

65 FLRA No. 16

TIDEWATER VIRGINIA
FEDERAL EMPLOYEES
METAL TRADES COUNCIL
(Union)

and

UNITED STATES
DEPARTMENT OF THE NAVY
NAVAL FACILITIES
ENGINEERING COMMAND
MID-ATLANTIC (NAVFAC MIDLANT)
(Agency)

0-AR-4659

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DECISION

September 9, 2010

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

This matter is before the Authority on exceptions to an award of Arbitrator Edward C. Johnson 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.*

Under § 7122(a) of the Statute, an award is deficient if it is contrary to any law, rule, or regulation, or if 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

* The Agency filed an opposition to the Union's exceptions. The Authority issued an Order to Show Cause (Order) requiring the Agency to show why its opposition should not be rejected as untimely. Order at 2. In its response, the Agency effectively concedes that it miscalculated the due date for filing its opposition. Agency's Response to Order at 1. As the Agency has failed to establish extraordinary circumstances warranting waiving the expired time limit, we will not consider the Agency's opposition. See *U.S. Dep't of Homeland Sec., U.S. Customs & Border Prot.*, 64 FLRA 916, 918-19 (2010) (union's opposition not considered where union conceded that its opposition was "technically untimely" and failed to establish extraordinary circumstances to excuse the lack of timeliness).

Authority precedent, the Authority concludes that the award is not deficient on the grounds raised in the exceptions and set forth in § 7122(a). See *AFGE, Local 1668*, 50 FLRA 124, 126 (1995) (award not deficient on ground that arbitrator failed to provide a fair hearing where excepting party fails to demonstrate that the arbitrator refused to hear or consider pertinent and material evidence, or that other actions in conducting the proceeding so prejudiced a party so as to affect the fairness of the proceeding as a whole); *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 exceptions are denied.