

66 FLRA No. 6

UNITED STATES
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
USP ADMINISTRATIVE MAXIMUM (ADX)
FLORENCE, COLORADO
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1302
COUNCIL OF PRISON LOCALS
(Union)

0-AR-4612
(65 FLRA 76 (2010))
(64 FLRA 1168 (2010))

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ORDER DISMISSING EXCEPTIONS

August 25, 2011

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Before the Authority: Carol Waller Pope, Chairman, and
Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This matter is before the Authority on exceptions filed by Union counsel (counsel) to an award of attorney fees by Arbitrator David W. Stiteler.¹ The Agency filed an opposition to the exceptions.

The Arbitrator awarded attorney fees to counsel; however, he did not award the full amount requested. For the reasons that follow, we dismiss counsel's exceptions.

II. Background and Arbitrator's Awards

In the underlying action, the Arbitrator concluded that the Agency violated the Fair Labor Standards Act and the parties' agreement by failing to compensate certain employees for pre- and post-shift duties. *See U.S. Dep't of Justice, Federal Bureau of Prisons, USP Admin. Maximum (ADX), Florence, Colo.*, 64 FLRA 1168, 1168 (2010). The Agency filed exceptions with the Authority, and the Authority dismissed them. *See id.* at 1170. The Authority denied the Agency's subsequent motion to reconsider that

decision. *See U.S. Dep't of Justice, Federal Bureau of Prisons, USP Admin. Maximum (ADX), Florence, Colo.*, 65 FLRA 76 (2010).

Counsel submitted a petition for attorney fees to the Arbitrator requesting \$103,226.40 for 159.3 hours at a billing rate of \$648 per hour. *See Award* at 1. The Arbitrator granted counsel's request for attorney fees. However, he concluded that the appropriate hourly billing rate was \$315 per hour, *see id.* at 3-4; moreover, he reduced the amount counsel requested by half because the Union lost one of the two claims it presented at arbitration, *see id.* at 4. Accordingly, the Arbitrator concluded that counsel was entitled to \$25,090 in attorney fees. *Id.* at 5.

III. Order to Show Cause

Counsel filed exceptions, and the Agency filed an opposition. Thereafter, the Authority issued an Order directing counsel to show cause why his exceptions should not be dismissed because he lacked standing to file them. *See Order to Show Cause (Order)* at 1. The Authority stated that the record indicated that counsel filed the exceptions on his own behalf, rather than as a representative of the Union, which was a party to the arbitration. *See id.* at 2. Based on this, the Authority stated that counsel did not appear to be a party to the arbitration within the meaning of the Authority's Regulations; as such, he appeared to lack standing to file exceptions. *See id.*

The Authority ordered counsel to provide evidence that he was authorized to file exceptions on behalf of the Union. *See id.* The Authority stated that a "[f]ailure to comply with this Order . . . may result in dismissal of [counsel's] exceptions." *Id.* Counsel did not respond to the Order.

IV. Analysis and Conclusion

The Authority will dismiss a party's filing when the party fails to comply with an Authority order concerning that filing. *See, e.g., NAGE, Local R3-32*, 57 FLRA 624, 624 n.* (2001) (*NAGE*) (dismissing opposition because party failed to submit response to Authority's order directing party to show cause why opposition should not be dismissed); *U.S. Dep't of Veterans Affairs, Med. Ctr., Coatesville, Pa.*, 56 FLRA 829, 830 n.1 (2000) (*VAMC*) (dismissing exceptions because party failed to submit response to Authority's order directing party to show cause why opposition should not be dismissed).

The Authority ordered counsel to demonstrate that the exceptions were filed on behalf of the Union. Counsel filed nothing in response. Counsel was given notice that his failure to respond to the Order could result

* The record indicates that counsel no longer represents the Union. *See Order to Show Cause* at 2. However, for purposes of this decision, we refer to him as counsel.

in dismissal of the exceptions. *See* Order at 2. Because counsel has failed to comply with the requirements of the Authority's Order, we dismiss the exceptions. *See NAGE*, 57 FLRA at 624 n.*; *VAMC*, 56 FLRA at 830 n.1.

V. Order

The exceptions are dismissed.