

**70 FLRA No. 17**

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 779  
(Union)

and

UNITED STATES  
DEPARTMENT OF THE AIR FORCE  
82 TRW/JA  
SHEPPARD AIR FORCE BASE, TEXAS  
(Agency)

0-AR-5200

—  
DECISION

December 5, 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 Frederick P. Ahrens filed by the Union under § 7122(a) of the Federal Service Labor-Management Relations Statute<sup>1</sup> and part 2425 of the Authority's Regulations.<sup>2</sup> 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.<sup>3</sup>

There are two preliminary matters. The first preliminary matter concerns the timeliness of the Union's exceptions. The award is dated April 10, 2016,<sup>4</sup> and the Union filed its exceptions through the Authority's eFiling system on May 17, 2016,<sup>5</sup> apparently untimely.<sup>6</sup> The Authority's Office of Case Intake and Publication sent the Union an order to show cause why its exceptions should not be dismissed as untimely.<sup>7</sup> The Union filed a response, which included a photocopy of the postmark on

the award, dated April 12, 2016.<sup>8</sup> Therefore, because the due date to file exceptions was May 17, 2016 – the date that the Union filed its exceptions – we find the Union's exceptions timely and consider them.

The second preliminary matter concerns whether the Authority's regulations bar one of the Union's exceptions. We find that §§ 2425.4(c) and 2429.5 of the Authority's Regulations<sup>9</sup> bar consideration of the Union's exception that the award is contrary to law because it violates the "applica[ble hearsay] standard used by the Merit Systems Protection Board."<sup>10</sup> There is no indication in the award or the record that the Union raised this argument before the Arbitrator, despite both parties' reliance on testimonial evidence throughout the arbitration.<sup>11</sup> Therefore, because the Union could have raised, but did not raise, this argument at arbitration, we dismiss this exception.

Regarding the Union's remaining essence, exceeds-authority, and nonfact exceptions,<sup>12</sup> 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).<sup>13</sup>

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

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<sup>8</sup> Union's Resp., Exh. 5.

<sup>9</sup> 5 C.F.R. §§ 2425.4(c), 2429.5.

<sup>10</sup> Exceptions Br. at 6 (emphasis omitted).

<sup>11</sup> Award at 2-4.

<sup>12</sup> Exceptions Br. at 4-5 (essence), 1 (exceeds authority), 2-4 (nonfact).

<sup>13</sup> 5 U.S.C. § 7122(a); *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); *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); *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).

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<sup>1</sup> 5 U.S.C. § 7122(a).

<sup>2</sup> 5 C.F.R. pt. 2425.

<sup>3</sup> *Id.* § 2425.7 ("Even absent a [party's] request, the Authority may issue expedited, abbreviated decisions in appropriate cases.").

<sup>4</sup> Award at 4.

<sup>5</sup> Order at 2.

<sup>6</sup> 5 C.F.R. §§ 2425.2(b), 2429.21, 2429.22.

<sup>7</sup> Order at 1-2.