

**70 FLRA No. 43**

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
(Union)

and

UNITED STATES  
DEPARTMENT OF HOMELAND SECURITY  
IMMIGRATION AND CUSTOMS ENFORCEMENT  
(Agency)

0-AR-5255

DECISION

April 25, 2017

Before the Authority: Patrick Pizzella, Acting Chairman,  
and Ernest DuBester, Member

This matter is before the Authority on exceptions to an award of Arbitrator Luella E. Nelson 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.<sup>3</sup>

The Union requests an expedited, abbreviated decision under § 2425.7 of the Authority's Regulations.<sup>4</sup> The Agency does not oppose the Union'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 – we grant the Union's request.

As a preliminary matter, the Agency requests that the Authority dismiss the exceptions because (1) the

grievant lacked standing to file the exceptions and (2) it was not properly served with the exceptions' attachments.<sup>5</sup> Regarding the first preliminary matter, the record demonstrates that the grievant is a chief steward of the Union and nothing in the record before us indicates that the exceptions were not authorized by the Union.<sup>6</sup> Thus, we conclude that the Union's exceptions are properly before us. Regarding the second preliminary matter, given the lack of harm to the Agency from the defective service, we find the Union's exceptions to be valid and consider them.<sup>7</sup>

The Union argues that the award is incomplete, that the Arbitrator denied it a fair hearing, and that the award is based on a nonfact and failed to draw its essence from the parties' agreement, and that the Arbitrator exceeded her authority.<sup>8</sup> However, upon careful consideration of the entire record of the 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>9</sup>

Accordingly, we deny the Union's exceptions.

<sup>1</sup> 5 U.S.C. § 7122(a).

<sup>2</sup> 5 C.F.R. § 2425.

<sup>3</sup> We grant the Union's request for leave to file responses to two of the Agency's arguments – that the grievant lacked standing to file the exceptions, and that the Union did not properly serve the Agency with the exceptions' attachments – and we deny the Union's request in other respects. See *SSA, Office of Disability Adjudication & Review, Region VI, New Orleans, La.*, 67 FLRA 597, 599 (2014).

<sup>4</sup> See 5 C.F.R. § 2425.7 (in certain circumstances, "the excepting party may request" an expedited, abbreviated decision).

<sup>5</sup> Opp'n at 7-9.

<sup>6</sup> *U.S. Dep't of the Army, Aviation Applied Tech. Directorate, Fort Eustis, Va.*, 38 FLRA 362, 365 (1990).

<sup>7</sup> *NAGE, Local R1-109*, 61 FLRA 593, 595 (2006) (denying motion to dismiss where the opposing party suffered no harm from the improper service).

<sup>8</sup> Exceptions Form at 6 (incomplete), 8 (fair hearing), 9 (nonfact), 10 (essence), 11 (exceeds authority).

<sup>9</sup> *U.S. Dep't of the Treasury, IRS*, 68 FLRA 1027, 1030 (2015) (citing *AFGE, Council of Prison Locals 33, Local 3976*, 66 FLRA 289, 290 (2011)) (award not deficient as based on nonfact where excepting party directly challenges the arbitrator's procedural-arbitrability determination); *Indep. Union of Pension Emp. for Democracy & Justice*, 68 FLRA 999, 1009 (2015) (citing *AFGE, Local 1668*, 50 FLRA 124, 126 (1995)) (award not deficient on ground that arbitrator failed to provide a fair hearing where excepting party fails to demonstrate that the arbitrator refused to hear or consider pertinent and material evidence, or that other actions in conducting the proceeding so prejudiced a party so as to affect the fairness of the proceeding as a whole); *AFGE, Local 953*, 68 FLRA 644, 647 (2015) (arbitrator's finding regarding a grievance's timeliness is a procedural-arbitrability determination that the Authority will not find deficient on grounds that directly challenge the determination itself) (citations omitted); *AFGE, Local 1235*, 66 FLRA 624, 625 (2012) (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); *AFGE, Local 3615*, 65 FLRA 647, 649 (2011) (award not deficient as failing to draw its essence from parties' agreement where essence claim directly challenges the arbitrator's procedural arbitrability determination).