

**FEDERAL LABOR RELATIONS AUTHORITY  
Washington, DC**

IN THE MATTER OF ARBITRATION BETWEEN:

AMERICAN FEDERATION OF	)	
GOVERNMENT EMPLOYEES,	)	
NATIONAL COUNCIL OF HUD	)	Issue: Fair and Equitable
LOCALS 222,	)	
	)	FMCS Case No. 03-07743
Union,	)	
	)	
v.	)	<b>FLRA Docket No.: 0-AR-4586</b>
	)	
U.S. DEPARTMENT OF HOUSING	)	
AND URBAN DEVELOPMENT,	)	Arbitrator: Dr. Andree Y. McKissick
	)	
Agency.	)	Date: November 9, 2009
	)	

**UNION’S REQUEST TO ISSUE SHOW CAUSE ORDER AND  
MOTION FOR EXTENSION OF TIME TO FILE OPPOSITION TO AGENCY’S  
EXCEPTIONS**

The American Federation of Government Employees, National Council of HUD Locals 222 (the “Union”), by and through its undersigned counsel, hereby requests an Order to Show Cause from the Authority in the above captioned case and in support thereof states as follows:

**BACKGROUND FACTS**

On September 29, 2009, Arbitrator Andree Y. McKissick issued an Opinion and Award in the above captioned case. Agency Attachment 1. The procedural history of this case is substantial and the Opinion & Award summarizes it succinctly. *Id.* at 2-3.

The Opinion & Award was issued via email on September 29, 2009. The Parties received the Opinion & Award via E-mail on September 29, 2009. Exhibit A – Emails from Arbitrator. Indeed, the Arbitrator has even clarified that she sent the Opinion & Award via E-mail to Mr.

Corsoro on September 29, 2009 because he had indicated to her that he was the “proper party” to receive the Opinion & Award. Exhibit B – Email chain from Arbitrator. The Agency filed Exceptions to the Opinion and Award on October 30, 2009. *See* Agency Exceptions.

## ARGUMENT

### I. Request for Issuance of Order to Show Cause

In the Exceptions, the Agency indicates that the Opinion & Award was issued on September 29, 2009, and was “served on the Parties by mail.” Exceptions at p. 1. Further, the Agency states that the Opinion & Award was received on October 8, 2009. *Id.* The Agency’s statements are untrue. The Parties received the Opinion & Award via E-mail on September 29, 2009. Exhibit A. Indeed, the Arbitrator has even clarified that she sent the Opinion & Award via E-mail to Mr. Corsoro on September 29, 2009 because he had indicated to her that he was the “proper party” to receive the Opinion & Award. Exhibit B.

The Authority has held that receipt of an Arbitrator’s Opinion & Award via E-mail counts towards the calculation of the deadline for filing exceptions. *Social Security Administration and AFGE Local 1923*, 63 FLRA No. 100 (May 8, 2009). Further, in that case the Authority made clear that it is the date of service and not the date of receipt that controls. *Id.* Therefore, even if the Agency did not open or receive the E-mail until October 1, 2009, it would be irrelevant; the exceptions are still untimely. Based on the foregoing, the Union requests that the Authority issue an Order to Show Cause as to why the Exceptions should not be dismissed as untimely.

## **II. Union's Motion for Extension**

Pursuant to § 2429.23 of the Authority's Regulations, the Union hereby requests an extension of 30 days from receipt of the Authority's decision on this Request or from the receipt of the Decision on the Order to Show Cause (whichever is later) to file any Opposition to the Agency's Exceptions. Good cause exists for this request. Based on the foregoing, there is a likelihood that the Agency's Exceptions will be dismissed and filing an Opposition prior to this issue of timeliness being resolved would be a waste of Union time and resources.

### **CONCLUSION**

Based on the foregoing, the Union requests that an Order to Show Cause as to why the Agency's Exceptions Should not be Dismissed as Untimely be issued. The Union further requests, pursuant to Section § 2429.3 an extension of time for filing the Opposition to the Agency's Exceptions be issued.

Respectfully Submitted,

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Counsel for the Union

### ATTACHMENTS:

A – Emails to/from Arbitrator  
B – Emails from Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November, 2009, the foregoing was sent to:

Director, Case Control Office  
Federal Labor Relations Authority  
Docket Room, Suite 201  
1400 K Street, NW.  
Washington, D.C. 20424-0001  
(5 copies and 1 original via Certified Mail)

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