

65 FLRA No. 215

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
BLACK HILLS HEALTH CARE SYSTEM
HOT SPRINGS, SOUTH DAKOTA
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1539
(Union)

0-AR-4744

DECISION

July 27, 2011

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

This matter is before the Authority on exceptions to an award of Arbitrator David A. Singer, Jr. 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.

Under § 7122(a) of the Statute, an award is deficient if it is contrary to any law, rule, or regulation, or it is deficient on other grounds similar to those applied by federal courts in private sector labor-management relations. Upon careful consideration of the entire record in this case and Authority precedent, the Authority concludes that the award is not deficient on the grounds raised in the exceptions and set forth in § 7122(a).^{*} *U.S. Dep't of the Air Force, Lowry Air Force Base, Denver, Colo.*, 48 FLRA 589, 593-94 (1993) (award not deficient as based on a nonfact where excepting party either challenges a factual matter that the parties disputed at arbitration or fails to demonstrate that the central fact

underlying the award is clearly erroneous, but for which a different result would have been reached by the arbitrator); *U.S. Dep't of Labor (OSHA)*, 34 FLRA 573, 575 (1990) (award not deficient as failing to draw its essence from the parties' collective bargaining agreement where excepting party fails to establish that the award: cannot in any rational way be derived from the agreement; is so unfounded in reason and fact and so unconnected to the wording and purpose of the agreement as to manifest an infidelity to the obligation of the arbitrator; does not represent a plausible interpretation of the agreement; or evidences a manifest disregard of the agreement).

Accordingly, the Agency's exceptions are denied.

* Because the Agency could have presented to the Arbitrator, but did not, its exceeded-authority and contrary-to-law arguments, these arguments are not properly before the Authority under 5 C.F.R. §§ 2425.4(c) and 2429.5 (2011), and these exceptions are dismissed. See *AFGE, Local 1546*, 65 FLRA 833, 833 (2011).