

63 FLRA No. 99

NATIONAL TREASURY
EMPLOYEES UNION
(Union)

and

UNITED STATES
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
(Agency)

0-AR-4201

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DECISION

April 30, 2009

Before the Authority: Carol Waller Pope, Chairman and
Thomas M. Beck, Member

I. Statement of the Case

This matter is before the Authority on exceptions to an award of Arbitrator Roger I. Abrams 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 exceptions.

The Arbitrator found that the Agency's refusal to bargain over Union midterm bargaining proposals did not violate § 7116(a)(1) and (5) of the Statute or the parties' agreement. For the reasons that follow, we deny the Union's exceptions.

II. Background and Arbitrator's Award

Under Article 47, Section 3.L. of the parties' expired¹ collective bargaining agreement, local Union chapters could propose for midterm bargaining issues not already addressed in any national or local agreement provided that:

The right of either party to initiate bargaining below the national level . . . does not extend to matters that are Service-wide in nature . . . or that involve changes implemented locally but on a varied basis because local management offi-

cial are given discretion in that regard. "Pilot[,]" "prototype[,]" or "test" programs for National matters, unless otherwise specifically provided in this Agreement or by the parties at the national level, must be negotiated nationally.

Exceptions, Attachment 3.

Pursuant to Article 47, local Union chapters submitted 251 midterm bargaining proposals to various local Agency officials. The Agency responded that there was no obligation to bargain because the issues raised by the proposals were covered by the parties' expired agreement, were Service-wide in nature, affected employees in more than one area, or proposed establishment of a pilot or test program. *See* Award at 5. The Union filed a grievance and when it was not resolved, it was submitted to arbitration. As relevant here, the parties stipulated the following issues for the Arbitrator:

- (1) ...[D]id the Agency violate Article 47, Section[s] 3 and 4 of the National Agreement by engaging in a pattern and practice of refusing to bargain over local [U]nion-initiated midterm proposals . . . ?
- (2) Did the Agency violate [§] 7116(a)(1) and (5) of the [Statute] by engaging in a pattern and practice of refusing to bargain over local [U]nion-initiated midterm proposals . . . or by repudiating Article 47, Sections [3] and 4 of the parties' National Agreement regarding local [U]nion-initiated midterm bargaining?
- (3) If so, what is the appropriate remedy?

Award at 9.

The Arbitrator found, as relevant here, that "most (at least many)" of the Union's proposals addressed matters that were Service-wide in nature and/or were not "unique to one chapter" under Article 47. *Id.* at 17. The Arbitrator found that other proposals involved matters that had already been addressed or were otherwise outside the Agency's duty to bargain. *Id.* As a result, the Agency's refusal to negotiate over these proposals could not be considered part of an alleged illegal "pattern and practice." *Id.* Accordingly, the Arbitrator found that the Agency did not violate Article 47 or § 7116(a)(1) and (5) of the Statute by engaging in a "pattern and practice" of refusing to bargain the Union's mid-term proposals. *See id.* at 19-20. In addition, the Arbitrator determined that the Agency did not violate § 7116(a)(1) and (5) of the Statute by repudiating

1. The parties' agreement expired on July 1, 2006. As the grievance was filed before the agreement's expiration, there is no dispute that it applies to this case.

Article 47, Sections 3 and 4. *See id.* at 19-20. Accordingly, the Arbitrator denied the grievance.²

III. Positions of the Parties

A. Union's Exceptions

The Union contends that the Arbitrator's award fails to draw its essence from Article 47 of the parties' agreement. *See* Exceptions at 4. The Union claims that Article 47 is clear and unambiguous and that the Arbitrator erroneously concluded that under Article 47, "local proposals must pertain to issues that are 'unique to one chapter.'" *Id.* at 9 (citing award at 17). The Union also asserts that the Arbitrator failed to consider parol evidence regarding the meaning of Article 47. *See id.* at 10-13.

The Union also contends that the Agency's refusal to bargain constituted a "coordinated effort" to avoid bargaining and, as a result, constituted bad faith bargaining in violation of § 7116(a)(1) and (5) of the Statute. *Id.* at 14.

B. Agency's Opposition

The Agency contends that the Arbitrator properly construed the parties' agreement. The Agency argues, in this regard, that the proposals submitted by the Union were Service-wide in nature, within the meaning of Article 47 of the parties' agreement. *See* Opposition at 17-21.

IV. Discussion

A. Whether the Award Fails to Draw Its Essence from the Parties' Agreement.

In reviewing an arbitrator's interpretation of a collective bargaining agreement, the Authority applies the deferential standard of review that federal courts use in reviewing arbitration awards in the private sector. *See* 5 U.S.C. § 7122(a)(2); *AFGE, Council 220*, 54 FLRA 156, 159 (1998). Under this standard, the Authority will find that an arbitration award is deficient as failing to draw its essence from the collective bargaining agreement when the appealing party establishes that the award: (1) cannot in any rational way be derived from the agreement; (2) is so unfounded in reason and fact and so unconnected with the wording and purposes of the collective bargaining agreement as to manifest an infidelity to the obligation of the arbitrator; (3) does not

represent a plausible interpretation of the agreement; or (4) evidences a manifest disregard of the agreement. *See United States Dep't of Labor (OSHA)*, 34 FLRA 573, 575 (1990).

The Union asserts that the award exhibits a manifest disregard of Article 47 because "it is the geographic effect of particular proposals rather [than] the subject matter of the proposal that determines whether the matter is service-wide." Exceptions at 4, 7. However, the term "Service-wide in nature" is not defined in the agreement and the Union provides no basis to conclude that the Arbitrator was constrained in his interpretation of the term. Moreover, exceptions contending that an arbitrator should, or should not, use parol evidence do not provide a basis for finding an award deficient. *See, e.g., NTEU*, 62 FLRA 45, 47-48 (2007). Thus, the Arbitrator's interpretation of Article 47 is not deficient. *See Fed. Deposit Ins. Corp.*, 62 FLRA 356, 358-59 (2008) (agency did not establish that arbitrator's interpretation of term "fair and equitable" failed to draw its essence from the parties' agreement).

Based on the above, we find that the Arbitrator's award does not fail to draw its essence from the parties' agreement.

B. Whether the Award Is Contrary to Law

The Arbitrator interpreted Article 47, which limits the matters that may properly be negotiated at the local level, as permitting the Agency to refuse to bargain in this case. *See* Award at 13. The Union argues that the award fails to draw its essence from the parties' agreement, but does not argue that, as interpreted by the Arbitrator, Article 47 is unenforceable. Moreover, the Authority has found enforceable contractual provisions that define, or limit, parties' obligations to engage in mid-term bargaining. *See United States Dep't of Energy, W. Area Power Admin., Golden, Colo.*, 56 FLRA 9, 12 (2000) (Authority applied parties' agreement concerning "the parameters of negotiations" in determining whether agency violated the Statute in refusing to bargain).

Consistent with the foregoing determination that the award does not fail to draw its essence from the parties' agreement, the Agency was permitted, based on Article 47, to refuse to bargain. Therefore, we conclude that the Agency did not violate § 7116(a)(1) and (5) of the Statute.

Accordingly, we find that the award is not contrary to law.

2. As the Union does not except to the Arbitrator's finding that the Agency did not repudiate the parties' agreement, we do not address it further.

V. Decision

The exceptions are denied.