

**67 FLRA No. 9**

NATIONAL ASSOCIATION  
OF GOVERNMENT EMPLOYEES  
LOCAL R5-184  
(Union)

and

UNITED STATES  
DEPARTMENT OF VETERANS AFFAIRS  
VETERANS AFFAIRS MEDICAL CENTER  
LEXINGTON, KENTUCKY  
(Agency)

0-AR-4850

DECISION

November 5, 2012

Before the Authority: Carol Waller Pope, Chairman, and  
Ernest DuBester, Member

**I. Statement of the Case**

Arbitrator C. Forest Guest found that the Union failed to demonstrate any of three factors necessary to establish that the grievants are entitled to environmental-differential pay. The main issue before us is whether the Union has established that the Arbitrator erred. Because the Arbitrator based his award on separate and independent grounds, and the Union has not demonstrated that all of the grounds are deficient, we find that the Union has not established that the Arbitrator erred.

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

The grievants are Wage Grade Housekeeping Aides who handle hazardous medical waste. The Union filed a grievance alleging that the Agency improperly denied environmental-differential pay to the grievants. The Arbitrator addressed 5 U.S.C. § 5343(c)(4) (§ 5343(c)(4)), which provides, in pertinent part, that Wage Grade employees are entitled to "proper differentials . . . for duty involving unusually severe working conditions or unusually severe hazards."<sup>1</sup> The Arbitrator determined that, in order to establish entitlement to environmental-differential pay, the Union was required to demonstrate three factors, specifically, that: (1) the Agency failed to provide training for the

grievants; (2) the grievants' job descriptions fail to specify the hazards associated with performance of their jobs; and (3) the grievants' personal protective equipment (the protective equipment) does not "practically eliminat[e]"<sup>2</sup> the threat of injury in accordance with Appendix A to 5 C.F.R. Part 532, Subpart E (Appendix A to Part 532), which pertinently provides that Wage Grade employees are entitled to environmental-differential pay for "[w]orking with or in close proximity to micro-organisms which involves potential personal injury [for which] the use of safety devices and equipment . . . have not practically eliminated the potential for such personal injury."<sup>3</sup>

The Arbitrator concluded that the Union failed to demonstrate any of these three factors. With respect to the third factor, he found that the record evidence supported a conclusion that the protective equipment practically eliminated the threat of injury. And he confirmed that conclusion by conducting his own "private test" of the equipment.<sup>4</sup> Because the Arbitrator found that the Union did not prove any of the three factors, he concluded that the grievants were not entitled to environmental-differential pay, and he denied the grievance.

The Union filed exceptions to the Arbitrator's award, and the Agency filed an opposition to the Union's exceptions. We discuss the Union's exceptions below.

**III. Analysis and Conclusions**

The Union argues that the award is contrary to § 5343(c)(4), Appendix A to Part 532, and the Authority's decision in *United States Department of Veterans Affairs, San Diego Healthcare System, San Diego, California*,<sup>5</sup> because the Arbitrator erred by finding that Wage Grade employees are entitled to environmental-differential pay only if their job descriptions fail to specify the hazards associated with performance of their jobs. These exceptions challenge the second ground for the award – the Arbitrator's findings regarding the grievants' job descriptions.

The Union also argues that the award is based on a nonfact because the Arbitrator erred in finding that the protective equipment practically eliminates the threat of injury to grievants. And the Union further contends that the Arbitrator exceeded his authority and denied the Union a fair hearing by conducting a private test of the protective equipment without the parties' consent, and then relying on the results of that test in finding that the equipment practically eliminates the threat of injury. These exceptions challenge the third ground for the

<sup>2</sup> Award at 10.

<sup>3</sup> Appendix A to Part 532.

<sup>4</sup> Award at 10.

<sup>5</sup> 65 FLRA 45 (2010).

<sup>1</sup> 5 U.S.C. § 5343(c)(4).

award – the Arbitrator’s findings regarding the protective equipment.

None of the Union’s exceptions challenges the first ground for the award – the Arbitrator’s findings regarding the grievants’ training – which is a separate and independent basis for the award. The Authority has held that, when an arbitrator has based an award on separate and independent grounds, an appealing party must establish that all of the grounds are deficient in order to demonstrate that the award is deficient.<sup>6</sup> As the Union’s exceptions do not challenge the first ground for the award, the Union’s exceptions provide no basis for finding the award deficient.<sup>7</sup>

#### **IV. Decision**

We deny the Union’s exceptions.

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<sup>6</sup> See *NFFE, Local 1001*, 66 FLRA 647, 649 (2012).

<sup>7</sup> See *id.*