69 FLRA No. 87

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
GULF COAST VETERANS HEALTH CARE SYSTEM
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1045
(Union)

0-AR-5181

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DECISION

September 27, 2016

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

I. Statement of the Case

Arbitrator Trevor Bain issued an award finding that the Agency violated the parties' collective-bargaining agreement by failing to adequately communicate its performance expectations to the grievant, prior to evaluating his performance for the rating year at issue. The Arbitrator also found that the Agency failed to prove, by a preponderance of the evidence, the merits of the performance rating given to the grievant for the performance period at issue. We must decide three substantive questions.

The first question is whether the award is contrary to law because it is deficient under the second prong of the test set forth in *U.S. Department of the Treasury, BEP, Washington, D.C.* (*BEP*).[1] Because the Authority no longer applies the second prong of the *BEP* test, the answer to this question is no.

Second, we must decide whether the Arbitrator failed to give the Agency a fair hearing because he framed the issue to be heard at arbitration in a manner that created an improper burden of proof for the Agency. Because the Agency does not demonstrate that a specific standard of proof or review regarding the issues in this case is required by law or by the parties' agreement, the answer to this question is no.

[1] 53 FLRA 146, 151-54 (1997).

Third, we must decide whether the Arbitrator based his award on nonfacts because he determined that the results of an inspection were emailed five months – instead of two days – after the inspection occurred, and because he determined that no face-to-face meetings between the grievant and his supervisors occurred during the performance period at issue. Because the Agency does not demonstrate that these findings were central facts underlying the award, but for which the Arbitrator would have reached a different result, and because the issue of whether a meeting occurred between the grievant and the Agency was disputed at arbitration, the answer to this question is no.

For the foregoing reasons, as well as the reasons explained below, we dismiss, in part, and deny, in part, the Agency's exceptions.

II. Background and Arbitrator's Award

The grievant works as a housekeeping aid for the Agency. In the two years leading up to the performance period at issue, the grievant was given a performance rating of "exceptional."[2] However, for the performance period at issue in this case, the grievant was given a performance rating of "fully successful," which is one level lower than his prior rating of "exceptional."[3] Upon receiving this lower rating, the Union filed a grievance on behalf of the grievant, alleging that the grievant "had no communication during the performance[-]rating period that his rating would be downgraded[,] nor was he provided information on what he needed to do to be rated exceptional."[4] The grievance was unresolved, and the parties proceeded to arbitration.

At arbitration, the Arbitrator found the grievant's testimony to be credible. The grievant testified, in pertinent part, that at his mid-term progress review he met with his supervisor but received no written or oral feedback. The grievant also stated that his ratings on each performance element were the same as his mid-term progress review from the previous year, during which his supervisor had told him that he was "doing good."[5] He further testified that his supervisors had given him no feedback that he was not performing at an excellent level, that he had no idea why his rating was downgraded from previous years, and that when he asked for feedback he was "told to go back to work."[6]

The Arbitrator noted the testimony of two housekeeping supervisors who each testified that the grievant had received counseling from his supervisors on

[2] Award at 17.
[3] *Id*. at 17-18.
[4] Exceptions, Joint. Ex. 3, Grievance.
[5] Award at 16.
[6] *Id*. at 18.

two separate instances because of, respectively, alleged misconduct and safety violations. The housekeeping supervisors also testified that they inspected the facilities that the grievant was assigned to clean in June and July of the performance year at issue, and that the July inspection revealed several unacceptable areas. Although this inspection occurred in July, the Arbitrator found that the results of the inspection were not emailed to the grievant's supervisor until five months later, in November, after the performance period had concluded.

In his award, the Arbitrator framed the issues before him as follows: "whether the Agency has proven by a preponderance of the evidence the merits of the performance rating of the [g]rievant for the [relevant performance] period," and "whether the Union established that the Agency violated the [parties' a]greement by not informing the [g]rievant of what the performance criteria are for receiving an exceptional rating."[7]

The Arbitrator found, in pertinent part, that following the June and July inspections of the grievant's work area, the grievant's supervisor did not make efforts to improve the grievant's performance as the Arbitrator determined was required by the parties' agreement. On this point, the Arbitrator found that the results of these inspections were not sent to the grievant's immediate supervisor until days and months had passed, and the performance period had concluded. The Arbitrator also concluded that the results of the inspection provided "insufficient" justification for lowering the grievant's performance rating from the previous year.[8] The Arbitrator further found that the misconduct of which the grievant was accused was not related to his job performance, and that the parties' agreement requires that employee performance reviews be "strictly related to job performance."[9]

Regarding whether the Agency failed to inform the grievant what was required to achieve an exceptional rating, the Arbitrator found that "communication given to the [g]rievant regarding his performance was minimal" or "non-existent," not only during the performance period at issue but also for the four prior performance periods.[10] The Arbitrator noted that the parties' agreement requires at least one face-to-face meeting between each employee and the Agency and that Agency supervisors are responsible for "[p]roviding supervision and feedback on an on-going basis."[11] In this regard, the Arbitrator concluded that "[t]wo-way communication did not occur" between the grievant and the Agency during the performance period at issue and that "[n]o evidence was introduced" that the Agency held "face-to-face meetings" with the grievant sufficient to fulfill the requirements of the parties' agreement during the performance period.[12]

Accordingly, the Arbitrator found that the Agency failed to meet its burden to show that the grievant's performance rating of "fully successful" was correct after the Agency had rated the grievant "exceptional" the previous year, and that the Agency violated the parties' agreement by failing to adequately communicate with the grievant regarding his performance and the Agency's expectations.[13] The Arbitrator sustained the grievance and ordered the Agency to change the grievant's rating for the performance period at issue from fully successful to "exceptional."[14] He also ordered the Agency to arrange a meeting between the grievant and the grievant's supervisor to discuss the requirements for receiving an "exceptional" rating.[15]

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

III. Preliminary Matter: We dismiss the Agency's exceptions that fail to raise recognized grounds for review under § 2425.6(e)(1) of the Authority's Regulations.

The Authority's Regulations enumerate the grounds upon which the Authority will review arbitration awards.[16] In addition, the Regulations provide that if an arbitration award is deficient based on private-sector grounds not currently recognized by the Authority, then the excepting party "must provide sufficient citation to legal authority that establishes the grounds upon which the party filed its exceptions."[17] Furthermore, § 2425.6(e)(1) of the Regulations provides that an exception "may be subject to dismissal or denial if . . . [t]he excepting party fails to raise and support" the grounds listed in § 2425.6(a)-(c), or "otherwise fails to demonstrate a legally recognized basis for setting aside the award."[18] Thus, an exception that does not raise a recognized ground is subject to dismissal.[19]

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[7] *Id*. at 28.
[8] *Id.* at 31.
[9] *Id*.
[10] *Id*. at 32.
[11] *Id*. at 33.
[12] *Id*. at 35.
[13] *Id*. at 17.
[14] *Id*. at 37.
[15] *Id*.
[16] 5 C.F.R. § 2425.6(a)-(b); *see also NAIL, Local 17*, 68 FLRA 97, 98 (2014).
[17] 5 C.F.R. § 2425.6(c).
[18] *Id*. § 2425.6(e)(1).
[19] *AFGE, Local 1815*, 68 FLRA 26, 27 (2014) (*Local 1815*) (citing *AFGE, Local 738*, 65 FLRA 931, 932 (2011); *AFGE, Local 3955, Council of Prison Locals 33*, 65 FLRA 887, 889 (2011) (*Local 3955*)
(Member Beck dissenting, in part)).

In its exceptions, the Agency argues that "[t]he [g]rievance asserts or suggests that the Agency had some obligation to inform the [g]rievant before issuing him a rating other than another [e]xcellent."[20] The Agency then proceeds to list several provisions of the parties' agreement,[21] and argues that it "fulfilled any and all obligations" under these provisions.[22] Additionally, the Agency argues that, after the Arbitrator framed the two issues to be decided at arbitration, the Arbitrator did not directly address the second issue, and that the evidence "clearly" shows that the issue should have been resolved in the Agency's favor.[23] Finally, the Agency argues that the Arbitrator's finding that interactions with fellow employees are unrelated to performance "is not consistent with the [parties' agreement]."[24]

These exceptions fail to raise any grounds currently recognized by the Authority,[25] and do not cite any legal authority to support a ground not currently recognized by the Authority.[26] We do not construe parties' exceptions as raising grounds that the exceptions do not raise.[27] Therefore, consistent with § 2425.6(e)(1) of the Authority's Regulations, we dismiss these exceptions.[28]

IV. Analysis and Conclusions

A. The Agency fails to support five of its exceptions.

As explained above, § 2425.6(e)(1) of the Authority's Regulations provides that an exception "may be subject to dismissal or denial if . . . [t]he excepting party fails to raise and support a ground" listed in § 2425.6(a)-(c).[29] Consistent with § 2425.6(e)(1), when a party does not provide any arguments to support its exception, the Authority will deny the exception.[30]

Here, the Agency fails to provide any arguments to support five of its exceptions. First, the Agency argues that the award is contrary to "the Agency's policies that are government-wide regarding performance appraisals."[31] Second, the Agency argues that the Arbitrator "exceeded his authority by cancelling the Agency's appraisal of the [g]rievant's performance and substituting his own appraisal of the [g]rievant."[32] Third, the Agency argues that "[t]he [a]ward provided by the Arbitrator of ordering a meeting between the Agency and the [g]rievant is not supported by law, rule, regulation, or the relevant labor contract."[33] After listing these assertions on the first page of its exceptions, the Agency fails to support them with any arguments.

Fourth, the Agency argues that the award "violates management's rights" because the Arbitrator "ruled that the Agency cannot inspect an employee's work on a day when the employee is not on duty."[34] However, the Agency does not specify which management rights were violated, nor does it offer any arguments – other than the assertion that "[t]his ruling is not based upon anything" – to support its claim.[35]

Fifth, the Agency asserts that "the [A]rbitrator erroneously ruled that interactions with other employees are unrelated to performance," and argues that this ruling "is not consistent with . . . the rules, laws, and regulations related to performance appraisals."[36] However, the Agency does not specify any rules, laws, or regulations that this portion of the award purportedly violates.

Accordingly, we deny these exceptions as unsupported under § 2425.6(e)(1) of the Authority's Regulations.[37]

B. The award is not contrary to law.

The Agency argues that the award is contrary to law.[38] When an exception involves an award's consistency with law, the Authority reviews any question of law raised by the exception and the award de novo.[39] In applying the standard of de novo review, the Authority assesses whether an arbitrator's legal conclusions are

[20] Exceptions at 9.
[21] *Id*. at 9-13.
[22] *Id*. at 11.
[23] *Id*. at 22.
[24] *Id*. at 17.
[25] 5 C.F.R. § 2425.6(a)-(b).
[26] *Id*. § 2425.6(c).
[27] *Local 1815*, 68 FLRA at 27 (quoting *Local 3955*, 65 FLRA at 889).
[28] 5 C.F.R. § 2425.6(e)(1).
[29] *Id*.
[30] *NTEU, Chapter 67*, 67 FLRA 630, 630-31 (2014) (citing *AFGE, Nat'l Border Patrol Council, Local 2595*, 67 FLRA 361, 366 (2014)).
[31] Exceptions at 1.
[32] *Id*.
[33] *Id*.
[34] *Id*. at 22.
[35] *Id*.
[36] *Id*. at 16-17.
[37] 5 C.F.R. § 2425.6(e)(1); *see NAGE, Local R3-10, SEIU*, 69 FLRA 510, 510 n.11 (2016) (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) (citing *U.S. DOJ, Fed. BOP, Metro. Corr. Ctr., N.Y.C., N.Y.*, 67 FLRA 442, 450 (2014); *Fraternal Order of Police, Pentagon Police Labor Comm.*, 65 FLRA 781, 784-85 (2011)).
[38] Exceptions at 17-19.
[39] *AFGE, Local 3506*, 65 FLRA 121, 123 (2010) (*Local 3506*) (citing *NTEU, Chapter 24*, 50 FLRA 330, 332 (1995)); *U.S. Dep't of the Treasury, U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994) (citing 5 U.S.C. § 7122(a)(1)).

consistent with the applicable standard of law.[40] In making that assessment, the Authority defers to the arbitrator's underlying factual findings.[41]

The Agency argues that the Arbitrator's cancellation of the grievant's performance rating is contrary to law because it impermissibly affects management's rights to direct employees and assign work under § 7106(a)(2)(A) and (B) of the Federal Service Labor-Management Relations Statute.[42] Specifically, the Agency asserts that this remedy is deficient under the two-prong test set forth in *BEP*.[43] The Agency notes that under the second prong of the *BEP* test, the Arbitrator's remedy must reflect a reconstruction of what management's performance appraisal of the grievant would have been if management had not violated either an applicable law or a provision of the parties' agreement.[44] The Agency states that the relevant "applicable law" here is 5 C.F.R. § 430.205(e), which, according to the Agency, requires that employees be informed of their level of performance during their annual progress reviews.[45] Because the Arbitrator did not find that the Agency violated this regulation or any other applicable law, and because the Arbitrator's remedy is not "based on a reconstruction of what the Agency would have rated the grievant," the Agency argues that the award is contrary to *BEP*.[46]

However, the Authority no longer recognizes the second *BEP* prong when analyzing whether an arbitrator's remedy impermissibly affects management rights set forth in 5 U.S.C. § 7106(a).[47] Accordingly, in assessing challenges to arbitral remedies on § 7106 grounds, the Authority no longer requires remedies to "reconstruct" what agencies would have done had they complied with the pertinent law or contract.[48] As such, the Agency's argument that the award does not satisfy the second *BEP* prong does not provide a basis for finding the award deficient.[49]

Moreover, the applicable law cited by the Agency – 5 C.F.R. § 430.205(e) – does not exist. Section 430.205 of Title 5 of the Code of Federal Regulations does not contain a paragraph (e), nor does it contain the language that the Agency purportedly quotes verbatim from this regulation.[50]

Accordingly, we deny the Agency's exception that the award is contrary to law.

C. The Arbitrator did not deny the Agency a fair hearing.

The Agency argues that the Arbitrator denied it a fair hearing.[51] The Authority will find an award deficient on the ground that an arbitrator failed to provide a fair hearing where a party demonstrates that the arbitrator refused to hear or consider pertinent and material evidence, or that other actions in conducting the proceeding so prejudiced a party as to affect the fairness of the proceeding as a whole.[52]

The Agency argues that the Arbitrator denied it a fair hearing by "inappropriately shifting the burden of proof and/or framing the issue to be heard in the arbitration."[53] The Agency points to the Arbitrator's framing of the issue as "whether the Agency has proven by a preponderance of the evidence the merits of the performance rating of the [g]rievant."[54] According to the Agency, by doing so, the Arbitrator created an improper standard under which "every employee is entitled to an 'Exceptional' rating in each element until and unless the Agency can prove that the [e]mployee is entitled to something less."[55]

However, the Authority has repeatedly held that unless a specific standard of proof or review is required by law or the parties' agreement, an arbitrator has authority to establish whatever standard he or she considers appropriate and the award will not be found deficient on the basis of a claim that the arbitrator applied

[40] *Local 3506*, 65 FLRA at 123 (citing *U.S. DOD, Dep'ts of the Army & the Air Force, Ala. Nat'l Guard, Northport, Ala.*, 55 FLRA 37, 40 (1998)).
[41] *U.S. Dep't of the Navy, Commander, Navy Region Haw., Fed. Fire Dep't, Naval Station Pearl Harbor, Honolulu, Haw.*, 64 FLRA 925, 928 (2010) (citation omitted).
[42] Exceptions at 17-19 (citing 5 U.S.C. § 7106(a)(2)(A) and (B)).
[43] 53 FLRA at 151-54.
[44] Exceptions at 18 (citing *BEP*, 53 FLRA at 154).
[45] *Id*. at 19 (quoting 5 C.F.R. § 430.205(e)).
[46] *Id*. at 19 (citing *BEP*, 53 FLRA at 154; *U.S. Dep't of VA, Med. Ctr. Balt., Md.*, 53 FLRA 190, 192-95 (1997)).
[47] *See U.S. EPA*, 65 FLRA 113, 113 n.2 (2010).
[48] *FDIC, Div. of Supervision and Consumer Prot., S.F. Region*, 65 FLRA 102, 106 (2010) (*FDIC*) (Chairman Pope concurring).
[49] For the reasons set forth in her concurring opinion in *FDIC*, Chairman Pope would analyze whether the Arbitrator's remedy has a "reasonable relation" to the violated law or contract provisions and the harm being remedied. 65 FLRA at 112. As she would find this standard satisfied here, she agrees that the Agency's argument does not provide a basis for finding the award deficient.
[50] *See* 5 C.F.R. § 430.205.
[51] Exceptions at 1, 13-16.
[52] *AFGE, Local 2152*, 69 FLRA 149, 152 (2015) (citing *AFGE, Local 1668*, 50 FLRA 124, 126 (1995)).
[53] Exceptions at 1.
[54] *Id*. at 14.
[55] *Id*. at 14-15.

an incorrect burden of proof.[56] In this case, there has been no demonstration that any specific burden of proof or review was required. Although the Agency cites Article 27, § 7F of the parties' agreement, which sets forth the definition of an "[e]xceptional" performance rating,[57] this provision does not contain a standard of proof for arbitrators or other third parties to apply when resolving grievances arising out of performance evaluations. Consequently, the Agency's arguments that the Arbitrator denied it a fair hearing provide no basis for finding the award deficient, and we deny this exception.

D. The award is not based on a nonfact.

The Agency argues that the award is based on nonfacts.[58] To establish that an award is based on a nonfact, the excepting party must demonstrate that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result.[59] The Authority will not find an award deficient based on the arbitrator's determination of any factual matter that the parties disputed at arbitration.[60]

The Agency argues that the award is based on two nonfacts. First, the Agency points to the Arbitrator's finding that, after conducting an inspection of the grievant's workplace in July, an Agency housekeeping supervisor did not email the results of that inspection to the grievant's immediate supervisor until five months later.[61] Based on this finding, the Arbitrator concluded that "[t]he results of this inspection could not have helped [the grievant's supervisor] improve the [g]rievant's performance since it was five months late in getting to him and delivered after the end of the rating period."[62]

The Agency asserts that the results of the inspection were actually emailed to the grievant's immediate supervisor two days (as opposed to five months) after the inspection occurred. To support this claim, the Agency cites to an exhibit from the underlying record that shows that although the email was re-delivered to the grievant's supervisor in November, it was originally sent in July, two days after the inspection had occurred.[63] The Agency further argues that this fact was not in dispute at arbitration.[64]

Although the cited exhibit suggests that the Arbitrator's factual finding that the inspection results were not sent to the grievant's supervisor for five months may be erroneous, the Agency has not shown that this is a central fact underlying the award, but for which the Arbitrator would have reached a different result.[65] The Arbitrator cited numerous other reasons for his decision to sustain the grievance.[66] For example, immediately after noting that the inspection results were emailed five months late, the Arbitrator found that the results of the inspection were "insufficient to change the [g]rievant's ratings," regardless of when they were sent.[67] The Arbitrator also found that the misconduct cited by the Agency as justification for lowering the grievant's rating was not related to his job performance,[68] and that communication between the Agency and the grievant regarding his performance was minimal.[69] Given these additional justifications for the Arbitrator's conclusion, the Agency has not demonstrated that the Arbitrator would have reached a different result, but for his allegedly erroneous finding that the inspection results were delivered five months after the fact.

Second, the Agency argues that the Arbitrator erroneously found that "[n]o evidence was introduced that face-to-face meetings were held during the performance period when the [g]rievant went from exceptional to fully successful."[70] According to the Agency, "the clear and undisputed evidence in this case showed that the Agency had its mandatory midyear meeting with the [g]rievant," and that the Agency also provided counseling to the grievant during the disputed time period.[71] As such, the Agency asserts that the Arbitrator relied upon a nonfact when he concluded that there were no face-to-face meetings between the Agency and the grievant.

However, the question of whether a meeting occurred between the grievant and the Agency was disputed between the parties at arbitration,[72] and the

[56] *U.S. Small Bus. Admin., Charlotte Dist. Office, Charlotte, N.C.*, 49 FLRA 1656, 1663-64 (1994) (citing *U.S. Dep't of VA, Nat'l Mem'l Cemetery of the Pac.*, 45 FLRA 1164, 1171 (1992); *U.S. Dep't of HHS, SSA, Office of Hr'gs & Appeals*, 39 FLRA 407, 412 (1991); *U.S. Dep't of the Navy, Naval Aviation Depot, Norfolk, Va.*, 36 FLRA 217, 222 (1990)); *Veterans Admin., Leavenworth, Kan.*, 34 FLRA 898, 901-02 (1990) (citing *Norfolk Naval Shipyard*, 30 FLRA 484, 485 (1987)).
[57] Exceptions at 14.
[58] *Id.* at 19-21.
[59] *U.S. Dep't of VA, Med. Ctr., Wash., D.C.*, 67 FLRA 194, 196 (2014) (citing *U.S. Dep't of the Air Force, Lowry Air Force Base, Denver, Colo.*, 48 FLRA 589, 593 (1993)).
[60] *U.S. DHS, U.S. CBP, Laredo, Tex.*, 66 FLRA 626, 628 (2012) (*DHS Laredo*) (citing *NAGE, SEIU, Local R4-45*, 64 FLRA 245, 246 (2009) (*Local R4-45*)).
[61] Exceptions at 20 (quoting Award at 30).
[62] *Id.* (quoting Award at 30).
[63] *Id.* (citing Agency Ex. 10).
[64] *Id.*
[65] *See U.S. EPA*, 68 FLRA 139, 141 (2014).
[66] *See* Award at 31-36.
[67] *Id.* at 31.
[68] *Id.*
[69] *Id.* at 32.
[70] Exceptions at 21 (quoting Award at 35).
[71] *Id.*
[72] *See* Award at 27.

Arbitrator concluded that a meeting sufficient to satisfy the requirements of the parties' agreement did not occur. Specifically, the Arbitrator stated that he viewed the term "face-to-face meeting" to mean "a formal conversation . . . between the employee and his/her supervisor" concerning the quality of the employee's performance.[73] Although the grievant testified that "he had a meeting with his supervisor and was asked to sign" his mid-term progress review, there is nothing in the record to indicate what, if anything, was discussed at that meeting.[74] Accordingly, the Arbitrator concluded that the Agency failed to conduct a "face-to-face meeting" – as defined by the Arbitrator – during the relevant performance-review period. As this issue was disputed by the parties at arbitration, the Agency's argument does not provide a basis for finding the award to be deficient.[75]

Moreover, even if this finding were clearly erroneous, the Agency has not established that this finding was central to the Arbitrator's overarching conclusion that communication regarding the grievant's performance and expectations was "minimal" or "non-existent" during the performance period at issue.[76] The issue of communication between the grievant and management was debated extensively by the parties at arbitration,[77] and the Arbitrator based his resolution of this issue on far more than whether there was a face-to-face meeting. For example, the Arbitrator acknowledged that "the [g]rievant was counseled by [his supervisor]" as a result of alleged misconduct,[78] and that "the [g]rievant had received counseling [during the review period at issue] because of safety violations."[79] The Arbitrator also acknowledged a memorandum sent to the grievant from his supervisor outlining requirements for the grievant's interactions with fellow employees and Agency customers.[80] After considering this evidence, the Arbitrator nonetheless concluded that the Agency failed to fulfill its obligations under the parties' agreement to communicate job-performance expectations to the grievant. Although the Agency disagrees with this conclusion,[81] the Authority will not find an award deficient on nonfact grounds based on a party's disagreement with an arbitrator's evaluation of evidence.[82]

Accordingly, the Agency's nonfact argument does not provide a basis for setting the award aside as deficient, and we deny this exception.

V. Decision

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

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[73] *Id*. at 35.
[74] *Id*. at 16.
[75] *See DHS Laredo,* 66 FLRA at 628 (citing *Local R4-45*, 64 FLRA at 246).
[76] Award at 32.
[77] *See generally id.* at 15-27.
[78] *Id*. at 23.
[79] *Id*.
[80] *Id*. at 19; *see* Agency's Ex. 4, Mem. on Expectations of Courtesy and Demeanor.
[81] *See* Exceptions at 21.
[82] *U.S. Dep't of Commerce, Nat'l Oceanic & Atmospheric Admin., Nat'l Weather Serv.*, 67 FLRA 356, 358 (2014) (citing *U.S. Dep't of the Treasury, IRS, St. Louis, Mo.,* 67 FLRA 101, 103 (2012)).