74 FLRA No. 91

UNITED STATES
DEPARTMENT OF HOMELAND SECURITY
U.S. CUSTOMS AND BORDER PROTECTION
SAN LUIS PORT OF ENTRY
(Agency)

and

NATIONAL TREASURY
EMPLOYEES UNION
CHAPTER 116
(Union)

0-AR-6102

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ORDER DISMISSING EXCEPTIONS

November 20, 2026

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Before the Authority: Colleen Duffy Kiko, Chairman, and Anne Wagner and Charles O. Arrington, Members

I. Statement of the Case

Arbitrator Samuel A. Vitaro issued an award finding the Agency violated contractual and statutory provisions in connection with the suspension and attempted termination of an alternative-work-schedule (AWS) pilot program. The Arbitrator did not issue a final remedy and instead directed the parties to consult and attempt to agree on a satisfactory remedy. The Arbitrator retained jurisdiction to issue a final remedy decision. The Agency filed exceptions to the award on exceeded-authority, essence, nonfact, and contrary-to-law grounds. For the following reasons, we dismiss the Agency's exceptions, without prejudice, as interlocutory.

II. Background and Arbitrator's Award

The Union filed multiple grievances alleging the Agency violated the parties' agreement and statutory provisions in various respects when the Agency repeatedly suspended an AWS pilot program. The grievances were consolidated and proceeded to arbitration, where the parties stipulated several issues regarding whether the Agency violated the parties' agreement, violated statutory provisions, and committed an unfair labor practice by suspending and making changes to the AWS pilot program. In addition, the Arbitrator stated that one issue before him was, "If a violation has been proven . . . , what is the appropriate remedy?"[1]

The Arbitrator found the Agency violated the parties' agreement and law in some, but not all, of the ways the Union alleged. Therefore, he granted the grievance in part. With regard to remedies, the Arbitrator declined to issue a final "cease[-]and[-]desist remedy" and instead "remand[ed] the . . . remedy issue to the parties . . . to consult and attempt to agree on a satisfactory remedy" within thirty days of his decision.[2] The Arbitrator stated that "[i]f the parties cannot agree, they each should submit their final and best recommended remedy, in light of [his] findings," and that he would "issue a final remedy decision within [fifteen] days from receipt of the parties[']submissions."[3] The Arbitrator "retain[ed] jurisdiction to assist the parties with remand[-]remedy assistance, to issue a final cease[-]and[-]desist remedy[,] and[] to address any post[-]hearing motions."[4]

The Agency filed exceptions to the award on February 13, 2026, and the Union filed an opposition on March 16, 2026. On March 30, 2026, the Authority issued an order directing the Agency to show cause why its exceptions should not be dismissed, without prejudice, as interlocutory. On April 10, 2026, the Agency filed a timely response to the show-cause order (response).

III. Analysis and Conclusion: We dismiss the Agency's exceptions, without prejudice, as interlocutory.

Section 2429.11 of the Authority's Regulations pertinently provides that the Authority "ordinarily will not consider interlocutory appeals."[5] In the arbitration context, this means that the Authority ordinarily will not resolve exceptions to an arbitrator's award unless the award completely resolves all of the issues submitted to arbitration.[6] Further, exceptions are considered interlocutory when the arbitrator has declined to make a final disposition as to a remedy.[7] Consistent with this principle, the Authority has repeatedly held that where an arbitrator declines to issue a remedy, directing instead that the parties attempt to develop an appropriate remedy on their own, the award does not constitute a final decision to

[1] Award at 14.
[2] *Id.* at 40.
[3] *Id.*
[4] *Id.* at 41.
[5] 5 C.F.R. § 2429.11.
[6] *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Bastrop, Tex.*, 73 FLRA 423, 424 (2023) (*FCC Bastrop*).
[7] *U.S. Dep't of the Air Force, Pope Air Force Base, N.C.*, 66 FLRA 848, 850 (2012); *U.S. Dep't of the Treasury, BEP, W. Currency Facility, Ft. Wor., Tex.*, 58 FLRA 745, 746 (2003).

which exceptions can be filed.[8] However, the Authority will grant interlocutory review under certain "extraordinary circumstances."[9]

Here, the Agency does not allege that extraordinary circumstances exist. Rather, the Agency contends the award is final and that the Arbitrator retained jurisdiction "to assist the [p]arties on the implementation of the . . . cease[-]and[-]desist remedy."[10]

We disagree. The Arbitrator directed the parties to develop an appropriate remedy on their own by remanding the "cease[-]and[-]desist remedy" and providing the parties thirty days "to consult and attempt to agree on a satisfactory remedy."[11] The Arbitrator expressly declined, as part of the award, to issue the final cease-and-desist remedy. Rather, he retained jurisdiction to "issue a final remedy decision" *after* further submissions from the parties.[12]

In support of its argument, the Agency cites *U.S. DOJ, Federal BOP, Federal Correctional Institution, Miami, Florida* (*FCI Miami*).[13] In *FCI Miami*, the Authority stated that "an award is final where the arbitrator retains jurisdiction solely to assist the parties in the implementation of awarded remedies, including determining the amount of monetary relief individuals are owed."[14] Applying that principle, the Authority found that the arbitrator's award was final because he had issued a final remedy and retained jurisdiction solely to assist in determining the amount of damages.[15] That is not what the Arbitrator did here, so *FCI Miami* is inapposite.

Consistent with Authority precedent, we find that the Arbitrator's award, which does not fully resolve the remedy issue, is not a final award. Therefore, the Agency's exceptions are interlocutory.[16]

The Agency requests that if the "Authority concludes the Arbitrator's award is not final due to his retention of jurisdiction over the cease[-]and[-]desist remedy, . . . the exceptions should be dismissed without prejudice to the right to refile."[17] Because we find the Arbitrator's award not final, we dismiss the Agency's exceptions without prejudice to the Agency's ability to refile.[18,19,20]

IV. Order

We dismiss the Agency's exceptions, without prejudice, as interlocutory.

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[8] *U.S. Dep't of VA, W. N.Y. Healthcare Sys., Buffalo, N.Y.*, 61 FLRA 173, 174 (2005) (*VA*); *U.S. Dep't of HHS, Navajo Area Indian Health Serv.*, 58 FLRA 356, 357 (2003) (*HHS*); *U.S. GPO, Wash., D.C.*, 53 FLRA 17, 18 (1997) (*GPO*).

[9] *FCC Bastrop*, 73 FLRA at 424.

[10] Resp. at 4-5.

[11] Award at 40.

[12] *Id.*

[13] 73 FLRA 154 (2022).

[14] *Id.* at 156.

[15] *Id.*

[16] *VA*, 61 FLRA at 174-75 (finding exceptions interlocutory where arbitrator declined to issue remedy, retained jurisdiction, and ordered agency to determine appropriate remedy); *HHS*, 58 FLRA at 356-57 (finding exceptions interlocutory where arbitrator ordered parties to determine appropriate remedy and retained jurisdiction to issue remedy if parties were unable to agree); *GPO*, 53 FLRA at 18 (same).

[17] Resp. at 5.

[18] Member Arrington acknowledges that, under current precedent, the Authority will consider interlocutory exceptions "when the excepting party demonstrates *both* that the arbitrator lacks jurisdiction as a matter of law *and* that resolving the exceptions would bring an end to the entire dispute that the parties submitted to arbitration." *U.S. Dep't of the Army, Army Materiel Command, Army Sec. Assistance Command, Redstone Arsenal, Ala.*, 73 FLRA 356, 362 (2022) (*Redstone*) (then-Member Kiko dissenting). Because the Agency has requested the Authority dismiss the exceptions if they are found to be interlocutory, it is not necessary to determine whether interlocutory review should be granted. Therefore, he reserves judgment on whether that precedent is correctly decided.

[19] Member Wagner notes that she previously has applied the extraordinary-circumstances standard as set forth in *Redstone*. *See U.S. Dep't of Transp., FAA*, 74 FLRA 248, 249-50 (2025) (Chairman Kiko dissenting); *U.S. DHS, CBP*, 74 FLRA 245, 245-46 (2025) (Chairman Kiko dissenting); *NLRB*, 74 FLRA 196, 197-98 (2025) (then-Member Kiko dissenting); *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Yazoo City, Miss.*, 74 FLRA 157, 157-58 (2024) (Chairman Grundmann concurring; then- Member Kiko dissenting). Member Wagner continues to believe that standard is appropriate. However, she agrees that it is unnecessary to apply that standard here because the Agency does not allege that extraordinary circumstances warrant granting interlocutory review.

[20] Consistent with her dissenting opinion in *Redstone*, Chairman Kiko reiterates that the standard established in *U.S. Dep't of the Treasury, IRS* – to grant interlocutory review of any exception that, "if decided, could obviate the need for further arbitration," 70 FLRA 806, 808 (2018) (Member DuBester dissenting) – better promotes the Federal Service Labor-Management Relations Statute's purpose of promoting "an effective and efficient government," 5 U.S.C. § 7101(b), than the standard articulated in *Redstone*. However, because the Agency has requested the Authority dismiss the exceptions if they are found to be interlocutory, she agrees it is unnecessary to determine whether interlocutory review should be granted or what standard of interlocutory review the Authority should apply.