

69 FLRA No. 23

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 12
(Union)

and

UNITED STATES
DEPARTMENT OF LABOR
(Agency)

0-AR-5138

DECISION

January 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 Jonathan E. Kaufmann 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 a preliminary matter, the Agency filed what appeared to be an untimely opposition to the Union's exceptions. In response, the Authority's Office of Case Intake and Publication issued an order (the order) directing the Agency to show cause why the Authority should consider its opposition.⁴ Although the Agency filed a motion requesting an extension of time to respond to the order (extension request), it did not do so before the regulatory deadline.⁵ Accordingly, we deny as untimely the Agency's extension request. In addition, we decline to consider either the Agency's response to the

order or the Agency's opposition to the Union's exceptions because neither was timely filed.⁶ Further, although the Union filed an opposition to the Agency's extension request (extension opposition), our finding that the extension request is untimely renders the extension opposition moot. Therefore, we decline to consider the extension opposition.⁷

As an additional preliminary matter, §§ 2425.4(c) and 2429.5 of the Authority's Regulations bar consideration of one of the Union's arguments. The Union argues that the Arbitrator applied the wrong legal standard and thereby prevented the Union from demonstrating that the Agency failed to follow merit-staffing principles when it selected an applicant from a certificate of eligibles.⁸ 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.⁹

In addition, two of the exceptions – that the Arbitrator “erred” by “disallowing the challenge to the merit[-]staffing process”¹⁰ and by “accepting the Agency's unsubstantiated statement that the merit[-]staffing selection was made from the corrected certificate of eligibles”¹¹ – do not raise a recognized ground for review listed in § 2425.6(a)-(c) of the Authority's Regulations¹² and do not demonstrate a legally recognized basis for setting aside the award.

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 Order to Show Cause at 1-2.

⁵ 5 C.F.R. § 2429.23(a) (“[r]equests for extensions of time shall be . . . received . . . not later than five . . . days before the established time limit for filing”).

⁶ *See U.S. Dep't of Transp., FAA, Flight Standards Serv., 220 & 230 Branches, Nw. Mountain Region, Renton, Wash.*, 68 FLRA 702, 703 (2015) (“the Authority has stated that, when the Authority issues an order directing a party to show cause why the Authority should consider a document, and the party's response does not comply with that order, the Authority will not consider the underlying document”); *see also* 5 C.F.R. §§ 2425.3(b), 2429.23(a).

⁷ *E.g., Broad. Bd. of Governors*, 66 FLRA 380, 384 (2011) (“Where the Authority declines to consider a document, the Authority also declines to consider a subsequent response to that document because the response is moot.”).

⁸ Exceptions at 5-6.

⁹ *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).

¹⁰ Exceptions at 3.

¹¹ *Id.* at 4.

¹² 5 C.F.R. § 2425.6(a)-(c).

Therefore, we dismiss these exceptions under § 2425.6(e)(1) of the Authority's Regulations.¹³

As for the Union's remaining 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 and set forth in § 7122(a).¹⁴

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

¹³ *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)).

¹⁴ *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 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).