

FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C.

UNITED STATES DEPARTMENT OF THE NAVY
NORFOLK NAVAL SHIPYARD
(Agency)

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 22
(Union)

0-AR-4397

DECISION

March 20, 2009

Before the Authority: Carol Waller Pope, Acting Chairman and
Thomas M. Beck, Member

This matter is before the Authority on exceptions to an award of Arbitrator Herbert Fishgold filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Union filed an opposition to the Agency's exceptions.*

Under § 7122(a) of the Statute, an award is deficient if it is contrary to any law, rule, or regulation, or it is deficient on other grounds similar to those applied by Federal courts in private sector labor-management relations. Upon careful consideration of the entire record in this case and Authority precedent, the Authority concludes that the award is not deficient on the grounds raised in the exceptions and set forth in § 7122(a). *See United States Dep't of*

* The Authority issued an order directing the Agency to show cause why its exceptions should not be dismissed as interlocutory. As it is undisputed that the sole issue submitted to the Arbitrator was the issue of arbitrability, and as the award constitutes a complete resolution of that issue, the Agency's exceptions are not interlocutory. *See, e.g., AFGE, Local 1242, Council of Prison Locals 33*, 62 FLRA 477, 479 (2008); *United States Dep't of Def., Def. Logistics Agency, Def. Distrib. Region West, Tinker Air Force Base, Okla.*, 53 FLRA 460, 462 n.1 (1997).

the Navy, Naval Base, Norfolk, Va., 51 FLRA 305, 307-08 (1995) (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, disregarded specific limitations on his authority, or awarded relief to persons who were not encompassed within the grievance); *AFGE, Local 2921*, 50 FLRA 184, 185-86 (1995) (arbitrator's determination of the procedural arbitrability of a grievance is subject to challenge only on grounds other than those that directly challenge the procedural arbitrability determination); *United States Dep't of the Air Force, Lowry Air Force Base, Denver, Colo.*, 48 FLRA 589, 593-94 (1993) (award not deficient as based on a nonfact where excepting party either challenges a factual matter that the parties disputed at arbitration or fails to demonstrate that the central fact underlying the award is clearly erroneous, but for which a different result would have been reached by the arbitrator); *United States Dep't of Labor (OSHA)*, 34 FLRA 573, 575 (1990) (award not deficient as failing to draw its essence from the parties' collective bargaining agreement where excepting party fails to establish that the award cannot in any rational way be derived from the agreement; is so unfounded in reason and fact and so unconnected to the wording and purpose of the agreement as to manifest an infidelity to the obligation of the arbitrator; does not represent a plausible interpretation of the agreement; or evidences a manifest disregard of the agreement).

Accordingly, the Agency's exceptions are denied.

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STATEMENT OF SERVICE

I hereby certify that copies of the Decision of the Federal Labor Relations Authority in the subject proceeding have this day been mailed to the following:

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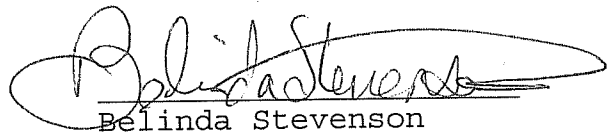
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DATED:

March 20, 2009
WASHINGTON, DC



Belinda Stevenson
Legal Clerk