

67 FLRA No. 42

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1482
(Union)

and

UNITED STATES
DEPARTMENT OF THE NAVY
MARINE CORPS LOGISTICS BASE
BARSTOW, CALIFORNIA
(Agency)

0-AR-4973

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DECISION

January 9, 2014

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Before the Authority: Carol Waller Pope, Chairman, and
Ernest DuBester and Patrick Pizzella, Members

I. Statement of the Case

Arbitrator Anthony Miller denied a grievance alleging that the Agency violated the parties' collective-bargaining agreement when it allowed a non-bargaining-unit contractor, instead of a particular unit employee (the grievant), to work overtime. There are two questions before us.

The first question is whether the award is based on nonfacts. Because the Union has failed to show that a central fact underlying the award is clearly erroneous, but for which the Arbitrator would have reached a different result, the answer is no.

The second question is whether the Arbitrator exceeded his authority because he failed to address an issue submitted to arbitration. Because the Arbitrator directly addressed the stipulated issue, the answer is no.

II. Background and Arbitrator's Award

The grievant worked in the Agency's cost work center (CWC) 712, maintaining, repairing, and renovating military vehicles and artillery. The Agency failed to offer the grievant certain overtime and, instead, offered the overtime to a non-bargaining-unit contractor.

In response, the Union filed a grievance, which went to arbitration. At arbitration, the parties stipulated to the following issue: "was there a violation of the [parties' agreement] when [the grievant] was denied the opportunity to work overtime . . . ? If so, what is the [a]ppropriate [r]emedy?"¹

The Arbitrator found that a certain individual (CWC 712 supervisor) supervised the employees in CWC 712, including the grievant. The Arbitrator noted that the grievant was on the overtime roster for CWC 712, but found that he was "lowest in seniority."² The Arbitrator also noted that CWC 712 was not under a mandatory overtime order, and there was no need for overtime work in CWC 712.

Conversely, the Arbitrator found that another CWC, CWC 713, was under a mandatory overtime order to "complete a backlog of [l]ight [a]rmed [v]ehicles."³ The Arbitrator concluded that a different individual (CWC 713 supervisor) supervised the employees in CWC 713, which included at least one contractor employee. That contractor employee was not on the overtime roster for CWC 713 and was not a member of the bargaining unit. Nevertheless, according to the Arbitrator, when the overtime at issue in this grievance was required in CWC 713, the CWC 713 supervisor assigned that overtime to the contractor employee. The grievant was not given the opportunity to work the overtime.

The Arbitrator identified the applicable provisions of the parties' agreement as Article 13, Sections 2 and 5. Section 2 states that "[t]he supervisor determines when overtime work is required and makes assignments of that work to employees under his or her supervision."⁴ Section 5 states, in relevant part, that "[o]vertime rosters will be established at the level of the immediate supervisor prior to overtime being worked; however, separate rosters may be established for different sections/departments/grades operating under the same level of immediate supervision."⁵

¹ Award at 2; *see also* Exceptions at 10.

² Award at 4.

³ *Id.*

⁴ *Id.* at 5 (internal quotation marks omitted).

⁵ *Id.*

The Arbitrator interpreted those provisions to mean that “[s]upervision is the controlling factor in determining overtime.”⁶ Specifically, he found that when supervisors determine that overtime is needed, the parties’ agreement requires the supervisor to assign that work to employees working under his or her supervision. He further found that the agreement does not require supervisors to offer overtime to employees working for another supervisor. On this basis, the Arbitrator found that the Agency did not violate the parties’ agreement. He found that, consistent with the agreement, the CWC 713 supervisor assigned the overtime to the contractor, an employee under his supervision. He further found that the agreement did not require the CWC supervisor to assign the overtime to the grievant, who worked under the supervision of the CWC 712 supervisor. As a result, the Arbitrator denied the grievance.

The Union filed exceptions to the Arbitrator’s award, and the Agency filed an opposition to the Union’s exceptions.

III. Analysis and Conclusions

A. The award is not based on nonfacts.

The Union argues that the award is based on nonfacts. To establish that an award is based on a nonfact, the appealing party must show that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result.⁷ However, the Authority will not find an award deficient on the basis of a party’s disagreement with an arbitrator’s evaluation of evidence.⁸

The Union’s nonfact arguments claim that: (1) the contractor did not work in CWC 713 when the overtime was assigned, but was “detailed to CWC 712 for some time before[,] during[,] and after the week in question;”⁹ (2) the overtime work the contractor performed was in CWC 712 – not CWC 713; (3) the issue that the Arbitrator stated should have also included the Union’s claim that the “contractor directed the work of three . . . bargaining[-]unit employees from CWC 713 to work with him in CWC 712;”¹⁰ (4) the Agency “knew at the time that the workload requirement of CWC 713 . . . would trigger an overtime requirement for CWC 712,” as CWC 712 is a component shop for CWC 713;¹¹ and (5) the grievant was not low on the CWC 712 overtime roster.

⁶ *Id.*

⁷ See *NFFE, Local 1984*, 56 FLRA 38, 41 (2000) (*NFFE*).

⁸ *Id.*

⁹ Exceptions, Attach. 1 at 1.

¹⁰ *Id.*

¹¹ *Id.*

To support its nonfact arguments, the Union cites only to an affidavit that it submitted during arbitration. The affidavit was prepared by a Union shop leader who worked in CWC 713. In the affidavit, the shop leader states that he worked overtime “in CWC 713” on the same days as the contractor.¹² He further states that the contractor was actually “assigned” to CWC 712, but still worked the overtime in CWC 713, along with three other Agency employees.¹³

The Arbitrator based his award on one central premise – that “[s]upervision is the controlling factor in determining overtime.”¹⁴ Because the Arbitrator found that the CWC 713 supervisor supervised the contractor and assigned the contractor the overtime, and that the CWC 713 supervisor did not supervise the grievant, the Arbitrator concluded that the Agency did not violate the parties’ agreement by failing to offer the overtime to the grievant. Thus, even assuming that the facts asserted by the Union and contained in the submitted affidavit are true, they do not refute these central facts upon which the Arbitrator based his award. In fact, the Union does not challenge these particular findings. Thus, the Union’s nonfact assertions do not demonstrate that a central fact underlying the award is clearly erroneous, but for which the Arbitrator would have reached a different result.¹⁵

Moreover, to the extent that the Union’s nonfact claims challenge the Arbitrator’s evaluation of the evidence, as stated above, such claims do not provide a basis for finding that the award is based on a nonfact.¹⁶ Accordingly, we deny the Union’s nonfact exceptions.

B. The Arbitrator did not exceed his authority.

The Authority finds that arbitrators exceed their authority when they fail to resolve an issue submitted to arbitration.¹⁷

The Union argues that the Arbitrator exceeded his authority because he failed to resolve the issue of “overtime work being performed by a contractor and CWC 713 bargaining-unit employees at the direction of the contractor in CWC 712.”¹⁸ However, the parties here stipulated to the following issue for arbitration: “Was there [a] violation of the [parties’ agreement] when [the grievant] was denied the opportunity to work overtime . . . ? If so, what is the [a]ppropriate [r]emedy?”¹⁹ The Arbitrator’s findings concerning the denial of overtime

¹² Exceptions, Attach. 3 at 1.

¹³ *Id.*

¹⁴ Award at 5.

¹⁵ See *NFFE*, 56 FLRA at 41.

¹⁶ *Id.*

¹⁷ *U.S. Dep’t of the Treasury, IRS*, 66 FLRA 325, 331 (2011).

¹⁸ Exceptions at 10.

¹⁹ Award at 2; see also Exceptions at 10.

resolved that issue, and this exception provides no basis for concluding that the Arbitrator exceeded his authority by failing to resolve an issue submitted to arbitration.

Accordingly, we deny the Union's exceeds-authority exception.

IV. Decision

We deny the Union's exceptions.