[v59 p947] (Found at http://www.flra.gov/decisions/v59/59-169.html)

59 FLRA No. 169

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 2006
(Union)

and

SOCIAL SECURITY ADMINISTRATION
(Agency)

0-AR-3775

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DECISION

May 13, 2004

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Before the Authority: Dale Cabaniss, Chairman, and
Carol Waller Pope and Tony Armendariz, Members

I. Statement of the Case

This matter is before the Authority on exceptions to an award of Arbitrator Thomas M. Phelan 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 sustained a grievance claiming that the grievant's suggestion for lowering the Agency's energy costs was improperly evaluated under the Agency's Employee Suggestion Program (ESP), and that the Agency violated the parties' agreement by denying the grievant's request for a monetary award. Pursuant to the ESP, the Arbitrator ordered the Agency to pay the grievant $8,995. For the reasons set forth below, we deny the Union's exceptions.

II. Background and Arbitrator's Award

The Agency's ESP provides guidelines for evaluating employee suggestions and for granting monetary awards for fully or partially adopted suggestions. The grievant submitted an employee suggestion indicating that the Agency was wasting over $1 million annually because computer monitors (monitors) were being left on during inactive periods. The grievant's suggested solution was to

"implement and enforce" a policy requiring employees to turn off their monitors for overnight and other inactive periods. Award at 3. Under § IV(B)(3)(b) of the ESP, if a suggestion has been previously considered by the Agency, or is within the employee's job responsibilities, then the suggestion is not eligible for a monetary award. [n1] Applying the ESP, the Agency denied the grievant's request for a monetary award, finding that it had previously considered turning off monitors during inactive periods, and had an established policy that employees should turn off their monitors during non-work hours.

A grievance was filed claiming that the grievant's suggestion was not evaluated according to the ESP guidelines, and that the grievant was improperly denied a monetary award in violation of the parties' agreement. Ultimately, the grievance was submitted to arbitration where the Arbitrator framed the issue to be: "[W]hether [the grievant's] suggestion was evaluated in accordance with Article 17, Section 5D and the Employee Suggestion Program, and if not, what is the remedy." [n2] Id. at 16.

The Arbitrator determined that the grievant submitted a suggestion identifying the problem of monitors being left on during inactive periods, and that the grievant had proposed the solution of mandating and enforcing a policy that employees turn off their monitors during such periods. The Arbitrator also determined that the Agency agreed that there was a problem of monitors being left on during inactive periods, but disagreed with the grievant's proposed mandatory policy. In this regard, the Agency maintained that employees may voluntarily turn off their monitors, but refused to implement a policy forcing employees to do so.

In addition, the Arbitrator found that the Agency had an existing policy encouraging employees to turn off their monitors during inactive periods, but that the policy was not being adhered to. He determined that the grievant's suggestion identified that the existing policy was not being adhered to. The Arbitrator concluded that the non-adherence problem had not received prior management consideration. He remanded the grievance to the Agency for a determination of whether the grievant's suggestion was within his job responsibilities, within the meaning of § IV(B)(3)(b) of the ESP.

The Agency determined that the suggestion was not within the grievant's job responsibilities and [v59 p948] returned the grievance to the Arbitrator. The Arbitrator determined that, although the grievant had identified the problem of employees not adhering to the Agency's existing policy regarding turning off monitors during inactive periods, the Agency did not adopt the mandatory policy solution suggested by the grievant. Instead, the Arbitrator determined that the Agency had acted on the problem identified by the grievant, and implemented a plan reiterating its existing policy, eventually saving the Agency $891,000 annually.

Based on the foregoing, the Arbitrator found that the Agency had violated Article 17, Section 5(D) (§ 5(D)) of the parties' agreement by denying the grievant a monetary award, and concluded that, under ESP § IV(K)(8), the grievant was entitled to a "problem identification award that cannot exceed 50 percent of the customary award for a suggestion." Supp. Award at 2. The Arbitrator determined the customary award to be $17,910. [n3] Accordingly, the Arbitrator sustained the grievance and ordered the Agency to pay the grievant $8,955.

III. Positions of the Parties

A. Union's Exceptions

The Union contends that the award is contrary to the ESP. In this connection, the Union argues that the Arbitrator improperly categorized the grievant's suggestion as a problem identification suggestion under Section IV(G)(4) of the ESP, instead of an implemented suggestion within the meaning of Section III(A)(10) of the ESP. As such, the Union contends that the grievant is entitled to the full amount of a customary award, here, $17,910. Exceptions at 5.

The Union also contends that the award fails to draw its essence from § 5(D) of the parties' agreement because, by not according proper weight to the grievant's recommended solution, the Arbitrator failed to consider the grievant's suggestion in a fair and equitable manner. Id. at 10-11. According to the Union, in determining whether the grievant was entitled to a monetary award, the Arbitrator credited the Agency's arguments and testimony over other evidence introduced at the arbitration hearing. Id. at 11.

B. Agency's Opposition

The Agency argues that, based on the testimony and evidence presented at the hearing, the Arbitrator properly determined that the grievant was entitled to an award under the problem identification suggestion guidelines. In addition, the Agency argues that the Arbitrator's award is plausible and does not manifest disregard for the parties' agreement.

IV. Analysis and Conclusions

A. The award is not contrary to law, rule or regulation.

An award is deficient if it is inconsistent with a governing agency regulation. See United States Dep't of the Army, Fort Campbell Dist., Third Region, Fort Campbell, Ky., 37 FLRA 186, 192 (1990). As the Union's exception challenges the award's consistency with the SSA Personnel Manual for Supervisors, Chapter S451, the "Employee Suggestion Program" -- an Agency regulation -- we review the question of law raised by the exception de novo. See NFFE, Local 1437, 53 FLRA 1703, 1709 (1998) (NFFE, Local 1437); AFGE, Local 3184, 50 FLRA 449, 453 (1995). In applying a de novo standard of review, the Authority assesses whether the arbitrator's legal conclusions are consistent with the applicable standard of law. See NFFE, Local 1437, 53 FLRA at 1710. In making that assessment, the Authority defers to the arbitrator's underlying factual findings. See id.

The ESP provides for evaluation of employee suggestions and contains a guide for calculating monetary awards based on the amount of tangible benefits the suggestion yields to the Agency. As relevant here, an employee's suggestion is categorized as either: (1) a "problem identification" suggestion; or (2) an "implemented" suggestion. Section IV(G)(4) of the ESP provides that a problem identification suggestion occurs where a problem is identified by an employee and is submitted to the Agency without a method for solving the problem. Under § IV(K)(8) of the ESP, the award for an adopted problem identification suggestion may not exceed 50 percent of the customary award for a suggestion. Customary awards are calculated using the guidelines set forth in Exhibit 4 of the ESP. Section III(A)(10) of the ESP provides that an employee's suggestion should be considered an implemented suggestion when the suggestion is implemented in a substantially similar manner as the suggestion proposed by the employee. ESP § III(A)(17) indicates that awards for fully or partially adopted suggestions can range from letters of commendation to cash awards of $100 to $25,000. [v59 p949]

Here, the Arbitrator found that, prior to the grievant's suggestion, the Agency had an existing policy encouraging employees to turn off their monitors during inactive periods, but that the policy was not being adhered to. The Arbitrator also found that the grievant's suggestion identified the problem of employees not adhering to the existing policy, and proposed a mandatory policy requiring employees to turn off their monitors during inactive periods. He further found that, while the Agency did not accept the particular solution offered by the grievant, the grievant's suggestion was the "impetus" for the Agency's implementation of a plan reiterating its existing policy. Award at 19. Accordingly, the Arbitrator determined that the grievant was entitled to a problem identification award.

The Union claims that the Agency implemented the grievant's suggestion, thereby entitling the grievant to the full amount of a customary award. Contrary to the Union's claim, the Agency did not implement the grievant's proposed mandatory policy. Instead, the Agency merely reiterated its existing policy encouraging employees to turn off their monitors during inactive periods. See Award at 17-18. In these circumstances, we find that the Union has failed to demonstrate that the Arbitrator's refusal to find that the grievant's suggestion constituted an implemented suggestion is inconsistent with the ESP. Accordingly, as the Union has not established that the award is contrary to the Agency's ESP, we deny the exception.

B. The award draws its essence from the parties' agreement.

In order for an award to be found deficient as failing to draw its essence from the collective bargaining agreement, it must be established 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. United States Dep't of Labor (OSHA), 34 FLRA 573, 575 (1990).

The Union argues that the award fails to draw its essence from § 5(D) of the parties' agreement because the Arbitrator failed to consider the grievant's suggestion in a fair and equitable manner. The Arbitrator determined that the grievant's suggestion identified the problem of employees not adhering to the Agency's existing policy regarding turning off monitors during inactive periods. He further determined that the Agency did not implement the grievant's proposed solution to the problem. Accordingly, the Arbitrator concluded that the grievant's suggestion was a problem identification suggestion. The Union has failed to demonstrate that the Arbitrator's consideration of the grievant's suggestion was unfair or inequitable. As nothing in the record establishes that the award is implausible, irrational, unfounded in fact, or unconnected to the wording of the agreement, we deny the exception.

C. The award is not based on nonfacts.

The Union argues that, in deciding whether the grievant is entitled to an award for his suggestion, the Arbitrator improperly credited the Agency's testimony over other evidence introduced at the hearing. The Union also argues that the Arbitrator erred by not according proper weight to the grievant's recommended solution. We construe these arguments as contentions that the award is based on nonfacts. To establish that an award is based on nonfact, the appealing party must demonstrate that a central fact underlying the award is clearly erroneous, but for which a different result would have been reached. See United States Dep't of the Air Force, Lowry Air Force Base, Denver, Colo., 48 FLRA 589, 593 (1993). An award will not be found deficient based on an arbitrator's determination on any factual matters that the parties disputed below. Id. at 594.

Before the Arbitrator, the parties disputed whether the Agency implemented the grievant's suggested solution mandating that employees turn off their monitors during inactive periods. The Arbitrator determined that the Agency did not implement the grievant's suggested solution, and, instead, merely reiterated its existing policy encouraging employees to turn off their monitors during inactive periods. As the Union's exception challenges the Arbitrator's determination regarding a factual issue that the parties disputed below, the Union has not demonstrated that the award is based on a nonfact. See United States Dep't of Veterans Affairs, 54 FLRA 1109, 1113 (1998). Furthermore, to the extent the Union challenges the weight accorded to the grievant's testimony by the Arbitrator, such a challenge provides no basis for finding the award deficient as based on a nonfact. See United States Dep't of Veterans Affairs, Med. Ctr., Northport, N.Y., 49 FLRA 630, 637 (1994). Accordingly, we deny the exception.

V. Decision

The Union's exceptions are denied. [v59 p950]

APPENDIX
SSA Personnel Manual for Supervisors, Chapter S451, the "Employee Suggestion Program" provides, in pertinent part, as follows:

Section III. Commonly Used Terms and Acronyms

A. Terms
(10) Implementation. A suggestion is considered to be implemented if actions substantially the same as those proposed by the suggester are effected by management, even if minor modifications or improvements in the original proposal have been made.
. . . .
(17) Suggestion Award. An award granted for a suggestion submitted in writing by an employee or employees adopted in full or in part by management for the benefit of the Government. The award may consist of a letter of commendation, certificate and cash. Cash awards range from $100 to $25,000.
Section IV. Detailed Provisions

(B) Submitting Suggestions
(3) What to Submit as a Suggestion
(b) Suggestions eligible for processing but not eligible for awards are:
. . . .
(2) Those to which prior management consideration has been given; and
(3) Those hose which are within an
employee's job responsibilities.
(G) Special Considerations
(4) Problem Identification Suggestions. This suggestion category is used by employees who can see that a problem exists but could not reasonably be expected to know how to solve it. The suggestion, because it provides no solution for the problem presented, should prompt the responsible component into thinking about the problem and developing a solution.
(K) Awards
(1) Conditions for Granting Awards
(a) Adoption of the suggestion in full or in part, or if the actual idea is not adopted but stimulates a better solution to an existing problem; and
(b) Management's commitment to implement; no suggestion is eligible for adoption unless it can and will be implemented.
. . . .
(8) For an adopted "problem identification," the award amount will not exceed 50 percent of the customary award for a suggestion.
Exhibit 4. Guide for Calculating Award Amounts Based On Tangible Benefits.

BENEFITS AWARD
Estimated First-Year Benefits
Up to $10,000
$10,001 to $100,000
More than $100,000
Amount of Award to Employees
10% of benefits
$1,000, plus 3% to 10% of benefits over $10,000
$3,700 to $10,000 for the first $100,000 in benefits, plus 0.5% to 1.0% of benefits above $100,000, up to $25,000, with the approval of the Office of Personnel Management. Presidential approval is required for all awards of more than $25,000.

Footnote # 1 for 59 FLRA No. 169 - Authority's Decision

Pertinent provisions of the ESP are set forth in the attached Appendix.

Footnote # 2 for 59 FLRA No. 169 - Authority's Decision

Article 17, Section 5(D) of the parties' agreement provides, in relevant part, that suggestions submitted under the ESP "will be considered in a fair and equitable manner" and that "[s]uggestion awards will be appropriate for tangible suggestions, intangible suggestions, and problem identification, as defined in the SSA Suggestion System." Exceptions at 10.

Footnote # 3 for 59 FLRA No. 169 - Authority's Decision

Using ESP Exhibit 4 and his determination that the grievant's suggestion aided the Agency in developing a policy that saved the Agency $891,000 annually, the Arbitrator calculated the amount of a customary award as follows: $10,000 for the first $100,000 in benefits, plus $7,910, representing 1% of benefits above $100,000, for a total of $17,910. The Arbitrator awarded the grievant 50 percent of the customary award, $8,955. See Supp. Award at 2-3.