

72 FLRA No. 83

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS
VA PUGET SOUND HEALTH CARE SYSTEM
SEATTLE, WASHINGTON
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 3197
(Union)

0-AR-5632

DECISION

July 22, 2021

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

Decision by Member Abbott for the Authority

I. Statement of the Case

In this case, Arbitrator Michael Anthony Marr found that housekeepers at the Agency’s medical facility were entitled to environmental-differential pay (EDP) because they worked in close proximity to high-hazard microorganisms. He denied EDP for pipefitters. The Agency argues that the award is based on nonfacts, is contrary to law, and that it is incomplete, ambiguous, or contradictory. As described below, we find that the Agency has failed to establish that the award is deficient on any of these bases. As such, we deny, in part, and dismiss, in part, the Agency’s exceptions.

II. Background

On September 28, 2018, the Union filed a grievance seeking EDP for housekeepers and pipefitters at the Agency’s medical facility. The Union alleged that the employees are continuously exposed to, and in direct contact with, hazardous microorganisms¹ in performing

¹ The relevant EDP provisions are 5 U.S.C. § 5343(c)(4), 5 C.F.R. § 532.511, and Appendix A to 5 C.F.R. Part 532, Subpart E. Appendix A provides that employees are entitled to

their duties. The matter was not resolved and the Union invoked arbitration.

In an award dated April 18, 2020, the Arbitrator framed the issue as: “Is the grievance procedurally arbitrable? If so, did the [Agency] violate Article 29, Section 28 of [the] [collective-bargaining agreement (CBA)] and [the] [Code of Federal Regulations (CFR)] when it failed to pay [h]ousekeepers and [p]ipefitters EDP? If so, what is the remedy?”²

The Arbitrator found the grievance procedurally arbitrable as to both the housekeepers and pipefitters. With regard to the housekeepers, the Arbitrator first found that their working environment exposes them to “various degrees of hazards, physical hardships, and working conditions of an unusual nature (unusually severe),”³ consistent with Appendix A to 5 C.F.R. Part 532, Subpart E (Appendix A) and the definition of exposure to microorganisms with a high degree of hazard.⁴ He found that the housekeepers “transport waste bags . . . which contain organisms pathogenic to man,” and which “include, but are not limited to, biohazardous material such as blood, feces, urine and other body fluids.”⁵ He credited the testimony of numerous witnesses concerning how it was not unusual for the waste bags to break and spill, that housekeepers have occasionally been poked by needles

eight percent EDP for being exposed to high-hazard microorganisms, if they demonstrate that they:

[w]ork[] with or in close proximity to micro-organisms which involves potential personal injury such as death, or temporary, partial, or complete loss of faculties or ability to work due to acute, prolonged, or chronic disease. These are work situations wherein the use of safety devices and equipment, medical prophylactic procedures such as vaccines and antiserims and other safety measures do not exist or have been developed but have not practically eliminated the potential for such personal injury.

² Award at 5.

³ *Id.* at 125.

⁴ See 5 C.F.R. Pt. 532, Subpt. E, App. A. An example of exposure to microorganisms at a high degree hazard is: “[d]irect contact with primary containers of organisms pathogenic for man such as culture flasks, culture test tubes, hypodermic syringes and similar instruments, and biopsy and autopsy material. Operating or maintaining equipment in biological experimentation or production.” *Id.*

⁵ Award at 125. The Arbitrator noted that the housekeepers empty and transfer regulated medical waste containers, which may include “sharps, liquid human body fluids, blood containing potentially infectious materials, isolation waste which may contain level 4 pathogens such as Ebola (special suit needed), pathological waste, cultures and stocks, and animal waste.” *Id.* at 126.

protruding from bags or have otherwise been injured by the waste from the bags, and that housekeepers are responsible for changing the bedlinens of patients with *Clostridioides difficile* (C.Diff) and methicillin-resistant staphylococcus aureus (MRSA) and doing extra cleaning during outbreaks.

The Arbitrator also found that the housekeepers' position descriptions contain "voids" because they state that "[e]xposure to contagious disease is possible,"⁶ not "probable,"⁷ which he found inconsistent with the witness testimony. Although the Arbitrator found that the housekeepers have sufficient training to understand their duties and to execute them safely, he ultimately concluded that "the use of safety devices and equipment such as [personal protective equipment (PPE)] and training have not practically eliminated the potential for . . . personal injury" from job hazards.⁸ The Arbitrator found that, among other things, the effectiveness of the PPE is "nonexistent against needle sticks" and "almost nonexistent" against pathogens such as blood, wet feces, and urine.⁹ Based on the above, the Arbitrator concluded that the Agency violated the CBA and the CFR by failing to pay the housekeepers EDP. He granted EDP at the high exposure rate of eight percent.

With regard to the pipefitters, the Arbitrator also found that they work with hazardous microorganisms as set out in Appendix A. Additionally, he found that the pipefitters' position description contains voids because the emphasis is on work with chemicals, and it does not reference that the pipefitters "will be subjected to 'exposure'" or injury from pathogenic microorganisms or contagious diseases.¹⁰ The Arbitrator also found that the pipefitters have sufficient training to understand their duties and to execute them safely. However, unlike the housekeepers, he found that the pipefitters' "training, PPE, and other safety measures have practically eliminated the potential for personal injury."¹¹ He denied EDP as to the pipefitters.

The Arbitrator denied the Agency's request that the Union be responsible for court reporter and arbitration

fees for three additional days of arbitration.¹² In addition, the Arbitrator denied the Agency's request to order the Union to reimburse the Agency for half of the transcription fees for the first two days of the hearing, finding that he did not have jurisdiction to do so.¹³

The Arbitrator awarded each housekeeper backpay with interest, up to six years from the date of the filing of the grievance. He also stated:

This award of EDP is also limited to when [h]ousekeepers were or shall be exposed to hazardous conditions (handling red bags which may contain pathogenic microorganisms and/or needles and other sharps, in the room of a patient who has an infectious disease(s)[], handling garbage bags in public restrooms and the areas of the Methadone Program, and while sanitizing and sterilizing the Facility during outbreaks of contagious diseases such as C.Diff and MRSA), as set forth in this decision and award.¹⁴

The Arbitrator retained jurisdiction for sixty days "in the event the parties need [the] Arbitrator's assistance to implement this decision and award and/or have an issue regarding attorney's fees and costs."¹⁵

The Agency filed exceptions to the Arbitrator's award on May 14, 2020. The Union filed an opposition to the Agency's exceptions on June 13, 2020.

III. Analysis and Conclusions

A. The award is not based on a nonfact.

The Agency argues that the award is based on several nonfacts, including the Arbitrator's: (1) finding that the housekeepers' job descriptions contain voids, because "the uncontroverted testimony and evidence" showed otherwise;¹⁶ (2) finding that the housekeepers are exposed to unusually severe hazards, because "[t]he

⁶ *Id.* at 136-38.

⁷ *Id.* at 137.

⁸ *Id.* at 151.

⁹ *Id.* at 146. The Arbitrator noted that the housekeepers' PPE is absorbent and that the housekeepers "testified that blood, urine, and feces have gotten onto their skin." *Id.* In addition, the Arbitrator found that the PPE for the housekeepers presented by the Agency during the hearing was "visibly flimsy." *Id.* During a demonstration of how the PPE is worn, the handle on a PPE gown ripped, and the Agency's witness ripped a PPE glove on his hand. *Id.* With regard to the glove, the Agency's witness stated: "I think this was already ripped in the box." *Id.*

¹⁰ *Id.* at 140.

¹¹ *Id.* at 147.

¹² *Id.* at 151, 152 n.25. This matter was originally set for a two-day hearing. The Union took two days to present its case, the Agency took two days, and the Union used the last day for rebuttal. The Arbitrator found that "the Agency's request would have been stronger if it had taken just one day to complete its case," but that it took two full days. *Id.* at 152 n.25.

¹³ *Id.* at 151, 152 n.25. The Arbitrator concluded that he did not have jurisdiction to settle this dispute over costs because of the terms of a national settlement agreement between the parties in another matter. *Id.* at 152 n.25.

¹⁴ *Id.* at 153.

¹⁵ *Id.*

¹⁶ Exceptions Br. at 44.

Agency's [e]xpert provided un rebutted expert testimony to the contrary";¹⁷ (3) finding that the housekeepers' "PPE and other safety measures have not practically eliminated the potential for personal injury," which "disregards un rebutted expert testimony" and evidence;¹⁸ (4) disregarding evidence that housekeepers are trained to notify their supervisors of unusual hazards before cleaning;¹⁹ (5) finding that the pipefitters' job description contained voids, because witnesses testified otherwise;²⁰ and (6) finding that the Agency's request for sanctions against the Union for extending the arbitration "would have been stronger if it had taken just one day to complete its case," which "ignores the record that the Agency's case-in-chief required two days due to the Union's marathon cross-examinations of its witnesses."²¹

To establish that an award is based on a nonfact, the excepting party must show that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result.²² Disagreement with an arbitrator's evaluation of evidence, including the weight to be accorded such evidence, does not provide a basis for finding that an award is based on a nonfact.²³ Here, all of the Agency's arguments simply challenge the Arbitrator's evaluation of the evidence and testimony, which does not provide a basis for finding the award deficient. Accordingly, we deny the exceptions.²⁴

B. The award is not contrary to law.

The Agency argues that the award is contrary to law for several reasons.²⁵

¹⁷ *Id.*

¹⁸ *Id.* at 51; *see also* Award at 146.

¹⁹ Exceptions Br. at 58.

²⁰ *Id.* at 63.

²¹ *Id.* at 66; *see also* Award at 152 n.25.

²² *U.S. Small Bus. Admin.*, 72 FLRA 106, 106 (2021) (Chairman DuBester concurring) (citing *AFGE, Loc. 1594*, 71 FLRA 878, 880 (2020)).

²³ *Id.* (citing *AFGE, Loc. 12*, 70 FLRA 582, 583 (2018)).

²⁴ *Id.* at 107 (denying a nonfact exception where the arguments challenged the arbitrator's evaluation of the evidence); *see also U.S. Dep't of the Air Force, Peterson Air Force Base, Colo.*, 72 FLRA 143, 144 (2021) (denying nonfact exceptions merely disputing the arbitrator's evaluation of the evidence); *Fraternal Ord. of Police, Lodge No. 168*, 70 FLRA 788, 790 (2018) (denying a nonfact exception, where the record showed that both parties provided testimonial and documentary evidence and disputed the issues throughout arbitration, as an attempt to relitigate those findings before the Authority).

²⁵ When an exception involves an award's consistency with law, the Authority reviews any question of law raised by the exception *de novo*. *U.S. Dep't of VA, Cent. Ark. Veterans Healthcare Sys. Cent.*, 71 FLRA 593, 595 n.23 (2020) (*VA Arkansas*) (then-Member DuBester concurring) (citing *AFGE, Loc. 1633*, 71 FLRA 211, 212 n.12 (2019) (*Loc. 1633*) (Member Abbott concurring; then-Member DuBester concurring in part and dissenting in part)). In reviewing

First, the Agency claims that the award of EDP for the housekeepers is contrary to 5 U.S.C. § 5343(c)(4), 5 C.F.R. § 532.511, and Appendix A because it is premised on nonfacts.²⁶ Specifically, the Agency argues that, contrary to the Arbitrator's findings, "the [h]ousekeepers' duties do not involve unusually severe hazards within the meaning of § 5343(c)(4)" and "PPE and other safety measures have practically eliminated the potential for personal injury."²⁷ As noted above, we find that the Agency has failed to establish that the award is based on any nonfacts.²⁸

The Agency also contends that the Arbitrator failed to specifically consider what microorganisms the workplace contains and how they are transmitted, as required by Appendix A.²⁹ However, we find that the Arbitrator explicitly considered Appendix A's requirements when he found that the housekeepers have direct contact with primary containers containing organisms pathogenic to man, including "biohazardous material such as blood, feces, urine and other body fluids."³⁰ Furthermore, the Arbitrator detailed incidents where housekeepers have been poked by needles³¹ and discussed the transmission of C.Diff and MRSA within the Agency's facility.³² Thus, the Agency's argument is

de novo, the Authority assesses whether an arbitrator's legal conclusions are consistent with the applicable standard of law. *Id.* In making that assessment, the Authority defers to the arbitrator's underlying factual findings unless the excepting party establishes that they are nonfacts. *Id.* Section 7122(a)(1) of the Statute provides that an arbitration award will be found deficient if it conflicts with any rule or regulation. 5 U.S.C. § 7122(a)(1). For purposes of § 7122(a)(1), the Authority has defined rule or regulation to include both government-wide and governing agency rules and regulations. *VA Arkansas*, 71 FLRA at 595 n.23 (citing *Loc. 1633*, 71 FLRA at 212 n.12).

²⁶ Exceptions Br. at 69.

²⁷ *Id.* at 67.

²⁸ *See supra* Part III.A.

²⁹ Exceptions Br. at 69.

³⁰ Award at 125. The Arbitrator specifically considered the example of exposure to microorganisms with a high degree of hazard as provided in Appendix A, and used the same language in his analysis, to conclude that the same exposure applies to the housekeepers here. *Id.*; *see also supra* note 4 (quoting the example provided in Appendix A).

³¹ Award at 126-130.

³² *Id.* at 130-31. The Arbitrator stated that "[t]he evidence indicates that these pathogens both can live for long periods of time outside of a patient's body on surfaces within the [f]acility." *Id.* at 130. Additionally, the Arbitrator concluded that "[t]he numerous incidents of high hazard exposure at a minimum, involved direct contact, were on a consistent and often daily basis that involved red bags filled with pathogenic materials and/or sharps, and in many instances were injurious." *Id.* at 151.

without merit.³³ In addition, the Agency claims that although the Arbitrator found that the housekeepers' training is sufficient, he failed to consider that training is an "other safety measure" per Appendix A.³⁴ This argument is also without merit. In this case, the Arbitrator specifically concluded that "the use of safety devices and equipment *such as PPE and training*" did not practically eliminate the potential for injury.³⁵ Moreover, we find that the Agency's exception, again, simply constitutes mere disagreement with the Arbitrator's evaluation of the evidence and testimony, and that the Agency has failed to establish that the award is contrary to 5 U.S.C. § 5343(c)(4), 5 C.F.R. § 532.511, or Appendix A.³⁶ We deny the Agency's exception.

Second, the Agency argues that the award is contrary to law because the award of six years of backpay "is not based on any evidence to support such duration."³⁷ Specifically, the Agency claims that the award is contrary to the Authority's decision in *U.S. Department of VA, Central Arkansas Veterans Healthcare System Central (VA Arkansas)*,³⁸ because unlike that case, here there is no evidence that the housekeepers were exposed to high hazard microorganisms for six years.³⁹ The Agency also argues that the award is contrary to the parties' CBA.⁴⁰

³³ See *U.S. Dep't of VA, Boise Veterans Admin. Med. Ctr.*, 72 FLRA 124, 127-28 (2021) (*VA Boise*) (Member Abbott concurring; Chairman DuBester dissenting in part) (denying a contrary-to-law exception where the agency did not explain how failing to consider how microorganisms were transmitted was contrary to 5 U.S.C. § 5343(c)(4) or 5 C.F.R. § 532.511, and additionally finding that the arbitrator considered transmission when he found that the grievants were exposed to highly hazardous microorganisms when they worked with or in close proximity to blood and bodily fluids).

³⁴ Exceptions Br. at 72; see also *supra* note 1 (stating the Appendix A definition of exposure to microorganisms with a high degree of hazard).

³⁵ Award at 151 (emphasis added).

³⁶ *VA Boise*, 72 FLRA at 128 (denying a contrary-to-law exception where the agency merely disputed the arbitrator's evaluation of the evidence in finding that the potential for serious personal injury had not been practically eliminated); *VA Arkansas*, 71 FLRA at 595 (upholding the arbitrator's finding that the grievants were owed high-degree EDP and denying a contrary-to-law exception in part because the agency failed to successfully challenge any of the arbitrator's factual findings as nonfacts and merely challenged the weight that the arbitrator ascribed to evidence and testimony); *Loc. 1633*, 71 FLRA at 213 ("The [a]gency's argument that its training and protective equipment are sufficient to eliminate the threat of potential injury merely challenges the weight that the Arbitrator gave to the evidence and does not establish that the award is contrary to § 5343(c)(4) or Appendix A.").

³⁷ Exceptions Br. at 77.

³⁸ 71 FLRA at 596.

³⁹ Exceptions Br. at 78.

⁴⁰ *Id.* at 77-80.

To the extent that the Agency's argument regarding no evidence of exposure to high hazard microorganisms for six years constitutes a claim that the award violates the Back Pay Act (BPA),⁴¹ we find, again, that the Agency is simply disputing the Arbitrator's evaluation of the evidence.⁴² Furthermore, we note that in *VA Arkansas*, the Authority upheld an award of several years of backpay because the BPA provides that: "[I]n no case may pay, allowances, or differentials be granted under this section for a period beginning more than [six] years before the date of the filing of a timely appeal[.]"⁴³ The Authority found that the arbitrator's award was within that timeframe and noted that arbitrators do not violate the BPA when they award backpay for the entire six-year period prior to the filing of a grievance.⁴⁴ Thus, the backpay award here is not inconsistent with that decision. With regard to the Agency's argument that the backpay award is contrary to law because it is contrary to the parties' CBA, we find that argument misplaced and unsupported.⁴⁵ Accordingly, we deny the Agency's exception.

Third, the Agency argues that the Arbitrator's finding that he did not have jurisdiction to order the Union to reimburse the Agency for half of the transcription fees for the first two days of the hearing "is contrary to law or regulation."⁴⁶ Despite this assertion, the Agency does not identify a law or regulation with which it believes the award conflicts. It simply argues why it believes, based on the record, that

⁴¹ 5 U.S.C. § 5596.

⁴² *VA Boise*, 72 FLRA at 128 ("The Authority will not find an award deficient when the excepting party is merely disputing the evaluation of the evidence.").

⁴³ *VA Arkansas*, 71 FLRA at 596 (quoting 5 U.S.C. § 5596(b)(4)).

⁴⁴ *Id.* (citing *U.S. DHS, U.S. CBP*, 65 FLRA 978, 985 (2011)).

⁴⁵ In its contrary-to-law exception, the Agency only argues that the backpay award is contrary to the CBA, and makes no argument as to how or why the award is inconsistent with any law, rule, or regulation. Under the Authority's Regulations, "[a]n exception may be subject to dismissal or denial if: (1) [t]he excepting party fails to raise and support a ground as required in paragraphs (a) through (c) of this section, or otherwise fails to demonstrate a legally recognized basis for setting aside the award." 5 C.F.R. § 2425.6(e)(1). Furthermore, we note that the Agency's insistence that the parties' CBA limits awards of EDP to thirty days before the filing of the grievance is based on the decisions of prior arbitrators, see Exceptions Br. at 78-80, which we are not bound by. See *AFGE, Council of Prison Locs. C-33, Loc. 720*, 67 FLRA 157, 159 (2013) ("arbitration awards are not precedential, and an arbitrator is not bound to follow prior arbitration awards, even if they involve the interpretation of the same or similar contract provisions").

⁴⁶ Exceptions Br. at 80.

the Arbitrator was wrong. As such, we deny the Agency's exception as unsupported.⁴⁷

Finally, the Agency argues that the Arbitrator's "reference to deciding attorney's fees and costs is contrary to law," and contends that attorney fees are not warranted in the interest of justice under 5 U.S.C. § 7701(g)(1).⁴⁸ It is well established that under the BPA and its implementing regulations,⁴⁹ an arbitrator may retain jurisdiction after issuing an award for the purpose of considering requests for attorney fees.⁵⁰ Here, the Arbitrator simply retained jurisdiction in part for that purpose. Thus, the Arbitrator's "reference" to deciding attorney fees is not contrary to law. Furthermore, as the Arbitrator did not make any determination on the merits of attorney fees, the Agency's arguments that attorney fees are not warranted in the interest of justice are premature. Accordingly, we dismiss the Agency's exception, to the extent it contests the merits of attorney fees, without prejudice.⁵¹

C. The award is not incomplete, ambiguous, or contradictory as to make implementation impossible.

The Agency argues that the award is incomplete, ambiguous, or contradictory for a number of reasons. First, the Agency claims that the Arbitrator's award of six years of backpay for EDP does not clarify: (1) whether the award applies to all housekeepers;⁵² (2) how the backpay is to be calculated, or whether the housekeepers should only be paid for all the hours they are in pay status on the day on which they are exposed to

the situation, per 5 C.F.R. § 532.511(b)(3);⁵³ or (3) when the housekeepers are entitled to backpay, given that the Arbitrator limited the award to when the housekeepers "were or shall be exposed" to hazardous conditions in three specific situations.⁵⁴ Regarding this third point, the Agency argues that it would be unable to ascertain going back six years when housekeepers handled red bags in the rooms of patients with infectious diseases, when they handled certain garbage bags, and when they sanitized the Agency's facility during outbreaks of contagious diseases.⁵⁵ The Agency claims that "[i]f this award is to be interpreted as a blanket award of high-degree EDP for all [sixty-seven] [h]ousekeepers, then it is legally insufficient because it fails . . . under Appendix A."⁵⁶ Second, the Agency claims that the Arbitrator's award of EDP for the housekeepers going forward is ambiguous for the same reasons noted above, including that the award does not clarify specifically when housekeepers are entitled to EDP or how EDP is to be calculated, including whether the EDP is only for those hours that the housekeepers were exposed to hazardous duties during their shifts.⁵⁷

The Authority has held that for an award to be found deficient as incomplete, ambiguous, or contradictory, the excepting party must show that implementation of the award is impossible because the meaning and effect of the award are too unclear or uncertain.⁵⁸ Initially, we note that the award is not ambiguous as to whether it applies to all housekeepers; the Arbitrator clearly stated that "[e]ach [h]ousekeeper is awarded back pay."⁵⁹ In addition, the Agency's assertion that a blanket award of high-degree EDP for all of the housekeepers would be legally insufficient under Appendix A is inconsistent with the findings throughout this decision.⁶⁰ With regard to the Agency's other contentions, "the Authority has specifically rejected alleged ambiguities as a basis for finding an award deficient on this ground when . . . the arbitrator has retained jurisdiction to clarify the award."⁶¹ The Authority has held that such ambiguities are for clarification by the arbitrator and provide no basis for

⁴⁷ See 5 C.F.R. § 2425.6(e)(1); *NTEU, Chapter 215*, 67 FLRA 183, 184 (2014) (Member Pizzella concurring) (denying a contrary-to-law exception, where the union did not identify a law or government-wide regulation with which the award conflicted, as unsupported under § 2425.6(e)(1)).

⁴⁸ Exceptions Br. at 82.

⁴⁹ 5 U.S.C. § 5596; 5 C.F.R. Pt. 550, Subpt. H.

⁵⁰ *U.S. Dep't of VA, Med. Ctr., Coatesville, Pa.*, 53 FLRA 1426, 1431 (1998) (*VA Coatesville*); see also *AFGE, Loc. 1148*, 65 FLRA 402, 403 (2010) ("The [BPA] confers jurisdiction on an arbitrator to consider a request for attorney fees at any time during the arbitration or within a reasonable period of time after the arbitrator's award of backpay becomes final and binding.").

⁵¹ *U.S. Dep't of the Treasury, IRS, Wage & Inv. Div.*, 66 FLRA 235, 244 (2011) (dismissing an exception without prejudice because the arbitrator merely permitted the union to argue why it could receive attorney fees and did not address the merits of a potential award); *VA Coatesville*, 53 FLRA at 1432 (dismissing without prejudice an agency's exception that an award of attorney fees would not comply with the requirements under 5 U.S.C. § 7701(g)(1), because the arbitrator simply retained jurisdiction to consider a request for attorney fees and did not make a determination on the merits).

⁵² Exceptions Br. at 85-86.

⁵³ *Id.* at 87 (quoting 5 C.F.R. § 532.511(b)(3) ("An employee entitled to an environmental differential on the basis of hours in a pay status shall be paid for all hours in a pay status on the day on which he/she is exposed to the situation.")).

⁵⁴ *Id.*; see also Award at 153.

⁵⁵ Exceptions Br. at 88; see also Award at 153.

⁵⁶ Exceptions Br. at 88.

⁵⁷ *Id.*

⁵⁸ *U.S. Dep't of VA, James J. Peters VA Med. Ctr., Bronx, N.Y.*, 71 FLRA 1003, 1004 (2020) (*VA Bronx*) (citing *U.S. Dep't of VA, Malcolm Randall VA Med. Ctr., Gainesville, Fla.*, 71 FLRA 103, 105 n.30 (2019)).

⁵⁹ Award at 153.

⁶⁰ See *supra* Part III.B.

⁶¹ *VA Bronx*, 71 FLRA at 1004 (citing *U.S. DHS, U.S. CBP*, 68 FLRA 253, 258 (2015) (*DHS CBP*)).

finding the award deficient.⁶² Here, the Arbitrator retained jurisdiction “in the event the parties need [the] Arbitrator’s assistance to implement th[e] decision and award.”⁶³ Accordingly, the alleged ambiguities can be clarified by the Arbitrator and provide no basis for finding the award deficient. We therefore deny the Agency’s exceptions that the award is incomplete, ambiguous, or contradictory as to make implementation of the award impossible.⁶⁴

IV. Decision

The Agency’s exceptions are denied, in part, and dismissed, in part.

Chairman DuBester, concurring:

I agree with the Decision to deny, in part, and dismiss, in part, the Agency’s exceptions.

⁶² *DHS CBP*, 68 FLRA at 258 (citing *U.S. VA, Cent. Tex. Veterans Health Care Sys., Temple, Tex.*, 66 FLRA 71, 73 (2011)).

⁶³ Award at 153.

⁶⁴ *VA Bronx*, 71 FLRA at 1004 (denying an exception that an EDP award was incomplete or ambiguous because the arbitrator retained jurisdiction to clarify the award); *DHS CBP*, 68 FLRA at 258 (denying the agency’s exception that the award was incomplete, ambiguous, or contradictory because the alleged ambiguities could be clarified by the arbitrator); *U.S. Dep’t of VA, Med. Ctr., Huntington, W.Va.*, 46 FLRA 1160, 1167 (1993) (“with respect to the [a]rbitrator’s retention of jurisdiction, we note that in arbitration cases that have come before the Authority including those involving entitlement to EDP, it is not uncommon for an arbitrator to have retained jurisdiction to resolve questions or problems that might arise concerning an award”).