

72 FLRA No. 5

UNITED STATES  
DEPARTMENT OF THE ARMY  
FORT STEWART AND  
HUNTER ARMY AIRFIELD  
FORT STEWART, GEORGIA  
(Agency)

and

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 1922  
(Union)

0-AR-5538

DECISION

January 11, 2021

Before the Authority: Colleen Duffy Kiko, Chairman,  
and Ernest DuBester and James T. Abbott, Members

**I. Statement of the Case**

In this case, the Agency filed interlocutory exceptions to Arbitrator Dennis R. Nolan’s “Ruling on the Union’s Request for Information.” For the reasons discussed below, we dismiss the Agency’s interlocutory exceptions for failure to file exceptions to an arbitrator’s *award* pursuant to § 2425.2(a) of the Authority’s Regulations.<sup>1</sup>

**II. Background and Order to Show Cause**

The Union filed a grievance and request for information (RFI) with the Agency. The grievance asserts that the violations arise from the Agency’s failure to properly classify bargaining-unit employees as nonexempt under the Fair Labor Standards Act (FLSA), failure to pay proper compensation for overtime worked, failure to allow employees a proper choice of compensatory time or overtime, and failure to pay “suffer or permit” overtime.

The Union made a request for all outstanding RFI response data. Agency counsel refused to provide much of the requested data. The parties participated in several hearings before the Arbitrator until the Union

notified the Arbitrator that it could not proceed in further hearings without the requested RFI data. The Arbitrator issued a written ruling on the RFI issue (the ruling).

In the ruling, the Arbitrator found that “under current law a union has a right to information for which it can present a particularized need in order to investigate and present grievances.”<sup>2</sup> He stated that there was “no way to rule” on the Agency’s objections with the information submitted so far.<sup>3</sup> Accordingly, he directed the Union to revise its requests for information, investigate what information it could obtain through other means, and respond to the Agency’s other objections. Finally, the Arbitrator noted that the parties would have time to resolve the remaining questions.

On September 6, 2019, the Agency filed exceptions to what it calls the Arbitrator’s “2019 Order.”<sup>4</sup> In its exceptions, the Agency alleges that the ruling is contrary to law, does not draw its essence from the parties’ agreement, and is contrary to public policy. The Agency also alleges that the Arbitrator exceeded his authority. On November 1, 2019, the Union filed an opposition to the exceptions.

On January 8, 2020, the Authority’s Office of Case Intake and Publication issued an order directing the Agency to “show cause why its exceptions should not be dismissed for failure to satisfy the conditions for review of arbitration awards.”<sup>5</sup> The Agency’s response to the order acknowledges that its exceptions do not stem from a final award.<sup>6</sup> The Agency argues that even if the Arbitrator’s order is not an award, the Authority should resolve the Agency’s exceptions because the Arbitrator erred in asserting jurisdiction over the RFI,<sup>7</sup> and extraordinary circumstances exist that warrant interlocutory review of the Agency’s claim that the FLSA prohibits the Union’s grievance.

**III. Analysis and Conclusion: We dismiss the Agency’s interlocutory exceptions for failure to file an exception to an arbitrator’s award pursuant to § 2425.2(a) of the Authority’s Regulations.**

Section 7122(a) of the Federal Service Labor-Management Relations Statute (Statute) provides that “[e]ither party . . . may file . . . an exception to any arbitrator’s *award*,”<sup>8</sup> and § 2425.2(a) of the Authority’s Regulations provides that “[e]ither party to arbitration . . .

<sup>1</sup> 5 C.F.R. § 2425.2(a).

<sup>2</sup> Arbitrator’s Ruling on the Union’s Request for Information (Ruling) at 3.

<sup>3</sup> *Id.* at 6.

<sup>4</sup> Exceptions at 25.

<sup>5</sup> Order to Show Cause at 1.

<sup>6</sup> Response at 2.

<sup>7</sup> *Id.* at 11.

<sup>8</sup> 5 U.S.C. § 7122(a) (emphasis added).

may file an exception to an arbitrator's award rendered pursuant to the arbitration."<sup>9</sup> Further, the Authority ordinarily will not resolve exceptions to an arbitration award unless the award constitutes a complete resolution of all the issues submitted to arbitration.<sup>10</sup> An arbitration award that postpones the determination of an issue submitted does not constitute a final award subject to review.<sup>11</sup>

In the ruling, the Arbitrator expressly stated that he had "no way to rule on" the Agency's objections to the RFIs.<sup>12</sup> The Agency refers to the ruling as an "[o]rder,"<sup>13</sup> and acknowledges that the exceptions do not "stem from a final award."<sup>14</sup> We agree that the ruling does not constitute a complete resolution of all the issues submitted to arbitration.<sup>15</sup>

In *U.S. Department of VA, Gulf Coast Veterans Healthcare System (VA)*,<sup>16</sup> the Authority found that an arbitrator's email declining to issue an interim ruling on arbitrability did not constitute an award to which exceptions could be filed under § 7122(a) of the Statute and § 2425.2(a) of the Regulations.<sup>17</sup> Although the instant ruling has more indicia of formality than the email in *VA*, the ruling merely clarified the parties' obligations and expressly postponed resolving any of the parties' issues.

Consequently, because the Arbitrator's ruling does not constitute an arbitral award as required by § 7122(a) and § 2425.2(a), we dismiss the Agency's exceptions.

#### **IV. Decision**

We dismiss the Agency's exceptions.

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<sup>9</sup> 5 C.F.R. § 2425.2(a).

<sup>10</sup> *Id.* § 2429.11; *NTEU*, 66 FLRA 696, 698 (2012) (*NTEU*) (citing *U.S. DOJ, Fed. BOP, Fed. Med. Ctr., Carswell, Tex.*, 64 FLRA 566, 567-68 (2010); *U.S. Dep't of the Army, Army Corps of Eng'rs, Norfolk Dist.*, 60 FLRA 247, 248 (2004); *U.S. Dep't of HHS, Ctrs. For Medicare & Medicaid Servs.*, 57 FLRA 924, 926 (2002); *U.S. Dep't of the Interior, Bureau of Indian Affairs, Wapato Irrigation Project, Wapato, Wash.*, 55 FLRA 1230, 1231 (2000)).

<sup>11</sup> *NTEU*, 66 FLRA at 698.

<sup>12</sup> Ruling at 6.

<sup>13</sup> Exceptions at 25.

<sup>14</sup> Response at 2.

<sup>15</sup> *NTEU*, 66 FLRA at 698.

<sup>16</sup> 71 FLRA 752 (2020) (Member DuBester concurring).

<sup>17</sup> *Id.* at 752-53.