

69 FLRA No. 55

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1415
(Union)

and

UNITED STATES
DEPARTMENT OF THE NAVY
NAVFAC ENGINEERING COMMAND MIDWEST¹
PUBLIC WORKS DEPARTMENT
CRANE, INDIANA
(Agency)

0-AR-5115

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DECISION

May 24, 2016

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Before the Authority: Carol Waller Pope, Chairman, and
Ernest DuBester and Patrick Pizzella, Members

I. Statement of the Case

At Public Works Department, Crane, Indiana (PWD Crane), a practice existed under which bargaining-unit employees claimed entitlement to environmental-differential pay (differential pay), and their supervisors granted them that pay without confirming that it was warranted under applicable regulations. Arbitrator Stephen L. Hayford found that management of the Naval Facilities Engineering Command Midwest (NFEC Midwest) unilaterally terminated the practice without providing the Union with notice and an opportunity to bargain, and thereby violated the parties' collective-bargaining agreement and the Federal Service Labor-Management Relations Statute (the Statute).² The Arbitrator also found that the Union did not fail to bargain in good faith. As for remedies, the Arbitrator denied the Union's request for a status-quo-ante remedy and backpay for individual employees, but directed the parties to engage in

bargaining with the goal of fashioning a local differential-pay instruction tailored to PWD Crane. There are eight substantive questions before us.

The first question is whether the award is incomplete, ambiguous, or contradictory so as to make its implementation impossible. Because the Union fails to demonstrate that the award is impossible to implement, the answer is no.

The second and third questions are whether the Arbitrator exceeded his authority or denied the Union a fair hearing. One of the Union's exceeded-authority arguments does not explain how the Arbitrator failed to resolve an issue submitted to arbitration, resolved an issue not submitted to arbitration, disregarded specific limitations on his authority, or awarded relief to individuals not encompassed within the grievance. The Union's other exceeded-authority arguments, and its fair-hearing argument, are based on a misinterpretation of the award. For these reasons, the answer to the second and third questions is no.

The fourth question is whether the award is contrary to § 7117(d)(2) of the Statute³ because the Arbitrator framed and resolved an issue regarding whether the Union failed to bargain in good faith. And the fifth question is whether the award is contrary to § 7117(d)(2) and the Fourteenth Amendment to the U.S. Constitution because the Arbitrator found that NFEC Midwest violated the Union's rights to notice and an opportunity to bargain, but failed to overturn NFEC Midwest's decision or offer any relief to the Union. As neither § 7117(d)(2) nor the Fourteenth Amendment applies here, the answer to the fourth and fifth questions is no.

The sixth question is whether the award is contrary to Authority precedent regarding status-quo-ante remedies. Because the Arbitrator found that the terminated practice was unlawful, and the Authority has held that a status-quo-ante remedy requiring the reinstatement of an unlawful practice is inappropriate, the answer is no.

The seventh question is whether the award is contrary to the Back Pay Act (the Act)⁴ because the Arbitrator failed to award backpay. As the Arbitrator stated that the question of whether any individual employees were entitled to differential pay was not before him, there was no basis for him to award backpay. Therefore, the answer is no.

¹ Subsequent to the filing of the grievance, but prior to the arbitration hearing, NAVFAC Engineering Command Midwest was disestablished, and the Public Works Department at Crane, Indiana came under the direct command of Naval Facilities Engineering Command Mid-Atlantic. The Agency's designation in the case caption reflects the designation listed on the Arbitrator's award.

² 5 U.S.C. §§ 7101-7135.

³ *Id.* § 7117(d)(2).

⁴ *Id.* § 5596.

The eighth question is whether the award is contrary to public policy. Because the Union does not demonstrate that the award conflicts with any public policies that are grounded in laws or legal precedents, the answer is no.

II. Background and Arbitrator's Award

The dispute in this case arose while PWD Crane was under the direct command of NFEC Midwest. As mentioned previously, at PWD Crane, a practice developed under which employees' supervisors routinely authorized differential pay, without considering whether the employees were legally entitled to that pay.

NFEC Midwest management terminated the practice, implemented an instruction for differential pay (the instruction), and required PWD Crane to follow the instruction. In response, the Union filed a grievance, seeking, in relevant part, restoration of the practice and backpay for employees who lost differential pay because of the termination of the practice. In response, NFEC Midwest management asked the Union to negotiate over the instruction, but the Union refused to do so without restoration of the practice. Consequently, the grievance was unresolved and went to arbitration.

Prior to the arbitration hearing, NFEC Midwest was disestablished, and PWD Crane came under the direct command of Naval Facilities Engineering Command Mid-Atlantic (NFEC Midlant). Representatives from NFEC Midlant represented PWD Crane for the remainder of the arbitration proceedings.

At arbitration, the parties authorized the Arbitrator to frame the issues.⁵ And he framed them, in pertinent part, as: (1) whether NFEC Midwest had "provide[d] the Union with adequate notice of the change in [the differential-pay] policy"; (2) "[w]hat is the proper reach and effect of the . . . [terminated] practice"; (3) "[w]hat is the proper reach and effect of [the instruction]"; (4) "[d]id the Union fail to bargain in good faith"; and (5) "[w]hat, if any, are the obligations of the [p]arties going forward with regard to the issue of . . . differential pay . . . ?"⁶

The Union argued that the notice that NFEC Midwest provided before terminating the practice and implementing the instruction was inadequate because it did not explain why the practice was unlawful or what steps NFEC Midwest would take to comply with applicable law. According to the Union, the practice had

been in place so long that it had become part of the parties' agreement. As such, the Union argued that NFEC Midwest should have given it reasonable time to present its recommendations and to request bargaining under § 7117(d)(2) of the Statute⁷ and Article 21, Section 6 of the parties' 2008 collective-bargaining agreement (the 2008 agreement).⁸ As relevant here, the Union requested a status-quo-ante remedy and backpay for individual employees.

In contrast, NFEC Midlant argued that the practice was unlawful and that, therefore, management had no obligation to bargain before terminating it. NFEC Midlant acknowledged that management had a responsibility to bargain over the impact and implementation of the instruction, but asserted that management had provided the Union with notice of the instruction and that it was the Union that failed to bargain in good faith. Finally, NFEC Midlant contended that, as a remedy, the Arbitrator should "[r]equire the [p]arties to negotiate a process consistent with the . . . [i]nstruction, . . . for which entitlement [to differential pay] may be reviewed and approved if employees" satisfy the regulatory requirements.⁹

The Arbitrator stated that he would focus on whether management gave the Union adequate notice, but that the question "of whether [differential pay] is warranted for particular types of work performed by bargaining[-]unit employees . . . [was] not before [him]."¹⁰

As to notice, the Arbitrator found that the notice did not provide adequate explanation of how the practice was unlawful or how management would assess differential pay in the future. The Arbitrator concluded that management did not satisfy its contractual- or statutory-notice obligations. According to the Arbitrator, § 7117(d)(2) of the Statute was "directly applicable" to the dispute,¹¹ and management violated Article 21, Section 6 of the 2008 agreement, which required the Agency to give the Union a draft of proposed changes and to give the Union fifteen days to respond and request impact and implementation bargaining. The Arbitrator also found that, because management "never properly initiated the . . . process that would have led to impact and implementation bargaining . . . , the Union cannot be

⁵ Opp'n, Ex. 7, Tr. at 6 (Arbitrator "note[d] for the record that the parties have agreed to leave the precise framing of the issue to" him).

⁶ Award at 11.

⁷ 5 U.S.C. § 7117(d)(2).

⁸ Award at 19; *see also* Exceptions, Attach. 3 at 7, Union's Post-Hr'g Br. (Union's Br.) (stating that the parties executed a new collective-bargaining agreement after NFEC Midlant took command at PWD Crane, but that the 2008 agreement controlled in this case).

⁹ Opp'n, Ex. 8, Agency's Post-Hr'g Br. at 26; *see also* Award at 22-24.

¹⁰ Award at 26.

¹¹ *Id.* at 28.

deemed to have abridged its duty to bargain in good faith.”¹²

As to the practice, the Arbitrator found that there was no evidence that supervisors ever applied 5 C.F.R. § 532.511 or its appendices when approving differential pay, but instead “essentially automatic[ally]” approved requests.¹³ The Arbitrator also found that the Union had “at least . . . constructive knowledge” of the “dubious” requests for, and supervisors’ certifications of, differential pay.¹⁴ Consequently, the Arbitrator found that both parties “must share the responsibility for . . . the instant dispute, [and] . . . must also share the responsibility for setting things right.”¹⁵

As to a remedy, the Arbitrator found that because the practice was inconsistent with the “regulatory scheme” for differential pay, he could not award a status-quo-ante remedy.¹⁶ In this regard, the Arbitrator stated that the Union cited “no relevant case law” to establish that a status-quo-ante remedy was warranted,¹⁷ or that employees were “entitled to” differential backpay under the former practice.¹⁸

Instead, the Arbitrator found that, under these circumstances, any bargaining that could have occurred would have been limited to how “the regulatory scheme . . . would have [been] . . . implemented locally at PWD Crane.”¹⁹ He, therefore, directed the parties to engage in bargaining that would fashion a local instruction that was tailored to PWD Crane and provided specific instructions on bargaining steps and timeframes.

The Union filed exceptions to the Arbitrator’s award, and NFEC Midlant filed an opposition to the Union’s exceptions.

III. Preliminary Matter: Sections 2425.4(c) and 2429.5 of the Authority’s Regulations bar some of the Union’s arguments.

Under §§ 2425.4(c) and 2429.5 of the Authority’s Regulations,²⁰ the Authority will not consider any arguments that could have been, but were not, presented to the arbitrator.²¹ Additionally, the Authority will not consider arguments offered in support of an exception if those arguments differ from, or are inconsistent with, a party’s arguments to the arbitrator.²² In this regard, §§ 2425.4(c) and 2429.5 do not allow a party to appeal on the ground that an arbitrator did the “very thing” that the party asked the arbitrator to do.²³

The Union asserts that the award is incomplete, ambiguous, and contradictory, so as to make implementation impossible, because NFEC Midwest no longer exists, while NFEC Midlant “is not a party to this action and did not exist at [PWD] Crane at the time of the controversy.”²⁴ In response, NFEC Midlant argues that: it is not a new party to this case; it was always part of PWD Crane’s chain of command; PWD Crane reported directly to NFEC Midlant at the time of hearing; and, in any event, the Union did not argue to the Arbitrator that any remedy requiring action by NFEC Midlant would be impossible to implement.²⁵

As stated previously, before the arbitration hearing, NFEC Midwest was disestablished, and PWD Crane began reporting to NFEC Midlant, which represented management during the remainder of the arbitration proceedings. Therefore, the Union should have known to argue, at arbitration, that these changes meant that any remedy requiring action by NFEC Midlant would be impossible to implement. Because there is no evidence that the Union made such an argument at arbitration, §§ 2425.4(c) and 2429.5 of the Authority’s Regulations bar this argument, and we dismiss the portion of the Union’s exception that relies on it.²⁶

¹² *Id.* at 38.

¹³ *Id.* at 31.

¹⁴ *Id.* at 38.

¹⁵ *Id.* at 27.

¹⁶ *Id.* at 32, 40.

¹⁷ *Id.* at 40 n.12.

¹⁸ *Id.* at 32.

¹⁹ *Id.* at 38 n.10.

²⁰ 5 C.F.R. §§ 2425.4(c), 2429.5.

²¹ *U.S. Dep’t of VA, James N. Quillen VA Med. Ctr., Mtn. Home, Tenn.*, 69 FLRA 144, 145 (2015) (*Quillen*) (Member Pizzella dissenting) (citing 5 C.F.R. §§ 2425.4(c), 2429.5; *U.S. DHS, CBP*, 68 FLRA 157, 159 (2015)).

²² *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Bastrop, Tex.*, 69 FLRA 176, 178 (2016) (*Bastrop*) (citing *AFGE, Local 2145*, 69 FLRA 7, 8 (2015)).

²³ *Id.*

²⁴ Exceptions at 2.

²⁵ Opp’n at 8-9.

²⁶ *Quillen*, 69 FLRA at 145.

The Union also asserts that the award is incomplete, ambiguous, or contradictory because the Arbitrator “direct[ed] the parties to proceed under the guidelines of” the 2008 agreement,²⁷ which the Union claims has been “nullified” by the parties’ 2014 agreement.²⁸ But, before the Arbitrator, the Union specifically argued that, “[s]ince the 2014 [agreement] was ratified after” the events at issue and the invocation of arbitration, “the 2008 [agreement] is the controlling agreement as it relates to the [subject matter] of this arbitration.”²⁹ These arguments conflict. Therefore, §§ 2425.4(c) and 2429.5 of the Authority’s Regulations bar this argument, and we dismiss the portion of the Union’s exception that relies on it.³⁰

IV. Analysis and Conclusions

- A. The award is not incomplete, ambiguous, or contradictory so as to make its implementation impossible.

The Union alleges that, for three reasons, the award is incomplete, ambiguous, or contradictory so as to make implementation of the award impossible.³¹ To demonstrate that an award is deficient on this ground, the appealing party must demonstrate that the award is impossible to implement because the meaning and effect of the award are too unclear or uncertain.³²

First, the Union asserts that the award is incomplete because the Arbitrator failed to rule on any differential pay withheld from employees, despite finding that the Agency violated the Statute.³³ But this assertion does not explain how implementation of the award is impossible because the meaning and effect of the award are too unclear or uncertain. Thus, the assertion does not demonstrate that the award is deficient on this ground.³⁴

Second, the Union argues that although the Arbitrator directed the parties to bargain in order to fashion a local instruction, the Department of the Navy and NFEC Midlant do “not form local instructions or policies.”³⁵ Third, the Union argues that it is already in negotiations with NFEC Midlant over a policy for

payment of differential pay and “the entire remedy provided by the [A]rbitrator is moot.”³⁶

The Agency asserts that it will comply with the awarded remedy and the parties will “follow the Arbitrator’s [a]ward.”³⁷ According to the Agency, the award “provide[s] relief[,] . . . [by setting] the ground rules” and “there will be no further delay in setting forth local policy.”³⁸ The Agency also asserts that “[b]ecause there are other Public Works Departments within the [NFEC Midlant] area of responsibility that do the exact same work as PWD Crane, there is no reason that a consistent Command instruction cannot be implemented with local policy.”³⁹

Thus, the Agency confirms that it *is* possible for the parties to engage in bargaining by fashioning a local instruction tailored to PWD Crane – the remedy directed by the Arbitrator. Consequently, the Union’s second and third arguments provide no basis for finding that implementation of that remedy is impossible, and do not demonstrate that the award is deficient on this ground.⁴⁰

Based on the foregoing, the Union’s arguments do not provide a basis for finding the award incomplete, ambiguous, or contradictory so as to make its implementation impossible, and we deny the portions of this exception that are based on those arguments.

- B. The Arbitrator did not exceed his authority or deny the Union a fair hearing.

The Union argues that the Arbitrator exceeded his authority and denied the Union a fair hearing.⁴¹ Arbitrators exceed their authority when they fail to resolve an issue submitted to arbitration, resolve an issue not submitted to arbitration, disregard specific limitations on their authority, or award relief to those not encompassed within the grievance.⁴² Additionally, an award will be found deficient on the ground that an arbitrator failed to provide a fair hearing where a party demonstrates that the arbitrator refused to hear or consider pertinent and material evidence, or that other actions in conducting the proceeding so prejudiced a

²⁷ Exceptions at 3.

²⁸ *Id.*

²⁹ Union’s Br. at 7.

³⁰ *Bastrop*, 69 FLRA at 178.

³¹ Exceptions at 2-4.

³² *U.S. Dep’t of the A.F., Grissom Air Reserve Base, Ind.*, 67 FLRA 302, 304 (2014) (*Grissom*) (citing *U.S. DOD, Def. Logistics Agency*, 66 FLRA 49, 51 (2011)).

³³ Exceptions at 3 (citing 5 U.S.C. § 7117(d)(2)(A)).

³⁴ *Grissom*, 67 FLRA at 304.

³⁵ Exceptions at 2.

³⁶ *Id.* at 3.

³⁷ Opp’n at 9.

³⁸ *Id.*

³⁹ *Id.* at 10.

⁴⁰ *Grissom*, 67 FLRA at 304.

⁴¹ Exceptions at 4-10.

⁴² *NAGE, SEIU, Local 551*, 68 FLRA 285, 286 (2015) (*NAGE*) (citing *AFGE, Local 1617*, 51 FLRA 1645, 1647 (1996)).

party as to affect the fairness of the proceeding as a whole.⁴³

First, the Union argues that the Arbitrator exceeded his authority by directing the parties to engage in bargaining with the goal of fashioning a local instruction tailored to PWD Crane.⁴⁴ But the Union does not assert that the Arbitrator failed to resolve an issue submitted to arbitration, resolved an issue not submitted to arbitration, disregarded specific limitations on his authority, or awarded relief to individuals not encompassed within the grievance. As such, the Union has not demonstrated that the Arbitrator exceeded his authority in this respect.⁴⁵

Second, the Union argues that the Arbitrator exceeded his authority when he addressed whether differential pay “was warranted” in the categories established by Office of Personnel Management regulations, despite the parties’ agreement that this issue was outside the scope of the arbitration.⁴⁶ The Union also argues that the Arbitrator denied it a fair hearing by addressing that issue because: at the hearing, the Arbitrator “admonished” the Union that evidence regarding that issue was outside the scope of the arbitration,⁴⁷ and prevented it from presenting such evidence;⁴⁸ but, in his award, the Arbitrator went ahead and resolved that issue.⁴⁹

Here, the premise underlying the Union’s second exceeded-authority argument, and its fair-hearing claim, is that the Arbitrator made determinations about the legality of various categories of differential pay. But he did *not* make such determinations; he merely found that the *automatic authorization* of differential pay, regardless of the category, was unlawful. Therefore, these arguments are based on a misinterpretation of the Arbitrator’s award, and provide no basis for finding the award deficient.⁵⁰

For the above reasons, we deny the exceeded-authority and fair-hearing exceptions.

C. The award is not contrary to law.

The Union argues that the award is contrary to law in several respects,⁵¹ which we discuss separately below. When an exception involves an award’s consistency with law, rule, or regulation, the Authority reviews any question of law *de novo*.⁵² In applying the standard of *de novo* review, the Authority assesses whether an arbitrator’s legal conclusions are consistent with the applicable standard of law.⁵³ In making that assessment, the Authority defers to the arbitrator’s underlying factual findings, unless the excepting party establishes that they are nonfacts.⁵⁴

1. The award is not contrary to § 7117(d)(2) of the Statute or the Fourteenth Amendment to the U.S. Constitution.

The Union argues that the Arbitrator misapplied § 7117(d)(2)(B) of the Statute by correctly finding that the Agency violated § 7117(d)(2)(A), but then “improperly transferr[ing] the right of the Union to the right of the Agency” and “unilaterally fram[ing] the issue against the Union” as whether the *Union* failed to bargain in good faith.⁵⁵ The Union also argues that § 7117(d)(2) “is the equivalent of the due[-]process rights” set forth in the Fourteenth Amendment to the U.S. Constitution.⁵⁶ In this regard, the Union claims that “the [A]rbitrator held that the Agency denied the Union its due[-]process rights of notice and an opportunity to bargain under” § 7117(d) of the Statute “but failed to overturn the decision or offer any relief to the Union regarding its loss of rights.”⁵⁷

Section 7117(d) of the Statute addresses certain unions’ “consultation rights” in connection with agencies’ issuances of “any [g]overnment-wide rule or regulation . . . effecting any substantive change in any condition of employment.”⁵⁸ As this case involves neither consultation rights nor changes to any government-wide rule or regulation, § 7117(d) does not apply here. Similarly, the pertinent due-process wording of the Fourteenth Amendment to the U.S. Constitution

⁴³ *AFGE, Council of Prison Locals, Local 3828*, 66 FLRA 504, 505 (2012) (citing *AFGE, Local 1668*, 50 FLRA 124, 126 (1995)).

⁴⁴ Exceptions at 9.

⁴⁵ *NAGE*, 68 FLRA at 286.

⁴⁶ Exceptions at 5.

⁴⁷ *Id.* at 10.

⁴⁸ *Id.* at 11.

⁴⁹ *Id.* at 8-11.

⁵⁰ See, e.g., *U.S. DHS, U.S. CBP*, 66 FLRA 838, 844 (2012) (exception that was based on a misinterpretation of an award did not provide a basis for finding the award deficient).

⁵¹ Exceptions at 12-14.

⁵² *NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)).

⁵³ *U.S. DOD, Dep’ts of the Army & the A.F., Ala. Nat’l Guard, Northport, Ala.*, 55 FLRA 37, 40 (1998) (citing *NFFE, Local 1437*, 53 FLRA 1703, 1710 (1998)).

⁵⁴ *U.S. DHS, U.S. CBP, Laredo, Tex.*, 66 FLRA 567, 567-68 (2012) (citing *U.S. DHS, U.S. CBP*, 66 FLRA 335, 340 (2011)).

⁵⁵ Exceptions at 12.

⁵⁶ *Id.* at 13.

⁵⁷ *Id.*

⁵⁸ 5 U.S.C. § 7117(d)(1).

applies to states, not the federal government.⁵⁹ Thus, the Union's arguments do not demonstrate that the award is contrary to either law. Accordingly, we deny these contrary-to-law exceptions.

2. The award is not contrary to Authority precedent regarding status-quo-ante remedies.

The Union argues that the Arbitrator's refusal to direct a status-quo-ante remedy is contrary to law because he erroneously stated that the Union cited "no relevant case law" to establish that a status-quo-ante remedy was warranted.⁶⁰ In this regard, the Union relies on Authority precedent that the Union claims it cited in its post-hearing brief before the Arbitrator.⁶¹ According to the Union, where an agency violates its obligation to bargain over the substance of a decision, "the Authority orders a status-quo-ante remedy in the absence of special circumstances."⁶²

The Authority has held that, where an Agency has an obligation to bargain over the substance of a decision, and fails to meet that obligation, a status-quo-ante remedy is warranted in the absence of special circumstances.⁶³ But the Authority has also held that it will not order a status-quo-ante remedy that would result in the reinstatement of an unlawful practice.⁶⁴ Here, the Arbitrator found that the practice was unlawful.⁶⁵ Therefore, because the Union does not argue that the finding is contrary to law,⁶⁶ the Arbitrator's refusal to award a status-quo-ante remedy is consistent with Authority precedent, and the Union's exception provides no basis for finding the award contrary to law in this regard. Accordingly, we deny the exception.

3. The award is not contrary to the Act.

The Union argues that the award is contrary to the Act⁶⁷ because the Arbitrator did not award a "make[-]whole remedy" of backpay to any employee whose activity was consistent with differential-pay regulations.⁶⁸

Under the Act, an arbitrator may award backpay to an employee only when the arbitrator finds that: (1) the employee was affected by an unjustified or unwarranted personnel action; and (2) that action resulted in the withdrawal or reduction of the employee's pay, allowances, or differentials.⁶⁹

Here, the Arbitrator stated that the question "of whether [differential pay] is warranted for particular types of work performed by bargaining[-]unit employees . . . [was] not before [him]."⁷⁰ Consistent with his framing of the issue – which the Union has not demonstrated to be deficient – the Arbitrator did not assess whether any individual employees actually performed work that would have entitled them to differential pay. As a result, there was no basis for the Arbitrator to address whether the Agency's actions resulted in the withdrawal or reduction of any individual employees' pay, allowances, or differentials. Consequently, the Union's argument provides no basis for finding that the Arbitrator's failure to award backpay is contrary to the Act, and we deny the exception.

- D. The award is not contrary to public policy.

The Union argues that the award is contrary to public policy because the Arbitrator found that the Agency violated § 7117(d) of the Statute, but he granted no relief.⁷¹ In this connection, the Union asserts that "[i]t is against public policy to allow the Agency to violate the law, to deny the Union its due[-]process rights" of notice and an opportunity to bargain, and to "reward the liable party while penalizing the aggrieved party."⁷² The Union further asserts that "[i]t is against public policy and not in the interest of justice to improperly deny . . . employees their [differential pay that] they are entitled to under federal law and regulations."⁷³

⁵⁹ U.S. Const. amend. XIV, § 1.

⁶⁰ Exceptions at 13 (quoting Award at 40 n.12).

⁶¹ *Id.*

⁶² *Id.* (citing *Dep't of VA Med. Ctr., Asheville, N.C.*, 51 FLRA 1572, 1581 (1996); Union's Br. at 20).

⁶³ *U.S. DHS, U.S. CBP*, 63 FLRA 505, 510 (2009) (citations omitted).

⁶⁴ *USDA, Food Safety & Inspection Serv., Boaz, Ala.*, 66 FLRA 720, 723 (2012) (citations omitted).

⁶⁵ Award at 32.

⁶⁶ See Exceptions at 14 (challenging only the Arbitrator's alleged failure to address any differential pay that was due to employees under the proper regulatory scheme).

⁶⁷ 5 U.S.C. § 5596.

⁶⁸ Exceptions at 14 (quoting Union's Br. at 99).

⁶⁹ *AFGE, Council of Prison Locals 33, Local 3690*, 69 FLRA 127, 130 (2015) (citations omitted).

⁷⁰ Award at 26.

⁷¹ Exceptions at 15.

⁷² *Id.*

⁷³ *Id.*

For an award to be found deficient as contrary to public policy, the asserted public policy must be “explicit,” “well defined,” and “dominant,” and a violation of the policy “must be clearly shown.”⁷⁴ The appealing party must also identify the policy “by reference to the laws and legal precedents and not from general considerations of supposed public interests.”⁷⁵

As discussed in Section IV.C. above, the Union has not demonstrated that the award is contrary to § 7117(d) of the Statute, the Fourteenth Amendment, Authority precedent, or the Act. And the Union cites no other “laws and legal precedents” with which the award conflicts.⁷⁶ Therefore, under the standard set forth above, the Union has not demonstrated that the award is contrary to public policy, and we deny this exception.

V. Decision

We dismiss, in part, and deny, in part, the Union’s exceptions.

⁷⁴ *U.S. Dep’t of VA, Bd. of Veterans Appeals*, 68 FLRA 170, 174 (2015) (citations omitted).

⁷⁵ *Id.* (quoting *NTEU*, 63 FLRA 198, 201 (2009)).

⁷⁶ *Id.*