

**67 FLRA No. 18**

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 1199  
(Union)

and

UNITED STATES  
DEPARTMENT OF THE AIR FORCE  
CHILD DEVELOPMENT CENTERS  
NELLIS AIR FORCE BASE, NEVADA  
(Agency)

0-AR-4876

DECISION

December 13, 2012

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

**I. Statement of the Case**

The central issue in this case is whether the award is deficient because the Arbitrator's finding – that an agreement provision, which established the regular workweek for existing employees as being forty hours, did not preclude the Agency from hiring new employees on a part-time basis without providing notice to the Union – fails to draw its essence from the parties' agreement. We find that the award is not deficient because the Arbitrator's interpretation of that provision is neither implausible nor evidences a manifest disregard of the parties' agreement.

**II. Background and Arbitrator's Award**

The Union filed a grievance asserting that the Agency violated Article 22 of the parties' agreement when it hired certain employees to work thirty-two hours per week and failed to notify the Union that it intended to hire part-time employees. Arbitrator Gerald R. Burke denied the grievance. As relevant here, the Arbitrator found that, although Article 22, Section 1 of the parties' agreement established the "regular" workweek for existing employees as being forty hours, that provision did not entitle employees to a forty-hour workweek and did not preclude the Agency from hiring new employees

on a part-time basis.<sup>1</sup> The Arbitrator also concluded that, under these circumstances, Article 22, Section 2 of the parties' agreement did not require the Agency to provide notice to the Union because the notice requirement contained in that provision applied only when the Agency changed the work hours of full-time employees after they were hired.

**III. Analysis and Conclusion: The award does not fail to draw its essence from the parties' agreement.**

The Union argues that the award fails to draw its essence from the parties' agreement because the Arbitrator's interpretation of Article 22 is implausible and evidences a manifest disregard of the agreement.<sup>2</sup> 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.<sup>3</sup> Under this standard, the Authority will find that an arbitration award is deficient as failing to draw its essence from the parties' agreement when, among other things, the appealing party establishes that the award does not represent a plausible interpretation of the agreement or evidences a manifest disregard of the agreement.<sup>4</sup> The Authority and the courts defer to arbitrators in this context "because it is the arbitrator's construction of the agreement for which the parties have bargained."<sup>5</sup>

The Union asserts that Article 22, Section 1 of the parties' agreement entitles all bargaining-unit employees to a forty-hour workweek.<sup>6</sup> According to the Union, the parties' agreement does not provide for a tour of duty of less than forty hours per week,<sup>7</sup> and the Arbitrator improperly ignored the forty-hour workweek requirement contained in Article 22, Section 1.<sup>8</sup>

The Union's assertions provide no basis for finding the award deficient. Article 22, Section 1 provides, in pertinent part, that an employee's "basic workweek is the day and hours of an administrative workweek which make up the employee's regularly scheduled [forty]-hour workweek, normally five [eight]-

<sup>1</sup> Award at 9 (internal quotation marks omitted).

<sup>2</sup> Exception at 7.

<sup>3</sup> See 5 U.S.C. § 7122(a)(2); see also *AFGE, Council 220*, 54 FLRA 156, 159 (1998).

<sup>4</sup> E.g., *AFGE, Local 2128*, 66 FLRA 801, 803 (2012) (*Local 2128*); *U.S. DOL (OSHA)*, 34 FLRA 573, 575 (1990) (*DOL*).

<sup>5</sup> *DOL*, 34 FLRA at 576.

<sup>6</sup> Exception at 7-8.

<sup>7</sup> *Id.* at 8-9.

<sup>8</sup> *Id.* at 10.

hour days, Monday through Friday.”<sup>9</sup> The Arbitrator’s determination that Article 22, Section 1 does not guarantee employees the right to a forty-hour workweek is a plausible interpretation of the language of this provision because this provision does not mandate that all employees must work forty hours per week.<sup>10</sup> Further, nothing in the language of Article 22, Section 1 prohibits the Agency from hiring part-time employees.<sup>11</sup> Thus, in these circumstances, we find that the Union has failed to demonstrate that the Arbitrator’s interpretation of Article 22, Section 1 is implausible or evidences a manifest disregard of the agreement.<sup>12</sup>

In addition, the Union argues that the Arbitrator’s determination – that the Agency had no obligation to notify the Union that it intended to hire part-time employees – is an unreasonable interpretation of the agreement because, as soon as a new employee is hired, that employee is covered by the agreement.<sup>13</sup> The Union similarly maintains that, because Article 22, Section 2 provides that the Union has the “right to bargain over the ‘abolishment of any shift,’” the Agency should have allowed the Union to bargain over its decision to hire part-time employees.<sup>14</sup>

As relevant here, Article 22, Section 2 of the parties’ agreement provides that “[e]mployees and the [U]nion will be notified of all changes in their hours of work, duty days[,] or location of work seven calendar days in advance of the changes” and that “the [U]nion does not waive its right to bargain over appropriate matters concerning the establishment or abolishment of any shift.”<sup>15</sup> The Arbitrator expressly interpreted the obligation to give notice as applying only to changes involving “existing employees.”<sup>16</sup> The Arbitrator also found that the Agency hired only new employees to work a thirty-two hour workweek and that there was no change to the work schedules of existing employees.<sup>17</sup> Based on these factual findings, which the Union does not assert are nonfacts, the Arbitrator concluded that the Agency was not required to provide notice to the Union.<sup>18</sup> As they are not contested as nonfacts, the Authority defers to

the Arbitrator’s factual findings.<sup>19</sup> Moreover, the Arbitrator’s interpretation of Article 22, Section 2 is consistent with the language of that provision. Consequently, we find that the Union has failed to demonstrate that the Arbitrator’s interpretation of Article 22, Section 2 is implausible or evidences a manifest disregard of the agreement.<sup>20</sup>

Accordingly, we conclude that the Union has failed to demonstrate that the award fails to draw its essence from the parties’ agreement, and we deny the Union’s exception.

#### IV. Decision

We deny the Union’s exception.

<sup>9</sup> Exception, Joint Ex. 1, Parties’ Agreement at 24.

<sup>10</sup> *See id.*; Award at 9.

<sup>11</sup> *See* Award at 9; Exception, Joint Ex. 1, Parties’ Agreement at 24.

<sup>12</sup> *See Local 2128*, 66 FLRA at 803; *AFGE, Local 2198*, 49 FLRA 575, 579 (1994).

<sup>13</sup> Exception at 8.

<sup>14</sup> *Id.* (quoting Exception, Joint Ex. 1, Parties’ Agreement at 24); *see also id.* at 9.

<sup>15</sup> Exception, Joint Ex. 1, Parties’ Agreement at 24.

<sup>16</sup> Award at 10.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *See SPORT Air Traffic Controllers Org.*, 66 FLRA 547, 550 (2012).

<sup>20</sup> *See id.*; *AFGE, Local 2328*, 61 FLRA 510, 512 (2006).