

63 FLRA No. 175

UNITED STATES DEPARTMENT OF HOMELAND
SECURITY

U.S. CUSTOMS AND BORDER PROTECTION
(Agency)
and

NATIONAL TREASURY EMPLOYEES UNION
CHAPTER 160
(Union)
0-AR-4516

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DECISION

August 13, 2009

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Before the Authority: Carol Waller Pope, Chairman and
Thomas M. Beck, Member

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

Under § 7122(a) of the Statute, 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. Upon careful consideration of the entire record in this case and Authority precedent, the Authority concludes that the award is not deficient on the grounds raised in the exceptions and set forth in § 7122(a). *United States Dep't of the Navy, Naval Base, Norfolk, Va.*, 51 FLRA 305, 307-08 (1995) (award not deficient on ground that arbitrator exceeded his authority where excepting party does not establish that arbitrator failed to resolve an issue submitted to arbitration, disregarded specific limitations on his authority, or awarded relief to persons who were not encompassed within the grievance); *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 where excepting party fails to establish that the award is in any manner contrary to the law, rule, or regulation on which the party relies); *United States 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 non-fact where excepting party either challenges a factual matter that the parties disputed at arbitration or fails to demonstrate that the central fact underlying the award is clearly erroneous, but for which a different result would have been reached by the arbitrator).

Accordingly, the Agency's exceptions are denied.

1. In its opposition, the Union requests that the Agency's exceptions should be dismissed because they do not meet the requirements of 5 C.F.R. § 2425.2. Opposition at 10. We deny the Union's request. *See, e.g., Int'l Bhd. of Electrical Workers, Local 734*, 63 FLRA 115, 115 n.* (2009) (exceptions addressed where record sufficient under § 2425.2 of the Authority's Regulations). In addition, the Agency filed a reply to the Union's opposition requesting that the Authority decline to consider the Arbitrator's erratum addressing concerns raised in its exceptions. Under § 2429.26 of the Authority's Regulations, the Authority may use its discretion to grant leave allowing parties to file other documents where appropriate. The Authority has considered supplemental submissions in circumstances in which a party may not have had an opportunity to address certain matters in its exceptions. *See, e.g., NTEU*, 61 FLRA 871, 876 n.11 (2006) (Authority considered supplemental submission addressing applicability of pertinent Authority case that issued after the parties had submitted their initial filings); *see also United States Customs Serv.*, 46 FLRA 1080, 1080 n.1 (1992) (union permitted to file a supplemental submission addressing applicability of a court decision that was issued after the union filed its exceptions); *see AFGE, Local 1960*, 34 FLRA 799 (1990) (union would have been permitted to supplement its exception so as to address arbitrator's "[e]rrata [s]heet" had the exception been timely filed). As the erratum was submitted after the Agency had filed its exceptions, it has not had the opportunity to address the erratum and, consequently, we consider the Agency's reply.