

FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
(Agency)

And

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
NATIONAL COUNCIL OF HUD LOCALS 222
(Union)

0-AR-4586

ORDER TO SHOW CAUSE

November 20, 2009

The Agency has filed exceptions to the award of Arbitrator Andree Y. McKissick in the above-captioned case. On November 9, 2009, the Union filed a supplemental submission requesting: (1) that the Authority issue an Order to Show Cause; and (2) an extension of time to file the opposition. For the following reason, the Agency is directed to show cause why its exceptions should not be dismissed as untimely filed.

The time limit for filing exceptions to an arbitration award is 30 days "beginning on the date the award is served on the [filing] party[.]" 5 U.S.C. § 7122(b); see also, 5 C.F.R. § 2425.1(b). The date of service is the date the award is deposited in the United States mail, delivered in person, received from commercial delivery, or, in the case of facsimile transmissions, the date transmitted. 5 C.F.R. § 2429.27(d). Absent evidence to the contrary, an arbitration award is presumed to have been served by mail on the date of the award. See *Okla. City Air Logistics Ctr., Tinker Air Force Base, Okla.*, 32 FLRA 165, 167 (1988). If the award is served by mail, five days are added to the period for filing exceptions. 5 C.F.R. § 2429.22. The time limit may not be

extended or waived by the Authority. 5 C.F.R. § 2429.23(d); see also *United States Info. Agency*, 49 FLRA 869, 871-73 (1994).

The Arbitrator's award is dated September 29, 2009. Therefore, any exceptions to the award had to be postmarked by the United States Postal Service, filed in person, or received from commercial delivery with the Authority no later than November 2, 2009, in order to be timely. 5 C.F.R. §§ 2425.1(b), 2429.21(b), 2429.22 & 2429.24(e). In its exceptions, the Agency states that the Arbitrator's award is dated September 29, 2009, and was served on the parties by mail. The Agency admits that as a result, exceptions had to be filed with the Authority by November 2, 2009. The Agency also states that it received the award on October 8, 2009. The statement of service that accompanied the Agency's exceptions indicates that the exceptions were served on "October 30, 2003[.]" Agency's statement of service. However, the Agency's exceptions were filed with the Authority by commercial delivery (UPS) on November 3, 2009.

The Union, in its supplemental submission, argues that the Arbitrator's award was served on the parties via e-mail on September 29, 2009. Consequently, the Union asserts that the Agency's exceptions were untimely filed and should be dismissed. The Union also provided documentation to support its argument.

Even if the Arbitrator's award was served via e-mail on September 29, 2009, as alleged by the Union, the exceptions would still be untimely as the time limit for filing exceptions began on September 29, 2009 and expired on October 28, 2009. See *United States Dep't of Homeland Security, United States Customs and Border Protection, United States Border Patrol*, 63 FLRA 345 (2009). It appears, therefore, that the Agency's exceptions were untimely filed. Accordingly, the Agency must show cause why its exceptions should not be dismissed as untimely filed.

The Agency must file with the Authority by December 4, 2009, five copies, one of which contains an original signature, of its response to this Order To Show Cause.

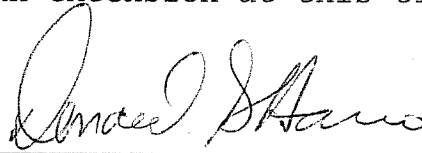
The Agency's response must also include five copies, one of which contains an original signature, of a statement of service that complies with the Authority's Regulations showing

that the Agency's response has been served on all counsel of record or other designated representatives. 5 C.F.R. § 2429.27(a) & (c). The Agency's response should be directed to Donald S. Harris, Chief, Case Intake and Publication, Federal Labor Relations Authority, 1400 K Street, NW, Suite 201, Washington, DC 20424-0001.

The Agency's failure to comply with this Order To Show Cause by December 4, 2009 may result in dismissal of its exceptions.

In view of this Order To Show Cause, it is unnecessary to rule on the Union's request for an extension at this time.

For the Authority:



Donald S. Harris, Chief
Office of Case Intake and
Publication

FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
(Agency)

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
NATIONAL COUNCIL OF HUD LOCALS 222
(Union)

0-AR-4586

STATEMENT OF SERVICE

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

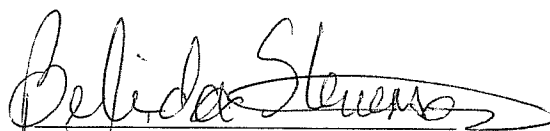
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Norman Mesewicz
Agency Representative
Labor & Employee Relations Division
Department of Housing and Urban Development
451 7th Street, SW., Room 2150
Washington, DC 20410

Michael Snider
Union Representative
104 Church Lane, Suite 100
Baltimore, MD 21208

DATED:

November 20, 2009
WASHINGTON, DC


Belinda Stevenson
Legal Clerk