

71 FLRA No. 40

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
GAINESVILLE, FLORIDA
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2779
(Union)

0-AR-5391

DECISION

July 10, 2019

Before the Authority: Colleen Duffy Kiko, Chairman,
and Ernest DuBester and James T. Abbott, Members

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

The Agency requests an expedited, abbreviated decision under § 2425.7 of the Authority’s Regulations.³ The Union does not oppose the Agency’s request. Upon full consideration of the circumstances of this case – including the case’s complexity, potential for precedential value, and similarity to other, fully detailed decisions involving the same or similar issues, as well as the absence of any allegation of an unfair labor practice brought before the Arbitrator – we grant the Agency’s request.

As a preliminary matter, §§ 2425.4(c) and 2429.5 of the Authority’s Regulations bar consideration of the Agency’s arguments that the award violates management’s rights to determine the Agency’s budget, organization, and internal-security practices under

§ 7106(a)(1) of the Statute.⁴ The Agency should have raised these arguments before the Arbitrator, but the record does not reflect that the Agency did so.⁵ Therefore, we dismiss these arguments.⁶

The Agency also argues that the award is incomplete, ambiguous, or contradictory as to make implementation impossible, but does not support that argument. Therefore, we deny that exception under § 2425.6(e)(1) of the Authority’s Regulations.⁷

Under § 7122(a) of the Statute,⁸ an award is deficient if it is contrary to any law, rule, or regulation, or it is deficient on other grounds similar to those applied by federal courts in private sector labor-management relations. As for the Agency’s remaining exceptions, upon careful consideration of the entire record in this case and Authority precedent, we conclude that the award is not deficient on the nonfact, essence, contrary-to-law,

¹ 5 U.S.C. § 7122(a).

² 5 C.F.R. pt. 2425.

³ See *id.* § 2425.7 (in certain circumstances, “the excepting party may request” an expedited, abbreviated decision).

⁴ *Id.* §§ 2425.4(c), 2429.5.

⁵ See generally Exceptions, Ex. B, Agency’s Post-Hr’g Br.

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 5 C.F.R. § 2425.6(e)(1); see also *Fraternal Order of Police, Pentagon Police Labor Comm.*, 65 FLRA 781, 785 (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).

⁸ 5 U.S.C. § 7122(a).

and exceeded-authority grounds raised in the exceptions and set forth in § 7122(a).⁹

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

⁹ *U.S. Dep't of the Navy, Naval Base, Norfolk, Va.*, 51 FLRA 305, 307-08 (1995) (award not deficient on ground that arbitrator exceeded his or her authority where excepting party does not establish that arbitrator failed to resolve an issue submitted to arbitration, resolved an issue not submitted to arbitration, disregarded specific limitations on his or her authority, or awarded relief to those not encompassed within the grievance); *AFGE, Local 1802*, 50 FLRA 396, 398 (1995) (award not deficient as based on a nonfact where excepting party challenges a conclusion based on the arbitrator's interpretation of the parties' collective-bargaining agreement); *Prof'l Airways Sys. Specialists, Dist. No. 1, MEBA/NMU (AFL-CIO)*, 48 FLRA 764, 768-69 (1993) (award not deficient as contrary to law, rule, or regulation where excepting party fails to establish that the award is contrary to the law, rule, or regulation on which the party relies); *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 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).