

**70 FLRA No. 58**

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 3331  
(Union)

and

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
(Agency)

0-AR-5274

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DECISION

July 6, 2017

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

This matter is before the Authority on exceptions to an award of Arbitrator Ellen S. Saltzman 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>

As a preliminary matter, §§ 2425.4 and 2429.5 of the Authority's Regulations bar consideration of the Union's exceeds-authority exception.<sup>4</sup> The Union should have known to raise this argument before the Arbitrator,

but the record does not reflect that the Union did so.<sup>5</sup> Therefore, we dismiss the exceeds-authority exception.<sup>6</sup>

As for the Union's remaining nonfact exception, upon careful consideration of the entire record in this case and Authority precedent, we conclude that the award is not deficient on the ground raised in the exception and set forth in § 7122(a).<sup>7</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> *Id.* § 2425.7 ("Even absent a [party's] request, the Authority may issue expedited, abbreviated decisions in appropriate cases.").

<sup>4</sup> *Id.* §§ 2425.4(c), 2429.5.

<sup>5</sup> *U.S. DHS, U.S. CBP, Border Patrol San Diego Sector, San Diego, Cal.*, 68 FLRA 128, 130 (2014) (where one month passed between union submitting post-hearing brief and arbitrator issuing award, the Authority declined to consider agency's argument about union's post-hearing brief, because agency did not show it had been precluded from presenting argument to arbitrator first) (citing *U.S. DOL*, 67 FLRA 287, 288-89 (2014) (finding that the agency could have responded to arguments raised in the union's post-hearing brief when there were two weeks between when the brief was filed and the award issued)).

<sup>6</sup> *U.S. DHS, U.S. CBP*, 66 FLRA 335, 337-38 (2011) (where a party should have known to make an argument to the arbitrator, but the record does not indicate that the party did so, §§ 2425.4(c) and 2429.5 of the Authority's Regulations bar the party from raising that argument to the Authority).

<sup>7</sup> *AFGE, Local 2258*, 70 FLRA 210, 213 (2017) (award not deficient as based on nonfact where the excepting party challenges the arbitrator's legal conclusions that the parties disputed at arbitration).