

64 FLRA No. 116

NATIONAL TREASURY
EMPLOYEES UNION
CHAPTER 178
(Union)

and

UNITED STATES
DEPARTMENT OF HOMELAND SECURITY
UNITED STATES
CUSTOMS AND BORDER PROTECTION
EAGLE PASS, TEXAS
(Agency)

0-AR-4554

DECISION

March 31, 2010

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

This matter is before the Authority on exception to an award of Arbitrator Carol Kyler 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 exception.

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 exception and set forth in § 7122(a).^{*} *See U.S. Dep't of the Air Force, Lowry Air Force Base, Denver, Colo.*, 48 FLRA 589, 593-94 (1993) (award not deficient 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).

Accordingly, the Union's exception is denied.

*. In agreeing with the Authority's denial of the Union's exception, Member DuBester notes the following. The Union argues that the Arbitrator was clearly erroneous in finding that the grievant's Bid 3 was incomplete. In support, the Union cites testimony at the hearing before the Arbitrator assertedly indicating that Bid 3 was considered by the parties to be acceptable and complete. Exceptions at 9-10. However, the parties elected to use an expedited arbitration proceeding that apparently did not include preparation of a formal transcript. In any event, the Authority was not provided with a copy of a transcript. Therefore, the Authority is unable to substantiate the Union's claims concerning hearing testimony. Accordingly, the Authority will only consider the Union's claims as arguments in support of its exceptions. *See U.S. Dep't of the Air Force, Sacramento Air Logistics Ctr., McClellan AFB, Calif.*, 50 FLRA 96, 99 (1995). Moreover, as the Arbitrator noted, the Bid and Rotation Committee, consisting of three management members and three union members, deemed the grievant's bid preference requests, including Bid 3, "invalid." Award at 6.