

64 FLRA No. 163

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2157
(Union)

and

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
WILLAMETTE NATIONAL CEMETERY
PORTLAND, OREGON
(Agency)

0-AR-4618

DECISION

June 4, 2010

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

This matter is before the Authority on an exception to an award of Arbitrator Thomas F. Levak 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 Labor (OSHA)*, 34 FLRA 573, 575 (1990) (award not deficient as failing to draw its essence from the parties' collective bargaining agreement where excepting party fails to establish that the award cannot in any rational way be derived from the agreement; is so unfounded in reason and fact and so unconnected to the wording and purpose of the agreement as to manifest an infidelity to the obligation of the arbitrator; does not represent a

plausible interpretation of the agreement; or evidences a manifest disregard of the agreement).*

Accordingly, the Union's exception is denied.

* Under 5 C.F.R. § 2429.5, the Authority will not consider issues that could have been, but were not, presented to the arbitrator. *See, e.g., AFGE, Local 2145*, 55 FLRA 366, 368 (1999). As there is no indication in the award, or elsewhere in the record, that the argument concerning compliance with occupational health and safety laws and regulations was raised before the Arbitrator, we will not consider it. *See id.*