

71 FLRA No. 149

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
JOHN J. PERSHING VA MEDICAL CENTER
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2328
(Union)

0-AR-5491

DECISION

May 29, 2020

Before the Authority: Colleen Duffy Kiko, Chairman,
and Ernest DuBester and James T. Abbott, Members
(Member DuBester dissenting)

Decision by Member Abbott for the Authority

I. Statement of the Case

In this case, we address an arbitrator's failure to make the necessary factual findings to support an award of hazard pay for certain nursing professionals.

The Union filed a grievance contending that Registered Nurses (RNs), Licensed Practical Nurses (LPNs), and other employees are entitled to environmental or hazard pay differential for dealing with certain

hazardous materials. Arbitrator George Deretich determined that the grievance was not arbitrable as to the RNs, but that it was arbitrable as to the LPNs and other employees, and he awarded hazard pay.

We deny the Union's exceptions that challenge the Arbitrator's conclusion that the grievance was not arbitrable as to the RNs under 38 U.S.C. § 7422 because the Union fails to explain how the Arbitrator erred. The Agency argues that the Arbitrator's award of a hazard pay differential for the LPNs is contrary to law, contrary to public policy, and based on a nonfact. Because we find that the Arbitrator failed to make the necessary findings to award a hazard pay differential, we grant the Agency's contrary-to-law exception and set aside that portion of the award.

II. Background and Arbitrator's Award

The Union filed a grievance seeking environmental differential pay or a hazard pay differential (HPD)¹ for RNs, LPNs, and Advanced Medical Support Assistants (AMSAs) at five of its outpatient facilities. The Union alleged that the grievants handle and transport hazardous material, which is a duty not factored into the function of their job positions. At any of the facilities, the grievants may have to change out and dispose of biohazardous red waste bags and sharps containers that contain used needles, bodily fluids, and chemicals.

Prior to the hearing, the Agency requested that the Arbitrator temporarily suspend the arbitration because it had requested a determination from the Agency's Under Secretary for Health (Under Secretary) as to whether the issue of compensation for the RNs was grievable under 38 U.S.C. § 7422.² The Agency argued that the matter was excluded from the grievance process under § 7422(b).³ The Arbitrator allowed the hearing to go forward but, in his award, he relied on § 7422(b) to rule that he had no

¹ The parties use the terms "hazardous duty pay," "hazard duty pay," "hazard differential pay," and "hazard pay differential" interchangeably. As the term "hazard pay differential" is consistent with the statutory and regulatory provisions governing such pay, we use the term "hazard pay differential (HPD)" throughout this decision. *AFGE, Local 1858*, 66 FLRA 607, 607 n.1 (2012).

² The statute states, in relevant part, that:

(a) Except as otherwise specifically provided in this title, the authority of the Secretary to prescribe regulations under section 7421 of this title is subject to the right of Federal employees to engage in collective bargaining with respect to conditions of employment through representatives chosen by them in accordance with chapter 71 of title 5 (relating to labor-management relations).

(b) Such collective bargaining (and any grievance procedures provided under a collective bargaining

agreement) in the case of employees described in section 7421(b) of this title may not cover, or have any applicability to, any matter or question concerning or arising out of (1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation under this title.

....

(d) An issue of whether a matter or question concerns or arises out of (1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation under this title shall be decided by the Secretary and is not itself subject to collective bargaining and may not be reviewed by any other agency.

38 U.S.C. § 7422. Section 7421(b) includes RNs. *Id.* § 7421(b).

³ Award at 34-35; *see also* 38 U.S.C. § 7422(b).

jurisdiction to arbitrate the issue of added compensation for the RNs.

The Arbitrator ruled that he had jurisdiction to hear the issue of added compensation as to the LPNs and AMSAs and upheld the Union's grievance for HPD for both. With regard to the LPNs, the Arbitrator noted that the functional statement defining the scope of the position provides that "[t]he incumbent may be exposed to infected patients and contaminated materials and may be required to don protective clothing in isolated situations or operative/invasive procedures."⁴ The Arbitrator determined that because there was "no reference" to the hazards claimed by the Union and the hazards the LPNs encounter were "outside the scope of dealing directly with administering to the patient," handling the biohazardous bags was not a part of the LPNs' nursing duties.⁵ In addition, the Arbitrator also found that the AMSAs qualified for HPD. He ordered compensation be paid to both the LPNs and AMSAs.⁶

The Agency filed exceptions to the award on April 5, 2019 and the Union filed exceptions to the award on April 8, 2019. Neither party filed an opposition to the exceptions of the other party.

III. Analysis and Conclusions

- A. The Union has failed to establish that the Arbitrator's conclusion that the grievance was not arbitrable as to the RNs is contrary to law.

The Union argues that the Arbitrator's award is contrary to law⁷ because the Arbitrator violated the parties' agreement "when he erroneously made a determination concerning the RNs, based on his perception of a 7422

issue"⁸ and because the Agency failed to follow the Office of Labor-Management Relations' "7422 Resolution Process," a process internal to the Agency to route requests for such determinations to the Agency's Under Secretary.⁹

The Arbitrator found that the question of HPD for the RNs is exempt from the grievance process. He concluded that this issue concerns added compensation and that 38 U.S.C. § 7422(b) excludes matters related to "the establishment, determination, or adjustment of employee compensation" and "professional conduct or competence" for certain employees, including RNs, from collective bargaining.¹⁰ While the Union plainly disagrees with the Arbitrator, the Union fails to explain why the Arbitrator's interpretation of 38 U.S.C. § 7422(b) was legal error,¹¹ and the Union's contention that the Arbitrator's "perception" of the issue is "invalid" is not an

⁴ Award at 38.

⁵ *Id.*

⁶ We note that neither party excepted to the Arbitrator's conclusions as to the AMSAs, and so, we will not discuss the award to those grievants further.

⁷ When an exception involves an award's consistency with law, the Authority reviews any question of law raised by the exception de novo. *AFGE, Local 12*, 70 FLRA 348, 349-50 (2017) (Member DuBester concurring) (citing *Fraternal Order of Police Lodge No. 158*, 66 FLRA 420, 423 (2011)). In applying the de novo standard of review, the Authority assesses whether an arbitrator's legal conclusions are consistent with the applicable standard of law. *Id.* at 350 (citing *Overseas Private Inv. Corp.*, 68 FLRA 982, 984 (2015)). In making this assessment, the Authority defers to the arbitrator's underlying factual findings. *Id.*

⁸ Union Exceptions at 6. Article 43, Section 2(C) of the parties' agreement reiterates 38 U.S.C. § 7422(b) and also provides the following:

Note 1: The language in the above paragraph shall only serve to preclude a grievance

where the Secretary, or a lawfully appointed designee of the Secretary (currently the Under-Secretary for Health), determines in accordance with 38 U.S.C. [§] 7422 that the grievance concerns or arises out of one or more of the three items listed above.

Award at 8.

⁹ Union Exceptions at 6-7.

¹⁰ Award at 34-35; *see also* 38 U.S.C. § 7422(b).

¹¹ *See* Union Exceptions at 6; 5 C.F.R. § 2425.6(e) ("An exception may be subject to . . . denial if . . . [t]he excepting party fails to . . . support a ground"); *AFGE, Nat'l Immigration and Naturalization Serv. Council*, 69 FLRA 549, 552 (2016) (*AFGE*) (denying an exception where the grievant failed to explain how the award was contrary to law and regulation); *see also AFGE, Local 2145*, 69 FLRA 563, 566 (2016) (*Local 2145*) (Dissenting Opinion of Member Pizzella) (the union sought a locality pay adjustment for RNs and LPNs and Member Pizzella stated "[w]ithout any doubt, the [u]nion's grievance, insofar as it concerns the RNs, is barred by 38 U.S.C. § 7422").

argument that the Arbitrator's award is contrary to law.¹² Furthermore, the Union fails to explain how its unsubstantiated claims that the Agency failed to follow the intra-Agency procedures as established by the Agency's Office of Labor-Management Relations' "7422 Resolution Process" establishes that the Arbitrator's award is contrary to law.¹³

Accordingly, we deny the exception.¹⁴

B. The Arbitrator's conclusion that the LPNs are entitled to HPD is contrary to law.

The Agency argues that the Arbitrator's award is contrary to law¹⁵ because under 5 C.F.R. § 550.904, HPD may not be paid where the hazardous duty has been considered in the classification of the position.¹⁶ The Agency asserts that the duties of handling biohazardous materials are classified within the LPNs' functional statement.¹⁷

The threshold requirements for an employee's entitlement to a hazard pay differential originate from a statutory mandate, as well as government regulation.¹⁸ A

¹² Our dissenting colleague relies on the Authority's 2006 decision in *AFGE, Local 2145*, 61 FLRA 571 (2006), to support his conclusion that the Arbitrator in this case lacked the authority to determine that the RN's grievance was excluded pursuant to § 7422(b). Although the Authority in *AFGE, Local 2145* ordered the arbitrator to resolve the merits of the grievance absent a specific § 7422(d) determination, it failed to provide any legal authority for its decision to do so. The dissent does not provide any such legal authority, and we failed to find any dictating that outcome. Consequently, *AFGE, Local 2145* will no longer be followed. And here, contrary to what the dissent suggests, we find the Arbitrator's determination consistent with § 7422 because the grievance concerns the "establishment, determination, or adjustment of employee compensation." 38 U.S.C. § 7422(b). In this regard, the Arbitrator's determination is consistent with numerous § 7422 determinations published on the Agency's easily-accessible website and which found similar compensation matters clearly excluded from collective bargaining or grievance procedures pursuant to § 7422(b). See U.S. Dep't of VA, *Title 38 Decision Paper- VA Med. Ctr., Asheville, N.C.* (March 5, 2001), https://www.va.gov/lmr/docs/38USC7422/2001/01-3-5_Ashville.pdf (finding an award of night differential and weekend premium pay for nurses a matter that concerned employee compensation and outside the scope of bargaining under § 7422(d)); see also U.S. Dep't of VA, *Title 38 Decision Paper- Harry S. Truman Mem'l Veterans Hosp., Columbia, Mo.* (April 3, 2015), https://www.va.gov/LMR/7422_Columbia_Decision_Paper.pdf (finding a request for information relating to physician pay concerned employee compensation under § 7422(b)); U.S. Dep't of VA, *Title 38 Decision Paper- Cent. Ala. Veterans Health Care Sys.* (September 10, 2013), https://www.va.gov/LMR/docs/7422_CentralAlabamaVeterans_HCS_9_10_13.pdf (finding a grievance arising out of a decision to place nurses on a different specialty pay schedule concerned a matter of employee compensation within the meaning of § 7422(b)). The VA's website specifically states that these determinations are provided so that parties may "benefit from a general understanding of the statutory limitations on Title 38 employees[]." VA Office of Labor-Management Relations (LMR), *38 § 7422 Determinations*, (last updated Oct. 30, 2019), <https://www.va.gov/LMR/38USC7422.asp>. We fail to find an error in an arbitration decision cognizant of those clear limitations.

¹³ See 5 C.F.R. § 2425.6(e); *AFGE*, 69 FLRA at 552.

¹⁴ The Union also argues that the Arbitrator's conclusion that the grievance was not arbitrable as to the RNs fails to draw its essence from the parties' agreement and that the Arbitrator exceeded his authority by precluding the RN grievance without a § 7422 determination from the Under Secretary. Union Exceptions at 7-10. However, because no provision in the parties' agreement can render grievable or arbitrable a claim that is expressly barred by statute, those exceptions also fail and we deny them. See 38 U.S.C. § 7422(b); *Local 2145*, 69 FLRA at 566 (Dissenting Opinion of Member Pizzella).

¹⁵ See *supra* note 7 (discussing the contrary-to-law standard).

¹⁶ Agency Exceptions at 5-6.

¹⁷ *Id.* The functional statement is the LPN job description. Award at 37. It states "the scope of the position and the responsibilities involved, including the duties involved and what the employee can expect is required of the position." *Id.* Additionally, we note that the Agency also argues that the Arbitrator failed to properly apply 5 C.F.R. Part 532, Subpart E, which concerns environmental differential pay. Agency Exceptions at 5-6. However, HPD – which is governed by the Hazardous Duty Act, 5 U.S.C. § 5545, and regulations that apply to general schedule (GS) employees – is distinct from environmental differential pay – which is governed by regulations that apply to wage grade employees. See *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Tucson, Ariz.*, 65 FLRA 267, 269 n.2 (2010) (*Fed. BOP*). Because the grievants at issue here, the LPNs, are GS employees, the Hazardous Duty Act applies to them. See *id.*

¹⁸ *NAIL, Local 15*, 65 FLRA 557, 559 (2011) (*NAIL*); *Fed. BOP*, 65 FLRA at 270 (citing *U.S. Dep't of the Army, Alaska*, 54 FLRA 1117, 1122 (1998)); see also 5 U.S.C. § 5545; 5 C.F.R. Part 550, Subpart I.

grievant must satisfy three requirements before he or she is entitled to a hazard pay differential: (1) the hazard or physical hardship must not have been considered in the classification of his or her position pursuant to 5 U.S.C. § 5545(d); (2) the hazard or physical hardship must be listed in Appendix A to 5 C.F.R. Part 500 (Appendix A); and (3) he[*/she*] must be performing a hazardous duty within the definition of 5 C.F.R. § 550.902.¹⁹

Here, the Arbitrator failed to make the necessary factual findings for an award of HPD. He found that the hazards claimed by the Union are not referenced in the LPN functional statement, are “outside the scope of dealing directly with administering to the patient,” and instead “stem from having to deal with and handle materials and wastes that are or may be contaminated, such as needles[and] broken glass.”²⁰ He found that it is possible an LPN may be injured or contaminated while transporting a red bag. But, these findings are insufficient to support the legal conclusion that the LPNs are entitled to HPD. It is not clear if the Arbitrator evaluated the classification of the LPN position, as required by 5 C.F.R. § 550.904, because his analysis does not make a finding as to the first requirement for entitlement to HPD. He only summarily concluded that the hazards are not referenced in the functional statement.²¹ Moreover, the Arbitrator failed to even address the second and third requirements. For example, although Appendix A requires a determination as to the protection afforded by protective devices²² the Arbitrator made no findings as to the effectiveness of any available protective equipment. In fact, he did not cite Appendix A at all or specifically address whether handling contaminated materials and wastes is a hazardous duty under 5 C.F.R. § 550.902, and he made no other factual findings for our *de novo* review.

Accordingly, because there are no factual findings to support the Arbitrator’s conclusion that the LPNs are entitled to HPD, we find that he erred as a matter

of law. Thus, we grant the Agency’s exception that the award as to the LPNs is contrary to law.²³

IV. Decision

We deny the Union’s exceptions regarding the Arbitrator’s finding that the grievance was not arbitrable as to the RNs. However, we grant the Agency’s contrary-to-law exception to the Arbitrator’s finding that the LPNs are entitled to HPD, and set aside that portion of the award.

¹⁹ *Fed. BOP*, 65 FLRA at 270.

²⁰ Award at 38.

²¹ To this end, we note a glaring inconsistency in the Arbitrator’s factual findings. Although the Arbitrator found that “the hazards to the LPNs stem from having to *deal with and handle materials and wastes that are or may be contaminated*, such as needles [and] broken glass,” which he determined is not referenced in the functional statement, the functional statement actually provides that “[t]he incumbent may be exposed to . . . *contaminated materials*.” Award at 38 (emphasis added). Furthermore, Member Abbott would caution that permitting the Arbitrator to decide what activities come within the territory of being an LPN may not be a decision that an arbitrator, who is not a medical professional, should be making. See *U.S. DOJ, Fed. BOP, Fed. Med. Ctr. Carswell, Ft. Worth, Tex.*, 70 FLRA 890, 892, nn.21-22 (2018) (Member DuBester dissenting) (Member Abbott questioning whether arbitrators should be permitted to decide questions of medical competency).

²² 5 C.F.R. Part 550, Subpart I, App. A.

²³ In light of our conclusion that the award as to the LPNs is contrary to law, we need not address the Agency’s remaining contrary to public policy and nonfact exceptions challenging the vacated portions of the award. See Agency’s Exceptions at 7-9; *U.S. Dep’t of the Treasury, IRS*, 70 FLRA 792, 794 (2018) (Member DuBester dissenting) (not addressing the remaining arguments challenging vacated portions of the award).

Member DuBester, dissenting:

Contrary to the majority's decision, I would find that the Arbitrator erred by concluding that the Registered Nurses' (RNs) grievance was excluded from the parties' grievance procedure by operation of 38 U.S.C. § 7422. Additionally, I would remand the portion of the award addressing the Licensed Practical Nurses' (LPNs) entitlement to hazard pay differential to allow the Arbitrator to make additional findings necessary to resolve this matter.

The Arbitrator concluded that he lacked jurisdiction over the RN's claim for compensation by operation of 38 U.S.C. § 7422(b). This provision states, in relevant part, that "any grievance procedures provided under a collective bargaining agreement" may not "cover, or have any applicability to, any matter or question concerning or arising out of . . . (3) the establishment, determination, or adjustment of employee compensation."¹ Section 7422, however, also contains a provision stating that the "issue of whether a question concerns or arises out of" one of the subjects listed in § 7422(b) "shall be decided by the Secretary [of Veterans Affairs] and is not itself subject to collective bargaining and may not be reviewed by any other agency."²

Consistent with this provision, the Authority has held that "the Secretary has 'exclusive authority' to make such determinations and that the Secretary's determination is not reviewable by the Authority."³ And it has applied this principle to preclude an arbitrator from excluding a grievance pursuant to § 7422(b) absent an actual § 7422(d) determination pertaining to the grievance.

Specifically, in *AFGE, Local 2145*,⁴ the arbitrator found that a grievance involving an RN's reassignment was excluded by § 7422(b) based upon a § 7422(d) determination in a *prior* case involving the reassignment of an RN. Addressing the union's claim that the

arbitrator's conclusion was contrary to § 7422, the Authority found it was not clear from the record whether the determination upon which the arbitrator relied "does, in fact, extend to other similar cases, or whether it was limited to the facts of that case."⁵ It further noted that there was no indication in the record that the Secretary or his designee had "made a determination in *this case* that the grievant's reassignment involved the same 'matters or questions' as the RN's reassignment in the prior case."⁶

Based upon this record, the Authority concluded that it was unable to determine whether the arbitrator erred in finding that the prior § 7422 determination "applied to subsequent similar cases."⁷ It therefore remanded the portion of the grievance related to the grievant's reassignment to the parties for resubmission to the arbitrator "for an explanation of the basis" of his conclusion.⁸

Significantly, as part of this order, the Authority directed the arbitrator to *resolve the merits of the grievance* concerning the reassignment if he found on remand that "*no determination has been made* regarding whether the grievant's reassignment falls within § 7422(b)."⁹ In other words, the Authority concluded that the arbitrator was not authorized to exclude the grievance under § 7422(b) absent a § 7422(d) determination that pertained to the grievance.

In the case before us, the Arbitrator did not base his conclusion that the RN's grievance was excluded by § 7422(b) upon *any* § 7422(d) determination made by the Secretary, but instead made this determination on his own accord.¹⁰ Applying the plain language of § 7422(d), and the principles set forth in *AFGE, Local 2145*, I would conclude that the Arbitrator lacked authority to make this

¹ 38 U.S.C. § 7422(b).

² *Id.* § 7422(d).

³ *AFGE, Local 2145*, 61 FLRA 571, 575 (2006) (quoting *Veterans Admin., Long Beach, Cal.*, 48 FLRA 970, 975 (1993)). Federal courts have reached the same conclusion. *See, e.g., AFGE, AFL-CIO, Local 2152 v. Principi*, 464 F.3d 1049, 1059 (9th Cir. 2006) (holding that the Secretary has the "sole authority to determine whether a § 7422(b) exemption applies to a grievance"). The parties' bargaining agreement also incorporates this principle. Article 43, Section 2(C) of the parties' agreement reiterates the exclusions listed in § 7422(b), and further states that its "language . . . shall only serve to preclude a grievance where the Secretary, or a lawfully appointed designee of the Secretary . . . determines in accordance with 38 U.S.C. [§] 7422 that the grievance concerns or arises out of one or more of the three items listed [in § 7422(b)]." Award at 8 (quoting Article 43, Section 2(C), Note 1).

⁴ 61 FLRA 571 (2006).

⁵ *Id.* at 575.

⁶ *Id.* (emphasis added) (noting further that the Agency had "not provided the Authority with a copy of the determination that it is relying on or the prior award relied on by the [a]rbitrator").

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* (emphasis added).

¹⁰ The Arbitrator noted in his award that the Agency had requested that the arbitration be temporarily suspended "until a [§] 7422 determination could be made by the U.S. Department of Health via the Under Secretary for Health." Award at 35. He also noted the Agency's position that "if the [Under Secretary for Health] decides that an issue is subject to one of the [§] 7422 exemptions, an arbitrator would not have any jurisdiction to resolve the matter." *Id.* at 21. There is no indication from the record, however, that any such determination was ever made or issued.

determination, and that his conclusion was therefore contrary to law.¹¹

Remarkably, the majority – while acknowledging the relevance of the Authority’s decision in *AFGE, Local 2145* – summarily decides that this decision will “no longer be followed” because “it failed to provide any legal authority” for its conclusions.¹² If the majority is indeed searching for “legal authority” to support our decision in that case, and my reliance upon that case to dissent from the majority’s decision, it need look no further than the plain language of § 7422(d).

I also disagree with the majority’s decision to set aside the portion of the award pertaining to the LPNs’ entitlement to a hazard pay differential (HPD). Instead, I would remand this portion of the award to allow the Arbitrator to make the factual findings necessary to resolve this matter.

A grievant seeking HPD must satisfy a three-part test.¹³ Addressing the first part of this test, the majority finds that it is “not clear if the Arbitrator evaluated the classification of the LPN position,” and faults the Arbitrator for “summarily conclud[ing] that the hazards are not referenced in the [LPNs’] functional statement.”¹⁴ However, the Arbitrator directly quoted the portion of the functional statement addressing the types of hazards to which the LPNs may be exposed,¹⁵ and found that this excerpt “is the full extent of its references to what could be classified as hazardous.”¹⁶

The Arbitrator then considered whether the hazards for which the Union was seeking HPD were encompassed by this function statement. On this point, he found that the hazards depicted by the functional statement are those to which the LPNs would be exposed while “administering medical care to the patient(s),” which are

“inherent and part of the job of being an LPN.”¹⁷ In contrast, he found that the hazards detailed by the Union “come from activities forced upon the LPNs that are outside the scope of . . . administering to the patient.”¹⁸

On this basis, the Arbitrator concluded that “[t]here is no reference made [in the functional statement] to the hazards being listed and claimed by the employees and the Union.”¹⁹ Applying the standard governing contrary-to-law exceptions, I would defer to the Arbitrator’s fully substantiated finding that the hazards claimed by the Union are not referenced in the LPN’s functional statement.²⁰

And while I agree with the majority that the Arbitrator failed to make any findings regarding the second and third parts of the test governing entitlement to HPD, I disagree that the award should be set aside on these grounds. Rather, under these circumstances, I believe that the award should be remanded to the parties for resubmission to the Arbitrator “to permit [the] impartial resolution of the remaining factual issues in this case.”²¹

¹¹ I disagree with the majority’s conclusion that the Union “fails to explain why the Arbitrator’s interpretation of 38 U.S.C. § 7422(b) was legal error.” Majority at 3-4. In its exceptions, the Union argues that the arbitrator “should have realized [that] he did not have a [§] 7422 determination from the Under Secretary, and, therefore, he could not deny the grievance for the RNs.” Union Exceptions at 8.

¹² Majority at 4 n.12.

¹³ *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Tucson, Ariz.*, 65 FLRA 267, 270 (2010) (*BOP Tucson*) (“a grievant must satisfy three requirements before he is entitled to a hazard pay differential: (1) the hazard or physical hardship must not have been considered in the classification of his position pursuant to 5 U.S.C. § 5545(d); (2) the hazard or physical hardship must be listed in Appendix A to 5 C.F.R. Part 500; and (3) he must be performing a hazardous duty within the definition of 5 C.F.R. § 550.902”).

¹⁴ Majority at 5-6.

¹⁵ Award at 38 (“The incumbent may be exposed to infected patients and contaminated materials and may be required to don

protective clothing in isolated situations or operative/invasive procedures.”).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* The Arbitrator found that these hazards include “needles, broken glass[,] and a variety of other materials found in the waste disposal containers” that the LPNs handle and transport to the facility’s biohazardous waste room. *Id.* at 38-39.

¹⁹ *Id.* at 38.

²⁰ *E.g.*, *BOP Tucson*, 65 FLRA at 270 (rejecting agency’s contrary-to-law exception challenging arbitrator’s finding that the grievants’ positions did not take into account certain hazardous duties).

²¹ *U.S. Dep’t of the Navy, Navy Pub. Works Ctr., Norfolk, Va.*, 54 FLRA 338, 344 (1998); *see also U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Jesup, Ga.*, 69 FLRA 197, 201-02, 205-06 (2016) (Member Pizzella dissenting in part) (remanding portions of award because record contained insufficient findings to enable Authority to assess the arbitrator’s legal conclusions).