

68 FLRA No. 135

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1858
(Union)

and

UNITED STATES
DEPARTMENT OF THE ARMY
U.S. ARMY SPACE AND MISSILE
DEFENSE COMMAND
REDSTONE ARSENAL, ALABAMA
(Agency)

0-AR-5116

ORDER DISMISSING EXCEPTIONS

August 26, 2015

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

This matter is before the Authority on exceptions to an award of Arbitrator Dennis R. Nolan filed by the Union under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute)¹ and part 2425 of the Authority's Regulations.² The Agency filed an opposition to the Union's exceptions.

We have determined that this case is appropriate for issuance as an expedited, abbreviated decision under § 2425.7 of the Authority's Regulations.³

Sections 2425.4(c) and 2429.5 of the Authority's Regulations⁴ bar consideration of the Union's exception that "the [A]rbitrator's interpretation of the parties['] agreement did not abrogate management's rights since it reserved to management the right to evaluate all performance."⁵ To the extent that the Union is arguing that the award is contrary to § 7106 of the Statute, the Union should have known to raise this argument before

the Arbitrator, but the record does not reflect that the Union did so. Therefore, we dismiss this exception.⁶

The Union argues further that: (1) the Arbitrator "did not take in consideration" a pertinent Agency policy;⁷ (2) "there was no way the Union could force" a particular witness to testify as the award allegedly suggests;⁸ and (3) the award is allegedly "factual[ly] incorrect[] and not supported by the evidence."⁹ These arguments do not raise recognized grounds for review listed in § 2425.6(a)-(c) of the Authority's Regulations¹⁰ and do not otherwise demonstrate a legally recognized basis for setting aside the award. Therefore, we dismiss these exceptions under § 2425.6(e)(1) of the Authority's Regulations.¹¹

Accordingly, we dismiss the Union's exceptions.

¹ 5 U.S.C. § 7122(a).

² 5 C.F.R. pt. 2425.

³ *Id.* § 2425.7 ("Even absent a [party's] request, the Authority may issue expedited, abbreviated decisions in appropriate cases.").

⁴ *Id.* §§ 2425.4(c), 2429.5.

⁵ Exceptions at 4.

⁶ *U.S. DHS, U.S. CBP*, 66 FLRA 335, 337-38 (2011) (where a party should have known to make an argument to the arbitrator, but the record does not indicate that the party did so, §§ 2425.4(c) and 2429.5 of the Authority's Regulations bar the party from raising that argument to the Authority).

⁷ Exceptions at 1.

⁸ *Id.*

⁹ *Id.* at 2; *see also id.* at 3, 5.

¹⁰ 5 C.F.R. § 2425.6(a)-(c).

¹¹ *Id.* § 2425.6(e)(1); *see also AFGE, Local 2272*, 67 FLRA 335, 335 n.2 (2014) (exceptions are subject to dismissal under § 2425.6(e)(1) of the Authority's Regulations if they fail to raise a recognized ground for review or, in the case of exceptions based on private-sector grounds not currently recognized by the Authority, if they provide insufficient citation to legal authority establishing the grounds upon which the party filed its exceptions) (citing *AFGE, Local 3955, Council of Prison Locals 33*, 65 FLRA 887, 889 (2011)).