

65 FLRA No. 34

SOCIAL SECURITY ADMINISTRATION
HIGHLAND PARK, MICHIGAN
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 3239
(Union)

0-AR-4676

DECISION

September 30, 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 Joseph W. Gardner filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Union did not file an opposition to the Agency's exceptions.

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 exceptions and set forth in § 7122(a).^{*} *See NFFE,*

^{*} To the extent that the Agency's statement concerning when an arbitrator exceeds his authority could be construed as an assertion that the Arbitrator exceeded his authority here, *see* Exceptions at 5, the Agency provides no argument in support of this statement. We thus reject this statement as a bare assertion. *See, e.g., AFGE, Local 446*, 64 FLRA 15, 16 (2009). To the extent that the Agency asserts that the award is contrary to management's right to determine the number of employees required to accomplish its mission under § 7106(a)(1) of the Statute, *see* Exceptions at 2-3, such assertion was not raised before the Arbitrator and, therefore, is not properly before the Authority under 5 C.F.R. § 2429.5. *See SSA, San Juan, P.R.*, 63 FLRA 589,

Local 1827, 52 FLRA 1378, 1385 (1997) (exception challenging an arbitrator's evaluation of the evidence and determination of the weight to be accorded such evidence provides no basis for finding an award deficient); *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 Agency's exceptions are denied.

589 n.* (2009) (citing *AFGE, Local 1741*, 57 FLRA 696 (2002)). Accordingly, we dismiss this exception.