69 FLRA No. 15

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
COUNCIL OF PRISON LOCALS 33
LOCAL 3690
(Union)

and

UNITED STATES
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
MIAMI, FLORIDA
(Agency)

0-AR-5129

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DECISION

December 3, 2015

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

I. Statement of the Case

Arbitrator Donald J. Spero issued an award finding that the Agency violated the parties' master collective-bargaining agreement (parties' agreement) when it failed to bargain over a change in overtime procedures. However, the Arbitrator also found that the Union failed to provide sufficient evidence for an award of backpay, and also denied the Union's request for attorney fees under the Back Pay Act (the Act).[1] The Union filed exceptions to the Arbitrator's denial of backpay and attorney fees.

The Union raises several exceptions challenging the Arbitrator's denial of backpay. First, the Union argues that the Arbitrator based his denial of backpay on two nonfacts, namely the Arbitrator's statements that "it cannot be determined from the [overtime] logs how many hours of overtime were lost"[2] and that "the Agency . . . did not have the opportunity to provide an alternative reason for the denial of the shift[-]conflict overtime."[3] Because both of these alleged nonfacts concern the Arbitrator's evaluation of the evidence – and an arbitrator's evaluation of the evidence cannot be challenged as a nonfact – we deny these exceptions.

Second, the Union contends that the Arbitrator's denial of backpay fails to draw its essence from the parties' agreement. Since the Union does not demonstrate that the Arbitrator's denial of backpay fails to draw its essence from the parties' agreement, we deny this exception.

Third, the Union argues that the award is contrary to the Act because, in denying backpay, the Arbitrator failed to engage in the analysis required under the Act. Because the Arbitrator made sufficient findings to deny backpay, we deny this exception.

Fourth, the Union, in challenging the denial of backpay, contends that the Arbitrator denied it a fair hearing and that his analysis was contrary to law. Because the Union fails to support these exceptions, we deny them.

Fifth, the Union argues that the Arbitrator's conclusion that the parties' agreement limits any recovery period under the Act fails to draw its essence from the parties' agreement. However, because the Union bases this exception on dicta, we deny it.

The Union also raises several exceptions concerning the Arbitrator's denial of attorney fees under the Act. The Union argues that the denial of attorney fees is contrary to law, in part, because the Arbitrator did not complete the necessary analysis under the Act. However, because the Arbitrator completed the necessary analysis to deny attorney fees, we deny this exception.

The Union also contends that: (1) the Arbitrator's analysis stating that attorney fees could be available to the Agency under the Act is contrary to the Act, fails to draw its essence from the parties' agreement, and is based on a nonfact; and (2) the Arbitrator's analysis regarding an alleged conflict between the parties' agreement and the Act is contrary to law and fails to draw its essence from the parties' agreement. Because the denial of backpay is a separate and independent ground for the denial of attorney fees – and the Union does not successfully challenge this finding – these exceptions fail to demonstrate that the award is deficient, and we deny them.

[1] 5 U.S.C. § 5596.
[2] Exceptions at 5 (quoting Award at 15).
[3] *Id.* (internal quotation mark omitted).

II. Background and Arbitrator's Award

Prior to the events that led to the Union's grievance in this case, the parties agreed to a memorandum of understanding (MOU) concerning the assignment of overtime when there is a "shift conflict."[4] A shift conflict occurs when an employee's overtime shift begins before the end of an employee's regularly scheduled shift. Although the terms of the MOU prevent the assignment of overtime when there is a shift conflict, the Agency continued assigning shift-conflict overtime after the MOU. Some years later, the Agency instructed managers to not assign overtime when it would result in a shift conflict. The Union filed a grievance alleging that, by no longer assigning overtime shifts that would result in a shift conflict, the Agency violated the parties' agreement. The grievance remained unresolved, and the parties submitted the matter to arbitration.

At arbitration, the Union argued that the Agency had previously allowed employees to work an overtime shift even when there was a shift conflict. As such, the Union continued, the Agency violated the parties' agreement when it unilaterally changed that policy. As evidence of overtime hours lost due to the alleged violation, the Union presented overtime logs as well as two employees as witnesses. The Union also requested attorney fees under the Act.

The Agency argued that it had not changed its overtime procedures, but that it was simply enforcing or "re-implementing" the MOU.[5] The Agency also challenged the Union's calculation of lost overtime hours.

As relevant here, the Arbitrator concluded that, despite the MOU, the parties had a "custom and practice of allowing . . . shift[-]conflict overtime"[6] and that "the Agency is bound by established custom and practice to permit the assignment of shift[-]conflict overtime to [employees]."[7] Furthermore, the Arbitrator found that the Agency had violated the parties' agreement by "fail[ing] to fulfill its duty to bargain with respect to" a change in a condition of employment when it discontinued this custom and practice and he ordered a resumption of the practice.[8] However, the Arbitrator – finding that "[t]he Union's evidence is in more than one respect insufficient to support an award of [backpay]" – did not award any backpay.[9] Specifically concerning the Union's evidence, the Arbitrator found that "it cannot be determined from the [overtime] logs how many hours of overtime were lost for each bypassed shift" and that "[w]ith details so lacking [from the overtime logs,] the Agency . . . did not have the opportunity to provide an alternative reason for denial of the shift[-]conflict overtime."[10]

Additionally, the Arbitrator – noting that an award of attorney fees under the Act requires as a threshold matter an award of backpay – found that "[s]ince no [backpay] is awarded herein[,] there is no [backpay] award for an award of attorney fees" under the Act.[11]

The Union filed exceptions to the award; the Agency did not file an opposition.

III. Preliminary Matters: Sections 2425.4(c) and 2429.5 of the Authority's Regulations bar a Union argument.

Under §§ 2425.4(c) and 2429.5 of the Authority's Regulations, the Authority will not consider any evidence or arguments that could have been, but were not, presented to the Arbitrator.[12]

In its exceptions, the Union argues that "[c]ase decisions regarding record[ ]keeping and burden of proof under the [Fair Labor Standards Act (FLSA)[13]] overtime provisions are equally applicable regarding overtime under" the Act.[14] Specifically, the Union argues that, under the FLSA and cases applying the FLSA, the Union produced "sufficient evidence to show the amount and extent of . . . work as a matter of just and reasonable inference."[15] However, the Union did not argue for the application of the FLSA or related case law before the Arbitrator. As the Union could have raised these arguments before the Arbitrator, but did not do so, we will not consider them now.[16] Accordingly, we dismiss the portions of the exceptions that rely on these arguments.

[4] Award at 2 (internal quotation marks omitted).
[5] *Id.* at 11.
[6] *Id.* at 10.
[7] *Id.* at 14.
[8] *Id.* at 10.
[9] *Id.* at 15.
[10] *Id.*
[11] *Id.* at 18.
[12] 5 C.F.R. §§ 2425.4(c), 2429.5; *U.S. DOL*, 67 FLRA 287, 288 (2014) (*DOL*); *AFGE, Local 3448*, 67 FLRA 73, 73-74 (2012) (*Local 3448*).
[13] 29 U.S.C. §§ 201-19.
[14] Exceptions at 10.
[15] *Id.* (citing *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 688 (1946)); *see also id.* at 13 (quoting *AFGE, Local 1741*, 62 FLRA 113, 119-20 (2007)) (internal quotation mark omitted).
[16] 5 C.F.R. §§ 2425.4(c), 2429.5; *DOL*, 67 FLRA at 288; *Local 3448*, 67 FLRA at 73-74.

IV. Analysis and Conclusions

A. The Arbitrator's denial of backpay is not deficient.

1. The Arbitrator did not base his denial of backpay on a nonfact.

The Union argues that the Arbitrator based his denial of backpay on nonfacts.[17] To establish that an award is based on a nonfact, the excepting party must show that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result.[18] Additionally, the Authority has held that a disagreement with an arbitrator's evaluation of evidence provides no basis for finding an award deficient.[19]

First, the Union argues that the Arbitrator based his finding that "it cannot be determined from the [overtime] logs how many hours of overtime were lost for each bypassed shift" on a nonfact.[20] However, this exception challenges the Arbitrator's evaluation of the evidence, specifically the overtime logs. As noted above, a disagreement with an arbitrator's evaluation of evidence provides no basis for finding an award deficient.[21] Consequently, we deny this exception.

Second, the Union argues that the Arbitrator's finding that, "[w]ith details so lacking [from the overtime logs], the Agency . . . did not have the opportunity to provide an alternate reason for denial of the shift[-]conflict overtime" is based on a nonfact.[22] Specifically, the Union contends that this finding was based on a nonfact because the Agency "had every opportunity, but no other alternative reasons were offered by [the Agency] to deny the overtime."[23] However, as with the previous alleged nonfact, this alleged nonfact challenges the Arbitrator's evaluation of the evidence – again the overtime logs – and provides no basis for finding the award deficient.[24] As a result, we deny this exception.

2. The Arbitrator's denial of backpay does not fail to draw its essence from the parties' agreement.

The Union argues that the Arbitrator's denial of backpay fails to draw its essence from the parties' agreement.[25] When an exception alleges that an award fails to draw its essence from the agreement, the Authority reviews the arbitrator's interpretation of the agreement. In reviewing an arbitrator's interpretation of a collective-bargaining agreement, the Authority applies the deferential standard of review that federal courts use in reviewing arbitration awards in the private sector.[26] Under this standard, the Authority will find that an arbitration award is deficient as failing to draw its essence from the parties' agreement when the appealing party establishes that the award: (1) cannot in any rational way be derived from the agreement; (2) is so unfounded in reason and fact and so unconnected with the wording and purposes of the collective-bargaining agreement as to manifest an infidelity to the obligation of the arbitrator; (3) does not represent a plausible interpretation of the agreement; or (4) evidences a manifest disregard of the agreement.[27] The Authority and the courts defer to arbitrators in this context "because it is the arbitrator's construction of the agreement for which the parties have bargained."[28]

The Union contends that the Arbitrator's "failure to consider relief under the [Act]"[29] and his finding that "[e]ach infraction must be grieved as the circumstances warrant"[30] fail to draw their essence from the portion of the parties' agreement "regarding the scope and coverage of the negotiated grievance procedure and [a]rbitration clauses."[31] The Union also cites a portion of the parties' agreement "regarding whether 'overtime assignments are distributed and rotated equitably among bargaining[-]unit employees, and appropriate relief where that is not accomplished.'"[32] Additionally, the Union notes that the parties' agreement allows that "[s]pecific procedures regarding overtime assignments may be negotiated

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[17] Exceptions at 5, 15.
[18] *U.S. Dep't of VA, Bd. of Veterans Appeals*, 68 FLRA 170, 172 (2015) (Member Pizzella dissenting); *NFFE, Local 1984*, 56 FLRA 38, 41 (2000).
[19] *AFGE, Local 953*, 68 FLRA 644, 646 (2015) (*Local 953*); *AFGE, Local 3295*, 51 FLRA 27, 32 (1995).
[20] Exceptions at 5 (quoting Award at 15) (internal quotation mark omitted).
[21] *Local 953*, 68 FLRA at 646.
[22] Exceptions at 5 (quoting Award at 15) (internal quotation mark omitted).
[23] *Id*. at 15.
[24] *Local 953*, 68 FLRA at 646.
[25] Exceptions at 9-10.
[26] 5 U.S.C. § 7122(a)(2); *Independent Union of Pension Employees for Democracy & Justice*, 68 FLRA 999, 1003 (2015) (*IUPEDJ*) (citing *AFGE, Council 220*, 54 FLRA 156, 159 (1998)).
[27] *IUPEDJ*, 68 FLRA at 1003 (2015) (citing *U.S. DOL* (*OSHA*), 34 FLRA 573, 575 (*OSHA*) (1990)).
[28] *IUPEDJ*, 68 FLRA at 1003 (internal quotation marks omitted), *OSHA*, 34 FLRA at 576.
[29] Exceptions at 10.
[30] *Id.* at 9 (quoting Award at 16) (internal quotation marks omitted).
[31] *Id.* at 10.
[32] *Id.* (quoting the parties' agreement).

locally."[33] However, outside of quoting the language of the parties' agreement, the Union does not provide any argument explaining how the Arbitrator's denial of backpay or statement that "[e]ach infraction must be grieved as the circumstances warrant" fails to draw its essence from the parties' agreement.[34] Consequently, the Union has failed to demonstrate that the award fails to draw its essence from the agreement, and we deny this exception.[35]

3. The Arbitrator's denial of backpay is not contrary to the Act.

The Union contends that the award is contrary to the Act because the Arbitrator "never engaged in any analysis required under the [Act] to determine an unjustified [or] unwarranted personnel action[; or] that the personnel action resulted in the withdrawal or reduction of an employee's pay, allowances[,] or differentials."[36] When an exception involves an award's consistency with law, the Authority reviews any question of law raised by the exception de novo.[37] In applying the standard of de novo review, the Authority assesses whether an arbitrator's legal conclusions are consistent with the applicable standard of law.[38] In making this assessment, the Authority defers to the arbitrator's underlying factual findings.[39]

The Act authorizes an award of backpay *only* when an arbitrator finds that: (1) the aggrieved employee was affected by an unjustified or unwarranted personnel action; and (2) that action resulted in the withdrawal or the reduction of an employee's pay, allowances, or differentials.[40]

The Union argues that the Arbitrator never determined whether an unjustified or unwarranted personnel action resulted in the withdrawal or reduction of an employee's pay, allowance, or differentials. However, the Arbitrator made findings in regard to both requirements under the Act.

First, the Arbitrator found that the Agency violated the parties' agreement by changing a condition of employment – the shift-overtime policy – without first bargaining with the Union. A violation of a collective-bargaining agreement constitutes an unjustified or unwarranted personnel action.[41] Second, when evaluating the Union's evidence regarding an alleged withdrawal or reduction of employees' pay, allowances, or differentials, the Arbitrator found that "[t]he Union's evidence is in more than one respect insufficient to support an award of [backpay]."[42] Specifically, the Arbitrator found that "it cannot be determined from the [overtime] logs how many hours of overtime were lost for each bypassed shift" and that "details [were] so lacking [that] the Agency . . . did not have the opportunity to provide an alternative reason for denial of the shift[-]conflict overtime."[43] The Union does not successfully challenge these findings. By failing to demonstrate that there was any withdrawal or reduction of an employee's pay, allowances, or differentials, the Union failed to fulfill the Act's second requirement for backpay. Because the Union failed to prove the second requirement of the Act's test, the Arbitrator could not award any backpay under the Act.[44] Consequently, the Arbitrator completed the necessary analysis to deny backpay.

The Union cites several Authority cases to support this exception.[45] However, unlike in this case, none of those cases involved arbitral findings that the evidence was insufficient to support an award of backpay; in each of the cited cases, the arbitrator in that case awarded backpay. As such, these cases are inapposite and do not support the Union's argument.

Because the Arbitrator completed the required analysis for denying backpay, the Union has not demonstrated that the denial of backpay is contrary to the Act. We therefore deny this exception.

[33] *Id.* (internal quotation marks omitted).
[34] Award at 16 (internal quotation marks omitted).
[35] 5 C.F.R. § 2425.6(e) ("An exception may be subject to . . . denial if . . . [t]he excepting party fails to . . . support a ground . . . .").
[36] Exceptions at 14.
[37] *NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)).
[38] *U.S. DOD, Dep'ts of the Army & the Air Force, Ala. Nat'l Guard, Northport, Ala.*, 55 FLRA 37, 40 (1998).
[39] *Id.*
[40] 5 U.S.C. § 5596(b)(1); s*ee also U.S. Dep't of the Air Force, Warner Robins Air Force Base, Ga.*, 56 FLRA 541, 543 (2000) (*Dep't of the Air Force*) (citing *U.S. HHS*, 54 FLRA 1210, 1218-19 (1998)).
[41] *NAGE, SEIU, Local 551*, 68 FLRA 285, 289 (2015) (citing *U.S. Dep't of the Treasury, IRS, St. Louis, Mo.*, 67 FLRA 101, 105 (2012)).
[42] Award at 15.
[43] *Id.*
[44] 5 U.S.C. § 5596(b)(1); *see also Dep't of the Air Force*, 56 FLRA at 543 (citation omitted).
[45] Exceptions at 13-14 (citing *U.S. Dep't of Transp., FAA, Wash., D.C.*, 55 FLRA 322 (1999); *U.S. DOJ, Fed. BOP, U.S. Penitentiary, Marion, Ill.*, 60 FLRA 728 (2005); *U.S. Dep't of Transp., FAA*, 63 FLRA 502 (2009); *U.S. Dep't of Transp., FAA*, 63 FLRA 646 (2009); *U.S. DOJ, Fed. BOP, U.S. Penitentiary, Atwater, Cal.*, 66 FLRA 737 (2012)).

4. The Union fails to support two of its exceptions challenging the Arbitrator's denial of backpay.

Under § 2425.6(e)(1) of the Authority's Regulations, an exception "may be subject to . . . denial if . . . [t]he excepting party fails to . . . support a ground" listed in § 2425.6(a)-(c), "or otherwise fails to demonstrate a legally recognized basis for setting aside the award."[46]

The Union alleges that the Arbitrator denied it a fair hearing.[47] However, beyond simply stating that the Arbitrator denied the Union a fair hearing, the Union provides no further support for this exception. Because the Union has failed to support this exception, we deny it.[48]

Furthermore, the Union argues that the Arbitrator's analysis of *AT&T Mobility v. Vincent Concepcion* (*AT&T*)[49] and resulting statement that "[e]ach infraction must be grieved as the circumstances warrant"[50] are contrary to law.[51] Citing *AT&T*, the Arbitrator concluded that "[e]ach infraction must be grieved as the circumstances warrant" because "[a] massive claim for lost wages is impractical to manage" since "[e]ach grievant must present evidence of any act complained of in sufficient detail to permit the [Agency] to address it."[52] However, beyond stating that the Arbitrator based his analysis on "inapposite"[53] dicta, the Union cites neither law nor case law explaining how such an analysis is contrary to law. As such, the Union has also failed to support this exception, and we deny it.[54]

5. The Union bases the remainder of its exceptions concerning the denial of backpay on dicta.

The Union argues that the award is contrary to the Act and fails to draw its essence from the agreement because the Arbitrator found that the parties' agreement would limit the recovery period under the Act.[55] After finding that "[t]he Union's evidence is in more than one respect insufficient to support an award of [backpay],"[56] the Arbitrator stated in a footnote that, "[s]ince there is no pecuniary award[,] the limitation period for which [backpay] may be granted is academic."[57] Nevertheless, the Arbitrator then proceeded to state that the parties' agreement limited any recovery period to forty days, "[notwithstanding] the Union's assertion that the [Act] allows a recovery for as much as six years[']wages."[58]

However, as the Arbitrator noted, his statements regarding the recovery period were "academic"[59] in the absence of any award of backpay. Consequently, these statements were not essential to the Arbitrator's decision, and are therefore dicta.[60] Dicta do not provide a basis on which to find an award deficient.[61] Because the Union bases these exceptions on dicta, we deny them.

B. The Arbitrator's denial of attorney fees under the Act is not deficient.

1. The Arbitrator completed the necessary analysis to deny attorney fees under the Act.

The Union argues that the award is contrary to the Act, in part, because the Arbitrator "never engaged in the analysis required under the [Act] regarding [a] prevailing party; the warranted in the interest of justice standard; or permitted further requested filings by the Union regarding the reasonableness of the attorney fees."[62]

The threshold requirement for entitlement of attorney fees under the Act is a finding that an employee (1) "ha[s] been affected by an unjustified or unwarranted personnel action"; (2) "which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee."[63] After

[46] 5 C.F.R. § 2425.6(e)(1).
[47] Exceptions at 3, 5.
[48] 5 C.F.R. § 2425.6(e)(1) ("An exception may be subject to . . . denial if . . . [t]he excepting party fails to . . . support a ground . . . .").
[49] 563 U.S. 333 (2011).
[50] Award at 16 (quoting earlier arbitration award) (internal quotation marks omitted).
[51] Exceptions at 9.
[52] Award at 16.
[53] Exceptions at 9.
[54] 5 C.F.R. § 2425.6(e)(1).
[55] Exceptions at 4.
[56] Award at 15.
[57] *Id.* at 15 n.3.
[58] *Id.*
[59] *Id.*
[60] Black's Law Dictionary 519 (9th ed. 2009) (defining judicial dictum as "[a]n opinion by a court on a question that is directly involved, briefed, and argued by counsel, and even passed on by the court, but that is not essential to the decision"); *id.* at 1177 (defining obiter dictum as "[a] judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential").
[61] *U.S. DOJ, Fed. BOP, U.S. Penitentiary, Coleman II, Fl.*, 68 FLRA 52, 56 (2014); *Broad. Bd. of Governors, Office of Cuba Broad.*, 64 FLRA 888, 891-92 (2010); *NFFE, Local 1827*, 52 FLRA 1378, 1385 (1997); *AFGE, Local 1668*, 51 FLRA 714, 719 (1995).
[62] Exceptions at 17.
[63] 5 U.S.C. § 5596(b)(1); *see NAGE, SEIU, Local Union 551*, 68 FLRA 285, 289 (2015) (internal quotation marks omitted).

satisfying the threshold issues, the Act further requires that an award of attorney fees be: (1) in conjunction with an award of backpay to the grievant on correction of the personnel action; (2) reasonable and related to the personnel action; and (3) in accordance with standards established under 5 U.S.C. § 7701(g), which pertains to attorney fees awarded by the Merit Systems Protection Board.[64] The prerequisites for an award under 5 U.S.C. § 7701(g) are that: (1) the employee must be the prevailing party; (2) the award of attorney fees must be warranted in the interest of justice; (3) the amount of fees must be reasonable; and (4) the fees must have been incurred by the employee.[65]

Here, the Arbitrator determined that attorney fees under the Act were not warranted since he awarded no backpay[66] – a finding that the Union does not successfully challenge. After the Arbitrator found that no backpay was warranted, the Act required no further analysis for a denial of attorney fees.[67] Because the Arbitrator completed the necessary analysis to deny attorney fees, the Union has not demonstrated that the denial of attorney fees is contrary to the Act. Consequently, we deny this exception.

2. The Union's remaining exceptions fail to challenge a separate and independent basis for the Arbitrator's denial of attorney fees.

The Union raises several additional exceptions challenging the Arbitrator's denial of attorney fees under the Act. Specifically the Union argues that: (1) the Arbitrator's analysis stating that attorney fees could be available to the Agency under the Act is contrary to the Act, fails to draw its essence from the parties' agreement, and is based on a nonfact;[68] and (2) the Arbitrator's analysis regarding an alleged conflict between the parties' agreement and the Act is contrary to law and fails to draw its essence from the parties' agreement.[69]

The Authority has recognized that, when an arbitrator has based an award on separate and independent grounds, an appealing party must establish that all of the grounds are deficient in order to have the Authority find the award deficient.[70] When an excepting party has not demonstrated that the award is deficient on one of the grounds the arbitrator relied on, and the award would stand on that ground alone, then it is unnecessary to address exceptions to the other grounds.[71]

The Arbitrator determined that there would be no award of attorney fees under the Act because he did not find an award of backpay. As noted above, this finding is sufficient to deny an award of backpay under the Act.[72] Consequently, regardless of any additional analysis by the Arbitrator concerning attorney fees for the Agency or an alleged conflict between the parties' agreement and the Act, the lack of an award of backpay is a separate and independent ground for the denial of attorney fees under the Act. Since the Union has failed to demonstrate that the Arbitrator erred in the denial of backpay – and the denial of backpay is a separate and independent ground for the denial of attorney fees – we deny these exceptions.

V. Decision

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

[64] *U.S. DOD, Def. Distrib. Region E., New Cumberland, Pa.*, 51 FLRA 155, 158 (1995).
[65] *Id.*
[66] Award at 18 ("Since no [backpay] is awarded herein[,] there is no [backpay] for an award of attorney fees . . . .").
[67] *U.S. Dep't of the Navy, Naval Surface Warfare Ctr., Indian Head Div.*, 60 FLRA 530, 532 (2004) (*Dep't of the Navy*) ("There is no dispute that the [a]rbitrator did not award backpay or any other monetary relief. Therefore, the award of attorney fees is not authorized under the [Act]."); *see also AFGE, Local 15*, 63 FLRA 89, 90 (2009) (denying attorney fees under the Act where the arbitrator awarded the grievant priority consideration and no monetary award).
[68] Exceptions at 15.
[69] *Id.* at 16.
[70] *U.S. DHS, U.S. CBP*, 68 FLRA 184, 188 (2015) (citing *SSA, Region VI*, 67 FLRA 493, 496 (2014) (*SSA*); *U.S. DOJ, Fed. BOP, Metro. Det. Ctr., Guaynabo, San Juan, P.R.*, 66 FLRA 81, 86 (2011)).
[71] *Id.* (citing *SSA*, 67 FLRA at 496; *U.S. Dep't of the Air Force, 442nd Fighter Wing, Whiteman Air Force Base, Mo.*, 66 FLRA 357, 364-65 (2011)).
[72] *Dep't of the Navy*, 60 FLRA at 532.