

66 FLRA No. 135

UNITED STATES
DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C.
(Agency)

and

NATIONAL TREASURY
EMPLOYEES UNION
(Union)

0-AR-4789

—
DECISION

June 14, 2012

Before the Authority: Carol Waller Pope, Chairman, and
Thomas M. Beck and Ernest DuBester, Members¹

I. Statement of the Case

The Agency filed exceptions to an award of Arbitrator Roger I. Abrams 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. The Arbitrator found that the Agency violated the parties' agreement when it arbitrarily and capriciously "denied the [g]rievant's request for advance[] sick leave" and forced the grievant to use annual leave to cover her absence. Award at 9. The Arbitrator ordered the Agency to restore forty-eight hours of annual leave to the grievant, to grant the grievant forty-eight hours of advance sick leave, and to not use the grievant's annual leave balance as a basis for denying her future requests for advance sick leave. *See id.* For the reasons set forth below, we dismiss the Agency's exceptions in part and deny the Agency's exceptions in part.

II. Background and Arbitrator's Award

The grievant requested that the Agency provide her with forty-eight hours of advance sick leave because she did not have a sufficient sick leave balance to cover her absence. *Id.* at 2. During the grievant's absence, her

supervisor sent an email asking her "whether she wanted to use her accumulated annual leave to cover her sick days." *Id.* When the grievant did not respond to her supervisor's email, the supervisor charged the grievant's absence to her annual leave account. *Id.* Subsequently, the supervisor notified the grievant that "[t]he Agency denied [her] request for advance[] sick leave because she had over [100] hours of accumulated annual leave available to cover her sick time." *Id.* at 3; *see also id.* at 2.

The Union presented a grievance. *Id.* at 3. The matter was unresolved and was submitted to arbitration. The parties stipulated to the following issue: "Did the Agency violate Article 10 of the [parties'] [a]greement² when it denied the [g]rievant's request for advance[] sick leave and deducted annual leave? If so, what is the appropriate remedy?" *Id.* at 4.

The Arbitrator concluded that "[t]he Agency violated Article 10 of the [parties'] [a]greement when it denied the [g]rievant's request for advance[] sick leave and deducted annual leave." *Id.* at 9. Specifically, the Arbitrator determined that the Agency wrongfully "forced the [g]rievant to use her accumulated annual leave to cover her . . . absence[]." *Id.* at 6. According to the Arbitrator, Article 10, Section 5(A) allows an employee, *at his or her discretion*, to request that an approved absence be charged as annual leave rather than as sick leave. *Id.*

In addition, the Arbitrator found that, although the Agency has discretion under Article 10, Section 6(A) to grant or deny advance sick leave requests, the Agency denied the grievant's request in an arbitrary and capricious manner. *Id.* According to the Arbitrator, the Agency should not have used the grievant's annual leave balance as the basis for denying her request because having too much annual leave is not a standard "that can be applied in a reasonably consistent fashion in all cases." *Id.* at 8; *see also id.* at 6-7. Moreover, the Arbitrator determined the Agency's actions were arbitrary and capricious because the Agency, in a similar case, granted an employee's request for advance sick leave even though the employee had a substantial annual leave balance. *Id.* at 7.

The Arbitrator ordered the Agency to restore the forty-eight hours of annual leave that it forced the grievant to use to cover her absence. *Id.* at 9. The Arbitrator also ordered the Agency not to use the grievant's annual leave balance as a basis for denying her future requests for advance sick leave. *Id.*

¹ Member Beck's separate opinion, dissenting in part, is set forth at the end of this decision.

² The relevant portions of the parties' agreement are set forth in the appendix to this decision.

III. Positions of the Parties

A. Agency's Exceptions

The Agency maintains that the award is contrary to law because, "in fashioning [the] remedy, the [A]rbitrator violated the Back Pay Act" (Act). Exceptions at 5. According to the Agency, the Act "extends only to those amounts and benefits the employee normally would have earned if the adverse personnel action had not occurred." *Id.* at 7. Moreover, the Agency claims that, by ordering it to restore the grievant's annual leave without requiring it to grant her advance sick leave, the award goes beyond the make-whole remedy that the Union requested, *id.*, and provides her "with a windfall of [forty-eight] hours of unearned leave," *id.* at 5; *see also id.* at 7.

The Agency asserts that the award fails to draw its essence from the parties' agreement. *Id.* at 7-10. Specifically, the Agency contends that the remedy, which orders it not to consider the grievant's annual leave balance when evaluating any of her future advance sick leave requests, fails to draw its essence from Article 10, Section 6(A) of the parties' agreement. *See id.* at 8-10. According to the Agency, this remedy improperly "add[s] to Section 6(A) a new restriction on management discretion for all future cases." *Id.* at 9. In addition, the Agency asserts that the remedy, which requires it to restore forty-eight hours of annual leave to the grievant but not to charge the grievant with forty-eight hours of advance sick leave is "not reasonably related to the [agreement] provisions at issue." *Id.* at 10.

Also, the Agency claims that the Arbitrator exceeded his authority. *Id.* at 10-11. Specifically, the Agency argues that, despite the limited nature of the issue submitted to arbitration, the Arbitrator opined that the Agency could not use the grievant's annual leave balance as a basis for denying her future requests for advance sick leave. *Id.* at 11. Moreover, the Agency maintains that the Arbitrator disregarded an express limitation on his authority imposed by Article 35, Section 5(A)(17) of the parties' agreement. *Id.* According to the Agency, this provision states that an arbitrator has "no authority to add to, subtract from, alter, amend, or modify any provision of th[e] agreement, or impose on either the [Agency] or [the Union] any limitation or obligation not . . . provided for [specifically] under the terms of th[e] [a]greement." *Id.* (internal citations and quotation marks omitted).

The Agency asserts that the award is based on a nonfact. *Id.* at 12-13. The Agency argues that "[t]he [A]rbitrator incorrectly found that the Agency 'forced the [g]rievant to use her accumulated annual leave to cover her . . . absence[.]'" *Id.* at 12 (quoting Award at 6). According to the Agency, neither party established that

the Agency forced the grievant to use annual leave, and testimony presented at arbitration demonstrates that the Agency offered to restore the grievant's annual leave and to give the grievant leave without pay (LWOP) at various times up until arbitration. *Id.* Additionally, the Agency contends that the nonfact is significant because it is the basis for the Arbitrator's remedy requiring the Agency to restore forty-eight hours of annual leave to the grievant. *Id.* at 13.

Finally, the Agency maintains that the award is ambiguous and, as a result, cannot be implemented. *Id.* at 13-14. The Agency asserts that, to comply with the remedy ordering it to restore the grievant's annual leave, it must choose "between three different courses of action," namely "add[ing] [forty-eight] hours to the [g]rievant's [a]nnual [l]eave balance," charging the grievant with forty-eight hours of advance sick leave and restoring forty-eight hours of annual leave to her, or granting the grievant forty-eight hours of LWOP and re-crediting her with forty-eight hours of annual leave. *Id.* at 13.

B. Union's Opposition

The Union argues that the award is not contrary to law, rule, or regulation. Opp'n at 7-11. According to the Union, the award is not contrary to the Act because the Authority has "held that loss of leave may constitute an unjustified and unwarranted personnel action entitling an employee to a back pay award." *Id.* at 9. The Union asserts that, but for the Agency's arbitrary denial of the grievant's advance sick leave request, the Agency would not have deducted forty-eight hours of annual leave, but, rather, given the grievant forty-eight hours of advance sick leave. *Id.* at 10. Additionally, the Union maintains that, "but for' the Agency's decision to charge the [g]rievant's annual leave account by [forty-eight] hours, the [g]rievant would have been given the option to elect between using annual leave to cover the absence, [LWOP], or a combination of the two." *Id.*

The Union contends that the award does not fail to draw its essence from the parties' agreement. *Id.* at 11-13. In this regard, the Union claims that the remedy, which requires the Agency not to consider the grievant's annual leave balance when evaluating any of her future advance sick leave requests, is derived clearly from the parties' agreement and appropriately resolves the Agency's violation. *Id.* at 12.

Also, the Union maintains that the Arbitrator did not exceed his authority. *Id.* at 13-15. The Union argues that the parties stipulated to the issue of the appropriate remedy. *Id.* at 14. Moreover, according to the Union, "[t]he Arbitrator correctly determined that the remedy must ensure [that] the [g]rievant] is protected from

arbitrary action in the future in order to . . . address the stipulated issue of violation and remedy.” *Id.*

The Union argues that the award is not based on a nonfact. *Id.* at 15-16. The Union asserts that the parties disputed at arbitration whether the Agency forced the grievant to use annual leave to cover her absence. *Id.* at 15. In addition, the Union maintains that the Agency has not demonstrated that, “but for the [A]rbitrator’s reliance on this fact, the [A]rbitrator would have reached a different conclusion.” *Id.* at 16.

Furthermore, the Union contends that the award is not too ambiguous to implement. *Id.* at 16-17. The Union maintains that, because the remedy clearly orders the Agency to “credit the [g]rievant’s account with [forty-eight] hours of annual leave[,] . . . [i]t is [not] [im]possible to implement the [a]ward as it is written.” *Id.* (internal quotation marks omitted).

IV. Preliminary Matters

The Agency requested permission to file, and did file, a supplemental submission containing the Arbitrator’s supplemental award that was issued after the Agency filed its exceptions. In his supplemental award, the Arbitrator clarified that, as a remedy, he awarded the grievant forty-eight hours of annual leave, with a corresponding charge of forty-eight hours of advance sick leave. Supplemental Award at 2. The Union does not oppose the filing of the supplemental submission or the consideration of the Arbitrator’s supplemental award contained therein. Although the Authority’s Regulations do not provide for the filing of supplemental submissions, the Authority, pursuant to 5 C.F.R. § 2429.26, may grant leave to file documents as the Authority deems appropriate. *See, e.g., U.S. Dep’t of Def., Def. Logistics Agency, Def. Supply Ctr., Columbus, Ohio*, 60 FLRA 974, 975 (2005) (DLA); *U.S. Dep’t of Housing & Urban Dev., Denver, Colo.*, 53 FLRA 1301, 1309 n.6 (1998). Because the Arbitrator’s supplemental award clarifies the remedy he awarded and affects the Authority’s resolution of some of the Agency’s exceptions, we consider the Agency’s supplemental submission. *See DLA*, 60 FLRA at 976 (considering the parties’ supplemental submissions concerning an Office of Personnel Management decision because the decision rendered the petitions moot); *AFGE, Nat’l Council of EEOC Locals No. 216*, 47 FLRA 525, 525 n.*, 529 (1993) (permitting the agency, under § 2429.26, to file a letter from the arbitrator issued after it filed its exceptions as supplemental evidence in support of its contention that the award was not interlocutory).

In several of its exceptions, the Agency asserts that the Arbitrator erred in ordering it to restore the grievant’s annual leave without requiring it to grant her advance sick leave. *See* Exceptions at 4-7 (claiming that

the award is contrary to law because this particular remedy provided the grievant with a windfall of forty-eight hours of unearned leave); *id.* at 10 (asserting that the award fails to draw its essence from the parties’ agreement because this remedy is neither “reasonably related to the [agreement] provisions at issue nor to the harm suffered by the [g]rievant”); *id.* at 13-14 (arguing that the award is too ambiguous to implement because it is unclear whether the Arbitrator ordered it not only to credit the grievant with forty-eight hours of annual leave but also to charge the grievant with forty-eight hours of advance sick leave). As discussed above, the remedy, as clarified, requires the Agency to restore forty-eight hours of annual leave to the grievant and to charge forty-eight hours of advance sick leave to her. Supplemental Award at 2. Accordingly, based on the Arbitrator’s clarification, these exceptions are moot, and we dismiss them. *See U.S. Dep’t of Justice, Fed. Bureau of Prisons, Fed. Corr. Complex, Oakdale, La.*, 65 FLRA 35, 38-39 (2010) (dismissing the agency’s contrary to law exception as moot because, in a supplemental award, the arbitrator specifically addressed why an award of attorney fees was appropriate under 5 U.S.C. § 7701(g)); *U.S. Dep’t of the Army, Corpus Christi Army Depot, Corpus Christi, Tex.*, 56 FLRA 1057, 1074 n.17 (2001) (dismissing the agency’s exception that the award was incomplete because the arbitrator failed to define the employees entitled to environmental differential pay in his initial award as moot because the arbitrator corrected this deficiency when he issued his supplemental award).

V. Analysis and Conclusions

A. The award is not based on a nonfact.

The Agency claims that the section of the award concerning Article 10, Section 5(A) is based on a nonfact because the Arbitrator wrongfully determined “that the Agency ‘forced the [g]rievant to use her accumulated annual leave to cover her . . . absence[.]’” Exceptions at 12 (quoting Award at 6). To establish that an award is based on a nonfact, the appealing party must show that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result. *E.g., Soc. Sec. Admin., Dall. Region*, 65 FLRA 405, 407 (2010); *AFGE, Local 200*, 64 FLRA 769, 770 (2010); *AFGE, Local 1395*, 64 FLRA 622, 625 (2010). The Authority will not find an award deficient on the basis of the arbitrator’s determination on any factual matter that the parties disputed at arbitration. *E.g., NAGE, SEIU, Local R4-45*, 64 FLRA 245, 246 (2009) (NAGE); *AFGE, Local 3957, Council of Prison Locals*, 61 FLRA 841, 845 (2006).

The Agency’s nonfact claim is without merit because the issue of whether the Agency forced the grievant to use annual leave to account for her absence

was disputed at arbitration. *See* Award at 6; Opp'n at 15-16. Although the Agency asserts that neither party established that the grievant was forced to use annual leave, the Agency concedes that testimony was presented at arbitration demonstrating that it offered to restore the grievant's annual leave and to grant the grievant LWOP at various times up until arbitration. Exceptions at 12. Moreover, the Union similarly notes that the issue of whether the Agency forced the grievant to use annual leave was disputed at arbitration and that "there was significant testimony presented on the matter." Opp'n at 15. Consequently, we find that the Agency's claim does not provide a basis for finding the award deficient. *See NAGE*, 64 FLRA at 246 (concluding that a party failed to demonstrate that the award was deficient as based on a nonfact because the issue alleged to be a nonfact was disputed at arbitration); *AFGE, Local 2128*, 58 FLRA 519, 522 (2003) (same). Accordingly, we deny the Agency's exception.

B. The Arbitrator did not exceed his authority.

The Agency asserts that the Arbitrator exceeded his authority. Exceptions at 10-11. Arbitrators exceed their authority when they fail to resolve an issue submitted to arbitration, resolve an issue not submitted to arbitration, disregard specific limitations on their authority, or award relief to those not encompassed within the grievance. *See AFGE, Local 1617*, 51 FLRA 1645, 1647 (1996). In determining whether an arbitrator has exceeded his or her authority, the Authority accords an arbitrator's interpretation of a stipulated issue the same substantial deference that it accords an arbitrator's interpretation and application of a collective bargaining agreement. *See, e.g., U.S. Dep't of the Treasury, Internal Revenue Serv., Wage & Inv. Div.*, 66 FLRA 235, 243 (2011) (*IRS*); *U.S. Info. Agency, Voice of Am.*, 55 FLRA 197, 198 (1999). Moreover, the Authority grants an arbitrator broad discretion to fashion a remedy that the arbitrator considers to be appropriate. *See, e.g., U.S. Dep't of Justice, Fed. Bureau of Prisons, Fed. Corr. Inst., Sheridan, Or.*, 66 FLRA 388, 391 (2011) (*DOJ*); *IRS*, 66 FLRA at 243.

The Agency contends that the Arbitrator exceeded his authority by ordering it not to consider the grievant's annual leave balance when evaluating any of her future advance sick leave requests. Exceptions at 11. Its contention is without merit. The parties submitted to the Arbitrator the following stipulated issue: "Did the Agency violate Article 10 of the [parties'] [a]greement when it denied the [g]rievant's request for advance[] sick leave and deducted annual leave? If so, what is the appropriate remedy?" Award at 4. The Arbitrator resolved this issue by finding that the Agency violated Article 10, Section 6(A) of the parties' agreement when it arbitrarily denied the grievant's request for advance sick

leave. *See id.* at 6-9. Moreover, the Arbitrator's remedy, ordering the Agency not to consider the grievant's annual leave balance in the future, is directly responsive to the issue. *See id.* at 9. In this connection, it is well established that, where an arbitrator has found a contractual violation with regard to a particular action, the arbitrator may direct prospective relief, including directing the agency to comply with the violated contract provision in conducting future actions. *See, e.g., U.S. Dep't of the Army, U.S. Corps of Eng'rs, Nw. Div.*, 65 FLRA 131, 133 (2010) (Member Beck dissenting in part); *Air Force Space Div., L.A. Air Force Station, Cal.*, 24 FLRA 516, 517-20 (1986). Consequently, we find that the Agency has failed to show that the Arbitrator exceeded his authority on this basis.

In addition, the Agency claims that the Arbitrator exceeded his authority by disregarding an express limitation on his authority imposed by Article 35, Section 5(A)(17) of the parties' agreement. Exceptions at 11. According to the Agency, this provision mandates that an arbitrator has "no authority to add to, subtract from, alter, amend, or modify any provision of th[e] agreement, or impose on either the [Agency] or [the Union] any limitation or obligation not . . . provided for [specifically] under the terms of th[e] [a]greement." *Id.* (internal citations and quotation marks omitted). The Authority has found that, under § 2425.6(e)(1) of the Authority's Regulations, an exception that fails to support a properly raised ground is subject to denial. *See e.g., U.S. Dep't of Veterans Affairs, Cent. Tex. Veterans Health Care Sys., Temple, Tex.*, 66 FLRA 71, 73 (2011); *AFGE, Local 3627*, 65 FLRA 1049, 1050 (2011) (*Local 3627*). Here, the Agency fails to provide any support for its claim. In this regard, the Agency offers no explanation for how the Arbitrator disregarded the express limitation on his authority imposed by Article 35, Section 5(A)(17) and thus has failed to "explain how" the Arbitrator exceeded his authority as required by § 2425.6(b). *See Local 3627*, 65 FLRA at 1050-51 (finding that, because the union failed to show how the arbitrator's decision did not resolve the issue as he framed it, the union did not "explain how" the arbitrator exceeded his authority as required by § 2425.6(b)). As a result, the Agency has not established that the Arbitrator exceeded his authority on this basis. *See id.* (denying the union's exceeded-authority exception because the union failed to "explain how" the arbitrator exceeded his authority as required by § 2425.6(b)).

Accordingly, we deny the Agency's exceptions.

- C. The award does not fail to draw its essence from the parties' agreement.

The Agency claims that the award fails to draw its essence from Article 10, Section 6(A) of the parties' agreement because the award orders, as a remedy, that the Agency not consider the grievant's annual leave balance when evaluating her future advance sick leave requests. *See* Exceptions at 8-10. According to the Agency, this remedy improperly "add[s] to Section 6(A) a new restriction on management discretion for all future cases." *Id.* at 7. The Authority will find that an arbitration award is deficient as failing to draw its essence from the collective bargaining agreement when the appealing party establishes that the award: (1) cannot in any rational way be derived from the agreement; (2) is so unfounded in reason and fact and so unconnected with the wording and purposes of the collective bargaining agreement as to manifest an infidelity to the obligation of the arbitrator; (3) does not represent a plausible interpretation of the agreement; or (4) evidences a manifest disregard of the agreement. *See U.S. Dep't of Labor (OSHA)*, 34 FLRA 573, 575 (1990). The Authority and the courts defer to arbitrators in this context "because it is the arbitrator's construction of the agreement for which the parties have bargained." *Id.* at 576.

The Agency's claim is without merit. The Arbitrator found that, because the Agency arbitrarily and capriciously considered the grievant's annual leave balance when it denied her request for advance sick leave, it violated Article 10, Section 6(A) of the parties' agreement. *See* Award at 6-9. The Arbitrator then crafted a remedy that he deemed necessary and appropriate to resolve that violation. In this regard, he ordered the Agency not to consider the grievant's annual leave balance when evaluating her future requests for advance sick leave. *Id.* at 9. As discussed previously, arbitrators enjoy broad discretion in fashioning remedies, particularly where, as here, the parties specifically authorized the Arbitrator to determine the appropriate remedy for a violation. *See, e.g., DOJ*, 66 FLRA at 392; *AFGE, Council 215*, 66 FLRA 137, 141 (2011). In addition, the Agency does not cite to any provisions in the parties' agreement that address the Arbitrator's remedial discretion. *See DOJ*, 66 FLRA at 392 (denying the agency's essence exception in part because it did not cite to any provisions in the parties' agreement that addressed the arbitrator's remedial discretion). Therefore, the Agency provides no basis for finding that this remedy is irrational, unfounded, implausible, or in manifest disregard of the parties' agreement. Accordingly, we deny the Agency's exception.

VI. Decision

The Agency's exceptions are dismissed in part and denied in part.

APPENDIX

Article 10, Section 5 of the parties' agreement states, in pertinent part:

- A. An approved absence that would otherwise be chargeable to sick leave will be charged to annual leave if requested by the employee and there is no reasonable basis for the Office to deny such request.
- B. An approved absence that would otherwise be chargeable to sick leave will be charged to [LWOP] rather than earned annual leave when the employee:
 - 1. Has exhausted accrued sick leave;
 - 2. Requests LWOP in lieu of annual leave;
 - 3. Has an annual leave balance of eighty (80) hours or more; and
 - 4. Requests a minimum of forty (40) hours of LWOP.

....

Exceptions, Attach. B at 31-32.

Article 10, Section 6 of the parties' agreement states:

- A. Subject to the limitations contained in Section 6(B) below, employees may be given advance leave for their own medical needs, when all of the following conditions are met:
 - 1. The employee is eligible to earn sick leave;
 - 2. The employee's request does not exceed thirty (30) days;
 - 3. There is no reason to believe the employee will not return to work after having used the leave;

- 4. The employee has provided acceptable medical evidence of the need for advanced sick leave; and
- 5. The employee is not subject to the restriction of Section 4(B) above.

- B. Employees using sick leave for family care purposes as stated in Section 2(A)(3-5) may be advanced up to forty (40) hours of sick leave. However, employees may not receive an advance for the purpose of meeting the requirement to retain a minimum sick leave balance for leave granted for the reasons stated in Section 2(A)(3-5).

Id. at 32.

Article 35, Section 5(A)(17) of the parties' agreement states:

The Office and NTEU agree that the jurisdiction and authority of the chosen arbitrator will be confined exclusively to the interpretation of the express provision or provisions of this Agreement at issue between the parties. The arbitrator will have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement, or impose on either the Office or NTEU any limitation or obligation not specifically provided for under the terms of this Agreement. The parties reserve the right to take exceptions to any award to the Federal Labor Relations Authority. Awards may not include the assessment of expenses against either party other than as specified to in this Agreement.

Id. at 85.

Article 34, Section 6(A) of the second agreement states:

- A. The Employer has determined that an employee will be given advanced sick leave when all of the following conditions are met:
1. the employee is eligible to earn sick leave;
 2. the employee's request does not exceed thirty (30) workdays;
 3. there is no reason to believe the employee will not return to work after having used the leave;
 4. the employee has provided acceptable medical documentation of the need for advanced sick leave;
 5. the employee is adopting a child or the employee or family member has a serious health condition. Advanced sick leave is not available for routine medical visits or minor illnesses; and
 6. the employee is not subject to the restrictions of subsection 4A above.

Exceptions, Attach. H at 99.

Member Beck, Dissenting in Part:

I agree with the majority that we should consider the Agency's supplemental submission and that some of the Agency's exceptions are moot as a result of that submission. I also agree with my colleagues' conclusion that the award is not based on a nonfact. However, for the reasons stated in my dissent in *United States Department of the Army, United States Corps of Engineers, Northwestern Division*, 65 FLRA 131, 135-36 (2010) (*Army*) (Dissenting Opinion of Member Beck), I disagree with their determination that the Arbitrator was authorized to award prospective relief, as he did by ordering the Agency not to consider the grievant's annual leave balance when evaluating any of her future requests for advance sick leave.

While arbitrators have broad discretion in the fashioning of appropriate remedies, the Authority has adhered to the fundamental principle that arbitrators must confine their awards and remedies to those issues submitted for resolution. *See, e.g., Veterans Admin.*, 24 FLRA 447, 450 (1986). Here, the parties requested that the Arbitrator resolve the following stipulated issue: "Did the Agency violate Article 10 of the [parties'] [a]greement when it denied the [g]rievant's request for advance[] sick leave and deducted annual leave? If so, what is the appropriate remedy?" Award at 4 (emphasis added). Because the issue, on its face, was directed only at the Agency's denial of a particular request for forty-eight hours of advance sick leave, the Arbitrator's remedy should have been limited to rectifying that denial of leave. However, the Arbitrator ordered additional, prospective relief, namely that the Agency disregard the grievant's annual leave balance when evaluating her future requests for advance sick leave. *Id.* at 9. The Arbitrator's sweeping, prospective remedy is neither necessary nor appropriate due to limited nature of the grievance.

Finally, as I stated in *Army*, I do not mean to suggest that an arbitrator can never order prospective relief. *See Army*, 65 FLRA at 136. Indeed, one can imagine a stipulated issue that might have warranted the remedy directed by the Arbitrator here. For instance, the issue presented might have been: "Does the Agency violate Article 10, Section 6(A) of the parties' agreement by denying requests for advance sick leave based solely on employees' annual leave balances, and, if so, what shall be the remedy?" However, the issue here was explicitly more limited.

Accordingly, I would find that the Arbitrator exceeded his authority by ordering the Agency not to take into account the grievant's annual leave balance when

evaluating any of her future requests for advance sick leave.³

³ Because I would vacate the portion of the award concerning this remedy, I would find it unnecessary to address whether the remedy fails to draw its essence from the parties' agreement. *See Soc. Sec. Admin., Louisville, Ky.*, 65 FLRA 787, 791 n.* (2011) (Dissenting Opinion of Member Beck).