

69 FLRA No. 71

NATIONAL ASSOCIATION
OF GOVERNMENT EMPLOYEES
LOCAL R3-10
SEIU
(Union)

and

UNITED STATES
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
(Agency)

0-AR-5175

DECISION

July 29, 2016

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 John Paul Simpkins 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.

In its opposition, the Agency opposes an expedited, abbreviated decision under § 2425.7 of the Authority's Regulations,³ but does not support or explain that position.⁴ We have determined that this case is appropriate for issuance as an expedited, abbreviated decision under § 2425.7 of the Authority's Regulations.⁵

As a preliminary matter, the Union requested permission to file, and did file, a reply to the Agency's opposition (Union's reply).⁶ But the Union merely makes arguments that it already made, or could have made, in its exceptions. Therefore, because the Union

has not demonstrated why the Authority should consider the Union's reply, we do not consider it.⁷

The Union filed three exceptions. The first, asserting that the Arbitrator violated the parties' agreement, does not raise a recognized ground for review listed in § 2425.6(a)-(c) of the Authority's Regulations⁸ and does not demonstrate a legally recognized basis for setting aside the award.⁹ Therefore, we dismiss this exception under § 2425.6(e)(1) of the Authority's Regulations.¹⁰

The Union argues further that the Arbitrator exceeded his authority, but does not support that argument. Therefore, we deny this exception under § 2425.6(e)(1).¹¹

As for the Union's remaining nonfact exception, upon careful consideration of the entire record in this case and Authority precedent, we conclude that the award is not deficient on the ground raised in the exception.¹²

⁷ *U.S. Dep't of Transp., FAA*, 66 FLRA 441, 444 (2012) (citing *NTEU*, 65 FLRA 302, 305 (2010)) (where a party seeks to raise issues that it could have addressed, or did address, in a previous submission, the Authority ordinarily denies requests to file supplemental submissions concerning those issues).

⁸ 5 C.F.R. § 2425.6(a)-(c).

⁹ For the same reasons that he articulated in *AFGE, Nat'l Border Patrol Council, Local 2455*, 69 FLRA 171, 174-75 (2016) (*Local 2455*) (Concurring Opinion of Member Pizzella), Member Pizzella notes that he would conclude that the Union's argument – that the Arbitrator “violated” the parties' agreement – raises an obvious essence exception. He would instead address and deny the exception on its merits.

¹⁰ 5 C.F.R. § 2425.6(e)(1); *see also Local 2455*, 69 FLRA at 172 (Member Pizzella concurring); *AFGE, Local 2272*, 67 FLRA 335, 335 n.2 (2014) (citing *AFGE, Local 3955, Council of Prison Locals 33*, 65 FLRA 887, 889 (2011)) (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 grounds upon which the party filed its exceptions).

¹¹ 5 C.F.R. § 2425.6(e)(1); *see also U.S. DOJ, Fed. BOP, Metro. Corr. Ctr., N.Y.C., N.Y.*, 67 FLRA 442, 450 (2014) (exceptions are subject to denial under § 2425.6(e)(1) of the Authority's Regulations if they fail to support arguments that raise recognized grounds for review); *Fraternal Order of Police, Pentagon Police Labor Comm.*, 65 FLRA 781, 784-85 (2011) (same).

¹² *U.S. Dep't of the Air Force, Lowry Air Force Base, Denver, Colo.*, 48 FLRA 589, 593-94 (1993) (award not deficient as based on a nonfact where excepting party either challenges a factual matter that the parties disputed at arbitration or fails to demonstrate that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result).

¹ 5 U.S.C. § 7122(a).

² 5 C.F.R. pt. 2425.

³ *Id.* § 2425.7.

⁴ *See* Agency's Opp'n at 3.

⁵ 5 C.F.R. § 2425.7 (“Even absent a [party's] request, the Authority may issue expedited, abbreviated decisions in appropriate cases.”).

⁶ *See generally* Union's Reply to Agency's Opp'n (Mar. 9, 2016).

Accordingly, we dismiss, in part, and deny, in part, the Union's exceptions.