

69 FLRA No. 80

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2883
(Union)

and

UNITED STATES
DEPARTMENT OF HEALTH AND
HUMAN SERVICES
CENTERS FOR DISEASE CONTROL AND
PREVENTION
(Agency)

0-AR-5198

DECISION

September 8, 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 J. Dunn filed by the Union under § 7122(a) of the Federal Service Labor-Management Relations Statute¹ 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

As preliminary matters, the Agency contends that §§ 2425.4(c) and 2429.5 of the Authority's Regulations⁴ bar consideration of two of the Union's arguments.⁵ First, the Agency argues that the Regulations bar the Union's fair-hearing exception.⁶ But because the Agency's argument in that regard misinterprets the Union's fair-hearing exception, the Agency does not provide a basis to dismiss the exception under §§ 2425.4(c) and 2429.5. Second, the Agency contends that the Regulations bar one of the Union's

arguments about whether the award draws its essence from the parties' agreement.⁷ However, the Union disputes that contention,⁸ and it is unclear whether there is evidence that the Union could have provided to demonstrate that it made this essence argument at arbitration. Nevertheless, as stated below, we find that the disputed essence argument lacks merit. Therefore, we find it unnecessary to resolve the Agency's second contention about §§ 2425.4(c) and 2429.5.

The Union argues that the Arbitrator exceeded his authority,⁹ but does not support that argument. Therefore, we deny that exception under § 2425.6(e)(1) of the Authority's Regulations.¹⁰ As for the Union's remaining fair-hearing, nonfact, essence, bias, and impossible-to-implement exceptions,¹¹ upon careful consideration of the entire record in this case and Authority precedent, we conclude that the award is not deficient on the grounds raised in those exceptions and set forth in § 7122(a).¹²

⁷ *Id.* at 7.

⁸ Exceptions at 5 (stating that Union "repeated[ly] assert[ed]" the disputed argument at arbitration).

⁹ *Id.* at 2, 14.

¹⁰ 5 C.F.R. § 2425.6(e)(1); *see also Fraternal Order of Police, Pentagon Police Labor Comm.*, 65 FLRA 781, 784 (2011) (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).

¹¹ Exceptions at 2 (fair hearing and nonfact), 2-14 (essence), 4 n.1 (bias), 14-15 (impossible to implement).

¹² 5 U.S.C. § 7122(a); *U.S. Dep't of VA, Med. Ctr., N. Chi., Ill.*, 52 FLRA 387, 398 (1996) (award not deficient because of bias on the part of an arbitrator where excepting party fails to demonstrate that the award was procured by improper means, that there was partiality or corruption on the part of the arbitrator, or that the arbitrator engaged in misconduct that prejudiced the rights of the party); *AFGE, Local 1869*, 50 FLRA 172, 174 (1995) (award not deficient as being incomplete, ambiguous, or contradictory where excepting party fails to establish that implementation of the award is impossible); *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 conducted the proceedings in a manner that so prejudiced the party as to affect the fairness of the proceeding as a whole); *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); *U.S. DOL (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 purposes of the agreement as to

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 Opp'n Form at 6-7.

⁶ *Id.*

Accordingly, we deny the Union's exceptions.

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).