qualified." *Id.* at 9. The selecting official agreed that such applicants should be included. *Id.* Therefore, the evaluation panel included on the referral certificate the applicant who was ranked as "minimally qualified." *Id.* This applicant worked in the Maintenance Shop as a journeyman Machinist. *Id.* at 8-9. This addition increased the number of applicants on the referral certificate from three to four.

1. An ART is a reservist who works in a civilian position but is subject to performing reserve duty or being called for active duty in the Air Force. Award at 6. Reserve duty consists of two days duty per month and an additional period of two weeks duty per year. While on reserve duty, an ART occupies the same position and performs the same work, but does it in his or her military capacity and uniform. *Id.*

The evaluation panel sent the referral certificate to the selecting official. According to the Arbitrator:

> The evidence shows that the applicants on the certificate are listed alphabetically without any indication of their ranking; furthermore, that the selecting official routinely assumes that from among total applicants all on the certificate are 'best qualified' among all who applied.

Id. at 9. The four applicants subsequently appeared before an interview board, which provided its recommendations to the selecting official. *Id.*

The selecting official selected the applicant who was ranked minimally qualified to fill the vacant supervisory position. *Id.* at 9-10. Once the selecting official determined that the selectee had the necessary civilian qualifications, the Agency Chief of Personnel Employment, acting in her military capacity, then determined that the selectee met the qualifications of the military reserve equivalent of the supervisory position. *Id.*

The Union filed grievances on behalf of two applicants who had not been selected from the referral certificate. *Id.* at 10. The grievances alleged that the Agency violated the CBA and an Agency regulation by improperly placing on the referral list an applicant who was not qualified. *Id.* at 10-11. The grievances were not resolved and were submitted to arbitration.

The Arbitrator found that the issue before him was the "validity of the referral list from which the [selecting official] made his selection." *Id.* at 20. He determined that the Agency properly found that the selectee met the civilian and military qualifications to be included on the referral list. As relevant here, the Arbitrator concluded that Article 31, Section 6 of the CBA "was not violated by including a minimally qualified candidate on the referral list."[2] *Id.* at 22. The Arbitrator found that under Article 31, Section 6, an applicant who meets the minimal qualifications of a vacancy is "qualified." *Id.* Further, in the Arbitrator's view, Section 6's "mandate to select the 'best qualified' candidate" from the referral list did not rely upon the categories in which applicants were initially rated because the section did not make any reference to "highly qualified" applicants. *Id.* at 22-23. Rather, the Arbitrator interpreted Section 6's mandate to select the "best qualified" candidate as "clearly requir[ing] selection of the candidate deemed superior after a consideration of many factors[,]" including the recommendations of the interview board. *Id.* at 23. Finding that the interview board and the selecting official had made Section 6's "required 'evaluation' . . . to identify the 'best candidate'" from the referral list, the Arbitrator denied the grievances. *Id.*

III. Positions of the Parties

A. Union's Exceptions

The Union contends that the award fails to draw its essence from Article 31, Section 6 of the CBA. Exceptions at 2. The Union claims that the Arbitrator erred in interpreting Article 31, Section 6 of the CBA to permit the Agency to include on the referral certificate an applicant such as the selectee who is ranked as only minimally qualified. *Id.* at 2, 15-16. Rather, the Union argues, Article 31, Section 6 requires that of the qualified applicants, "only the Best Qualified . . . are referred over on the referral certificate" to the selecting official. *Id.* at 16. Because in the Union's view this did not happen, the Union asserts that the Arbitrator erroneously construed and applied the CBA when he denied the grievances.

In addition, the Union argues that the award is inconsistent with another arbitration award. *Id.* at 16-17 (citing *U.S. Dep't of the Army, Armament Research, Dev. & Eng'g Ctr., Picatinny Arsenal, N.J.*, 48 FLRA 873 (1993) (*U.S. Dep't of the Army, Picatinny*)). The Union claims that in that case, as in

2. Article 31, Section 6 of the CBA provides:

> All unit employee applications which meet minimum qualifications for a vacancy announcement are rated as qualified. Qualified candidates will be further evaluated in terms of the knowledge, skills, abilities (KSA's) required by the position to identify those best qualified candidates. Evaluation will be based on multiple assessment measures such as experience, education, and training to the extent that it is relevant to the position being filled. Rating criteria shall not be tailored to fit a certain employee or applicant. The Employer shall not use leave or medical records in rating candidates for promotion. Best [q]ualified candidates will be listed alphabetically. Promotion certificates will usually have the names of up to ten (10) persons.

Award at 5.

this case, an applicant did not possess the qualifications to be included on the referral list sent to the selecting official. In *U.S. Dep't of the Army, Picatinny*, the Authority denied exceptions to the arbitrator's award finding that the Agency violated, among other things, the parties' agreement by selecting an applicant who was not qualified for the position. *Id.* at 880.

B. Agency's Opposition

The Agency contends that the award is not deficient. It argues that the Arbitrator reasonably interpreted the CBA to include the selectee on the referral certificate and that the Union merely disagrees with the Arbitrator's interpretation of the CBA. Opp'n at 9. In addition, the Agency contends that the selectee was qualified to be placed on the referral certificate, according to the requirements of the Agency's regulations. *Id.* at 10.

IV. Analysis and Conclusions

A. The Union has not established that the award fails to draw its essence from the collective bargaining agreement.

The Union contends that the award fails to draw its essence from the CBA because the Arbitrator erroneously found that Article 31, Section 6 permits the Agency to include on the referral list an applicant such as the selectee who is ranked as minimally qualified.[3] In reviewing an arbitrator's interpretation of a collective bargaining agreement, the Authority applies the deferential standard of review that federal courts use in reviewing arbitration awards in the private sector. *See* 5 U.S.C. § 7122(a)(2); *AFGE, Council 220*, 54 FLRA 156, 159 (1998). Under this standard, the Authority will find that an arbitration award is deficient as failing to draw its essence from the collective bargaining agreement when the appealing party establishes that the award: (1) cannot in any rational way be derived from the agreement; (2) is so unfounded in reason and fact and so unconnected with the wording and purposes of the collective bargaining agreement as to manifest an infidelity to the obligation of the arbitrator; (3) does not represent a plausible interpretation of the agreement; or (4) evidences a manifest disregard of the agreement. *See U.S. Dep't of Labor (OSHA)*, 34 FLRA 573, 575 (1990). The Authority and the courts defer to arbitrators in this context "because it is the arbitrator's construction of the agreement for which the parties have bargained." *Id.* at 576.

The Union claims that the award fails to draw its essence from Article 31, Section 6 of the CBA because Section 6 requires that only the "best qualified" of the qualified candidates be referred to the selecting official on the referral list. Exceptions at 16. However, the only constraint that Section 6 imposes on referral lists is that such lists "will usually have the names of up to ten (10) persons." Moreover, although Section 6 requires that qualified applicants be further evaluated to determine which applicants are "best qualified," nothing in Section 6 bars the Agency from considering all qualified candidates "best qualified" for referral list purposes, where the total number of qualified candidates is under Section 6's presumptive limit of ten applicants on a referral list. In addition, the Union does not take issue with the Arbitrator's view that the overall goal of Section 6 is to assure that the "best candidate" is identified and selected. Award at 23. For these reasons, the Union does not provide any basis for finding that the Arbitrator's determination that the Agency did not violate Section 6 by including a minimally qualified candidate on the referral list is irrational, unfounded, implausible, or in manifest disregard of the CBA.

Accordingly, we deny this exception.

B. The Union has not established that the award is deficient because it conflicts with another arbitration award.

The Union contends that the award is deficient because it is inconsistent with an arbitration award upheld by the Authority in *U.S. Dep't of the Army, Picatinny*. Exceptions at 16-17. In that case, the arbitrator found that an agency violated the collective bargaining agreement by improperly placing a candidate on a referral certificate for a vacant position.

The Union's contention does not provide a basis for finding the award deficient. Arbitration awards are not precedential, and a contention that an

3. The Union also argues that the award is contrary Agency regulations, but does not demonstrate that the award is deficient in this regard. Specifically, the Union: (1) acknowledges that the Agency regulations state that additional candidates may be referred; and (2) argues that any discretion created by that wording "has been eliminated by contractual language." Exceptions at 15, 16. Thus, the Union's contrary to regulation argument essentially challenges the Arbitrator's contract interpretation.

arbitration award conflicts with other arbitration awards does not provide any basis for finding an award deficient under the Statute. *See IFPTE, Local 28, Lewis Eng'rs & Scientists Ass'n*, 50 FLRA 533, 536-37 (1995) (arbitrator not bound by awards resolving other disputes). Consequently, the Arbitrator was not required to conform the award in this case to a prior award resolving another dispute.

Accordingly, we deny this exception.

V. Decision

The Union's exceptions are denied.