67 FLRA No. 4

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
COUNCIL 215
(Union)

and

SOCIAL SECURITY ADMINISTRATION
OFFICE OF DISABILITY
ADJUDICATION AND REVIEW
REGION VI
OKLAHOMA CITY, OKLAHOMA
(Agency)

0-AR-4859

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DECISION

October 24, 2012

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

I. Statement of the Case

Arbitrator Patrick Halter found that the Agency violated the parties' collective-bargaining agreement in appraising the grievant and in denying the grievance. In one award (the original award), the Arbitrator directed the Agency to raise the grievant's performance ratings. But in a later award (the clarified award), he found that the grievant's ratings should not be raised, and he directed the Agency to place a copy of the clarified award in certain management officials' personnel files (the appraisal-file remedy).

The first issue before us is whether the Arbitrator misconstrued Authority precedent regarding § 7106 of the Federal Service Labor-Management Relations Statute (the Statute) when he found, in the clarified award, that the grievant's ratings should not be raised. Because the Arbitrator did not base his finding on Authority precedent regarding § 7106, we find that the Union has not shown that the award is deficient in this regard.

The second issue before us is whether the award is contrary to the Privacy Act[1] because there is no way for the Union to confirm whether the Agency complies with the appraisal-file remedy. As nothing in the Privacy Act requires that the Union be able to confirm this remedy, we find that the award also is not deficient on this ground.

II. Background and Arbitrator's Award

The grievant is a Union official who performs representational duties on official time for at least fifty percent of her work time. When her supervisor rated her level 3 for three of her job elements on her annual performance appraisal, she filed a grievance. The grievant's supervisor and the deciding officials at step 2 and step 3 of the negotiated grievance procedure denied the grievance, and the Union submitted it to arbitration. At arbitration, the parties stipulated to the issue of whether the Agency violated the parties' agreement when it rated the grievant at level 3, rather than level 5, for the three disputed job elements.

In the original award, the Arbitrator found that the grievant's supervisor and the Agency's two deciding officials in the grievance procedure did not consider the grievant's official time in rating her and in denying the grievance. The Arbitrator concluded that, because these officials acted on incomplete or erroneous information, the Agency violated Article 3, Section 2A of the parties' agreement by not treating the grievant "fairly and equitably."[2]

As a remedy, the Arbitrator raised the grievant's ratings for the disputed job elements from level 3 to level 4, stating that there was insufficient information to reach level 5 (the rating remedy). As a further remedy, the Arbitrator directed that a copy of the award be placed in certain management officials' personnel files.

The Union requested clarification of the original award because the Agency's appraisal system does not have a level-4 rating. In response, the Arbitrator issued the clarified award, which substituted the following rating remedy: "[T]he grievant's ratings for [the disputed job elements] are [at l]evel 3 . . . -- there is insufficient information to reach [l]evel 5."[3]

The Union then filed exceptions to the clarified award, and the Agency filed an opposition to the Union's exceptions. We resolve the exceptions below.

[1] 5 U.S.C. § 552a.

[2] Clarified Award at 3.

[3] *Id.*

III. Analysis and Conclusions

A. The clarified award is not contrary to § 7106 of the Statute.

The Union contends that the clarified award is contrary to § 7106 of the Statute. Specifically, the Union argues that the Arbitrator declined to raise the ratings based on an erroneous belief that Authority precedent required him to reconstruct what the Agency would have rated the grievant if it had not violated the parties' agreement (the reconstruction requirement). In this regard, the Union asserts that the Authority no longer imposes the reconstruction requirement.

The Union's arguments misinterpret the clarified award. Specifically, there is no basis for finding that the Arbitrator relied on § 7106 or Authority precedent concerning the reconstruction requirement when he denied the Union's request to raise the grievant's ratings to level 5. When a party's exception misinterprets an arbitrator's award, the Authority denies the exception.[4] As the Union's exception misinterprets the award, it provides no basis for finding the award deficient.

In addition, relying on *AFGE, Council of Prison Locals, Local 4052* (*Local 4052*),[5] the Union contends that the award is deficient because the Arbitrator found a violation of a contract provision negotiated under § 7106(b), but ordered no remedy. But in *Local 4052*, unlike here, the arbitrator misapplied Authority precedent regarding § 7106. Thus, the Union's reliance on *Local 4052* is misplaced.

Further, to the extent that the Union argues that the award is contrary to law because the Arbitrator ordered no remedy for the violation of Article 3, Section 2A, the Union does not establish that the award is deficient. The Authority has held that, when law does not require a particular remedy, an arbitrator is not required to remedy a violation of a collective-bargaining agreement.[6] Here, the Union does not argue that law requires a particular remedy. Accordingly, the Union's argument does not provide a basis for finding the award deficient in this regard.

B. The award is not contrary to the Privacy Act.

The Union also contends that the appraisal-file remedy is contrary to the Privacy Act. Specifically, the Union argues that it must be able to independently confirm the Agency's compliance with that remedy, but claims that the Privacy Act bars the Agency from permitting the Union access to the relevant files.

With certain exceptions not relevant here, the Privacy Act prohibits an agency from disclosing personal information about federal employees without their consent.[7] But nothing in the award requires the Agency to disclose personal information about federal employees, and the Union does not contend otherwise. Instead, the Union contends that it cannot confirm compliance with the award because the Privacy Act bars the Agency from permitting the Union access to the relevant files. However, the Union does not cite any provision of the Privacy Act or any other law that requires that the Union be able to independently confirm compliance with the award. Accordingly, the Union provides no basis for finding that the award is contrary to law in this regard.

IV. Decision

We deny the Union's exceptions.

[4] *See, e.g., SPORT Air Traffic Controllers Org.*, 66 FLRA 552, 554 (2012); *U.S. Dep't of HHS, SSA, Office of Hearings & Appeals, Falls Church, Va.*, 48 FLRA 562, 563-64 (1993).

[5] 65 FLRA 734 (2011).

[6] *E.g., Nat'l Ass'n of Air Traffic Specialists, NAGE, SEIU*, 61 FLRA 558, 559 (2006).

[7] *E.g., AFGE, Local 987*, 57 FLRA 551, 555 (2001).