66 FLRA No. 63

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
GENERAL COMMITTEE
(Union)

and

SOCIAL SECURITY ADMINISTRATION
(Agency)

0-AR-4723

_____

DECISION

November 17, 2011

_____

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

I. Statement of the Case

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

The Union filed a grievance alleging that the Agency allocated and reallocated award funds in violation of the parties' collective bargaining agreement (CBA) and Memorandum of Understanding (MOU). The Arbitrator sustained the grievance in part and denied it in part. As a remedy, she directed the Agency to cease and desist from improperly transferring funds in the future. For the following reasons, we deny the Union's exceptions.

II. Background and Arbitrator's Award

The Agency grants three types of monetary awards to employees in recognition of quality performance: Recognition of Contribution (ROC) Awards; Executive Recognition Awards (ERAs); and Exemplary Contribution or Service Awards (ECSAs). Award at 6. Following the Agency's distribution of award funds in fiscal year 2008, the Union filed a grievance, which was submitted to arbitration, where the Arbitrator framed the issue,[1] in pertinent part, as: "Did [the] Agency's administration of awards . . . violate Article 17 of the [CBA] [and/or] the [MOU]? If so, what is the appropriate remedy?"[2] *Id.* at 3.

At arbitration, the Union argued that "in the past, the parties met and agreed on how to disburse [award] funds." *Id.* at 19. The Union further argued that the Agency's contractual violations included, as relevant here: (1) awarding a "wide range of award amounts" to employees with the same performance-element average "within the same component"; (2) "failing to spend all of the award funds"; (3) failing to "comply with the [data-]reporting requirement" of Article 17, Section 5 of the CBA and/or the MOU; (4) providing awards to non-bargaining unit members; and (5) improperly transferring ERA funds to ECSA funds. *Id.* at 19-22.

The Arbitrator determined that "there was insufficient evidence presented that the practices utilized in the past to distribute awards established a past practice" that was binding on the Agency, "particularly in light of the changes reflected in Article 17" of the CBA. *Id.* at 18. In this connection, the Arbitrator found that "[t]he stated goal of . . . Article [17] was to provide the 'flexibility necessary to adapt to a changing work environment and unanticipated circumstances,'" which, according to the Arbitrator, "eliminated any Union participation in the awards process." *Id.*

In addressing the Union's remaining allegations, the Arbitrator acknowledged that the "definition of the word 'component' . . . [wa]s critical because [it] is used throughout the [CBA] . . . and MOU[] to describe how awards should be distributed." *Id.* at 20. At the hearing, the Union argued that the term "component" meant the Agency's six national-level components, while the Agency maintained that "component" should be defined as "a level much lower than national[.]" *Id.*

Addressing these arguments, and the Union's claim that the Agency had awarded a "wide range of award amounts" to employees with the same performance-element average "within the same component," the Arbitrator stated that "[t]he Union's position is grounded on its argument that . . . 'component' is defined[] for the purposes of award distribution as the six national components." *Id.* She determined that the CBA "uses the word ['component'] in various and inconsistent ways," and that "there was insufficient evidence presented to establish" that in the

[1] As discussed further below, there is no evidence that the parties stipulated the issues before the Arbitrator. The Arbitrator also framed the issue as including whether the Agency violated "5 U.S.C. Chapter 43 and 5 [C.F.R.] Part 430." Award at 3.

[2] The pertinent provisions of the CBA and the MOU are set forth in the appendix to this decision.

context of award distribution, "'component' meant at the national level." *Id.* at 20-21. In this regard, the Arbitrator found that Article 24 of the CBA references twelve components instead of six, while "Article 10[,] [Appendix C, Section 6.A (Article 10) of the CBA] . . . appears to use [the terms] office and component interchangeably." *Id.* at 20.

With regard to the Union's allegation that the Agency was required to spend all of the award funds, the Arbitrator found that "neither the [CBA] nor the MOU contain[s] any requirement that all award money be spent," and that "[i]n the absence of a showing of bad faith on [the Agency's] part, [the Union's] allegation must fail." *Id.* at 19. After "review[ing] the record carefully," she "did not find evidence of bad faith." *Id.* In addition, citing *National Treasury Employees Union*, 45 FLRA 696 (1992) (*NTEU*), the Arbitrator found that "there is much support for the proposition that [the] Agency is not entitled to issue all funds allocated for awards." Award at 19.

The Arbitrator further determined that the Union did not "provide[] sufficient evidence that [the] Agency violated" the data-reporting requirement of either the CBA or the MOU by providing a breakdown of fund transfers by national-level component. *Id.* at 22, 13-14. In this connection, she noted that "the MOU [does] not offer a new definition of component" that required the Agency to provide a breakdown of data at a level other than the national-level components. *Id.* at 22.

With respect to the Union's argument concerning awards provided to non-bargaining unit members, the Agency asserted that thousands of employees who were in the bargaining unit during the performance evaluation period had transferred out of the unit before the awards were issued. *Id.* at 20. At the close of the hearing, the Union requested, and the Arbitrator directed, that the Agency provide the Union with data identifying the bargaining unit status of the employees who received awards during the performance evaluation period. *Id.* In the award, the Arbitrator found that, despite the Agency's post-hearing provision of data, "the Union did not present sufficient evidence to establish" that the Agency provided awards to non-bargaining-unit members. *Id.* In this regard, she stated that "the Union asked for the opportunity to review the data" provided by the Agency after the hearing, but that the Union "did not rely on the data" to refute the Agency's assertion that employees who were in the bargaining unit during the performance evaluation period had transferred out of the unit before the awards were issued. *Id.*

In addition, the Arbitrator found that the Agency "improperly transferred unspent ERA funds to ECSA" funds in violation of the MOU. *Id.* at 21. In this regard, she determined that because the parties did not address the transfer of these funds in the MOU, despite discussing it during negotiations, "its omission . . . meant that the parties did not agree to the transfer of th[ose] funds." *Id.* For the foregoing reasons, she sustained the grievance in part and denied it in part. *Id.* at 23.

With respect to the remedy, the Arbitrator stated that she "ha[d] discretion to award a remedy that reflects a reconstruction of what management would have done had it acted properly." *Id.* at 21 (citing *Soc. Sec. Admin.*, 30 FLRA 1156, 1160 (1988) (*SSA*) (internal quotation marks omitted)). She found "no basis for directing [the Agency] to redistribute transferred funds" retroactively because the Agency "was not required to expend all award funds[.]" *Id.* However, she directed the Agency to "cease and desist from reallocating unspent ERA award funds to ECSA [funds] in the future." *Id.* at 23.

III. Positions of the Parties

A. Union's Exceptions

The Union argues that the award fails to draw its essence from the CBA and the MOU in four respects. First, the Union claims that the Arbitrator erred by finding that neither the CBA nor the MOU required the Agency to spend all of the award money. Exceptions at 10-14. Second, the Union challenges the Arbitrator's determination that the Agency was not bound by past practices regarding award distribution because of changes reflected in Article 17 of the CBA concerning Union participation in the awards process. *Id.* at 14-15. In this connection, the Union alleges that the Arbitrator determined that those changes abolished the past practice of spending all of the award money, and that this alleged determination is "not plausible." *Id.* at 15. Third, the Union contends that the Arbitrator erred by finding that the CBA did not clearly define "component" as a national-level component for the purposes of award distribution. *Id.* at 19-22. In this regard, the Union contends that: (1) both Article 4, Section 3.A. of the CBA and the MOU refer to the six national-level components; and (2) Article 10 of the CBA "makes clear that the phrase 'respective offices/components' refers to offices *or* components," and "does not mean that the terms . . . are synonymous." *Id.* at 21-22 (emphasis added). Fourth, the Union argues that the Arbitrator's finding that it did not establish that the Agency violated the data-reporting requirement of the MOU by providing a breakdown of fund transfers by national-level component "does not provide a plausible interpretation of the [MOU]." *Id.* at 22-24. In this regard, the Union alleges that: (1) the MOU requires a breakdown by "group", (2) a different provision of the

MOU defines "group" as "office"; and (3) the parties agreed that the terms "component" and "office" are not synonymous. *Id.*

The Union also argues that the award is based on four nonfacts. *Id.* at 9-10, 14-15, 19, 22-24. Specifically, the Union alleges that the Arbitrator erred by finding that: (1) the Agency was not required to spend all of the award money; (2) the Agency was not bound by past practices regarding award distribution because of changes reflected in Article 17 of the CBA; (3) the CBA did not clearly define "component" as a national-level component for the purposes of award distribution; and (4) the Union did not establish that the Agency violated the data-reporting requirement of the MOU. *Id.*

The Union further contends that the award is contrary to law in three respects. First, the Union alleges that the Arbitrator improperly relied on the Authority's decision in *NTEU*, 45 FLRA 696, in finding no evidence of bad faith. Exceptions at 7-9. Second, the Union argues that the award conflicts with the Authority's decision in *United States Department of the Army, Fort Campbell District, Third Region, Fort Campbell, Kentucky*, 37 FLRA 186 (1990) (*Fort Campbell*). Exceptions at 21. In this regard, the Union contends that the definition of "component" as "the lowest organizational level" component set forth in the Personnel Policy Manual (PPM),[3] which the Agency relied on during the award-distribution process, is not controlling because it conflicts with the definition of that term as a "national[-]level" component in Article 4, Section 3.A. of the CBA and the MOU. *Id.* at 20-21. Third, the Union maintains that the award is contrary to law because the Arbitrator relied on the inapplicable standard of law set forth in *SSA*, 30 FLRA 1156, and found that she only "had discretion to award a remedy that reflects a reconstruction of what management would have done had it acted properly." Exceptions at 16 (internal quotation marks omitted). In this connection, the Union claims that the Authority rejected the application of such a reconstruction requirement in *Federal Deposit Insurance Corp., Division of Supervision & Consumer Protection, San Francisco Region*, 65 FLRA 102 (2010) (Chairman Pope concurring in part) (*FDIC*). Exceptions at 16-17.

The Union also contends that the Arbitrator exceeded her authority by "fail[ing] to resolve two important issues which both parties squarely placed before her," specifically, whether the Agency violated both Item #6 of the MOU and Article 3, Section 2.A. of the CBA. *Id.* at 17-19. Finally, the Union maintains that the Arbitrator denied it a fair hearing by allegedly requiring the Union to submit evidence to refute the Agency's assertion that thousands of employees who were in the bargaining unit during the performance evaluation period had transferred out of the unit before the awards were issued, but then prohibiting the Union from doing so. *Id.* at 24-27. In this regard, the Union asserts that: (1) it did not have evidence to rebut the Agency's assertion until after the hearing; (2) the Arbitrator specifically stated at the hearing that the parties could not submit post-hearing evidence. *Id.*

B. Agency's Opposition

The Agency contends that the Arbitrator's findings concerning the Agency's failure to spend all of the award money and the definition of the term "component" are not deficient. Opp'n at 6-9, 15-18. In this connection, the Agency argues that: (1) the Arbitrator based these findings on her plausible interpretation of the CBA -- not on *NTEU* or nonfacts; and (2) the award does not conflict with *Fort Campbell* because "there [is] no obvious conflict" between the CBA and the PPM. *Id.* at 6-9, 16. The Agency also argues that the award is not contrary to law because the Arbitrator did not rely on *SSA* and, in any event, the remedy is consistent with *FDIC*, which eliminated the reconstruction requirement. *Id.* at 10-12. The Agency further claims that the Arbitrator did not exceed her authority because she "framed the issues as she had the latitude to do, and properly ruled on all the issues before her." *Id.* at 13. In addition, the Agency contends that the Union's exceptions concerning the MOU's data-reporting requirement and the fair hearing exception lack merit. *Id.* at 20-24, 26.

IV. Analysis and Conclusions

A. The award draws its essence from the CBA and the MOU.

In reviewing an arbitrator's interpretation of a collective bargaining agreement, the Authority applies the deferential standard of review that federal courts use in reviewing arbitration awards in the private sector. *See* 5 U.S.C. § 7122(a)(2); *AFGE, Council 220*, 54 FLRA 156, 159 (1998). Under this standard, 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) (*DOL*). The Authority and the courts defer to

[3] The pertinent wording of the PPM is set forth *infra.*

arbitrators in this context "because it is the arbitrator's construction of the agreement for which the parties have bargained." *Id.* at 576.

The Union contends that the Arbitrator's finding that the Agency was not obligated to spend all of the award money fails to draw its essence from the CBA and the MOU. Exceptions at 9-14. The Arbitrator determined that "neither the [CBA] nor the MOU contain[s] any requirement that all award money be spent." Award at 19. The Union does not identify any wording in either the CBA or the MOU with which this finding conflicts. As such, the Union's argument does not demonstrate that the Arbitrator's interpretation of the CBA and the MOU is irrational, unfounded, implausible, or evidences a manifest disregard of the CBA or the MOU.

The Union also contends that the Arbitrator's finding that the CBA did not clearly define "component" as a national-level component for the purposes of award distribution fails to draw its essence from the CBA and the MOU. Exceptions at 19-22. The Arbitrator found that "there was insufficient evidence presented to establish that 'component' meant at the national[-]level with regard to the distribution of funds and distribution of awards[.]" Award at 21. In this connection, she determined that the CBA "uses the word in various and inconsistent ways." *Id.* at 20. The Union does not demonstrate that the Arbitrator's interpretation is irrational, unfounded, implausible, or evidences a manifest disregard of the CBA or the MOU.

The Union further alleges that the Arbitrator's finding that the Agency was not bound by past practices regarding award distribution because of changes reflected in Article 17 of the CBA fails to draw its essence from the CBA. Exceptions at 14-15. The Arbitrator found that "[t]he stated goal of . . . Article [17] was to provide the 'flexibility necessary to adapt to a changing work environment and unanticipated circumstances,'" which, according to the Arbitrator, "eliminated any Union participation in the awards process." Award at 18. The Union does not establish that the Arbitrator's determination that Article 17 reflected changes to the past practice of distributing awards is irrational, unfounded, implausible, or evidences a manifest disregard of the CBA or the MOU.

The Union also alleges that the Arbitrator's finding that it did not establish that the Agency violated the data-reporting requirement of the MOU by providing a breakdown of fund transfers by national-level component "does not provide a plausible interpretation of the [MOU]."[4] Exceptions at 22-24. In this regard, the Union alleges that: (1) the MOU requires a breakdown by "group"; (2) a different provision of the MOU defines "group" as "office"; and (3) the parties agreed that the terms "component" and "office" are not synonymous. *Id.* The MOU provides, in pertinent part, that the Agency "agrees to provide a status report to [the Union] regarding unspent ROC award allocation of funds that were transferred to the ECSA funds within their jurisdictions" and "a breakdown regarding the reallocation of funds for each group of employees." *Id.*, Attach., Jt. Ex. 3 at 2. The Arbitrator found that, because "the MOU [does] not offer a new definition of component," the Union did not "provide sufficient evidence that the Agency violated" the data-reporting requirement of the MOU. Award at 22. The Union provides no basis for finding that the MOU required the Arbitrator to interpret "group" to have a different meaning than "component." Thus, the Union does not demonstrate that the Arbitrator's interpretation is deficient.

For the forgoing reasons, we deny the Union's essence exceptions.

B. The award is not based on nonfacts.

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. *See NFFE, Local 1984*, 56 FLRA 38, 41 (2000). However, the Authority will not find an award deficient on the basis of an arbitrator's determination of any factual matter that the parties disputed at arbitration. *See id.* In addition, an arbitrator's interpretation of a collective bargaining agreement does not constitute a matter that can be challenged as a nonfact. *E.g.*, *U.S. DHS, U.S. Immigration & Customs Enforcement*, 65 FLRA 792, 795 (2011) (*ICE*).

[4] Chairman Pope finds that this allegation does not raise a "ground[]" for finding the award deficient under § 7122(a)(2) of the Statute and § 2425.6 of the Authority's Regulations. In this connection, failure to "provide a plausible interpretation," Exceptions at 22-24, is a *standard* that the Authority applies to determine whether an established ground – whether an award fails to draw its essence from the parties' agreement – has been satisfied. *See DOL*, 34 FLRA at 575. As the Union has not cited one of the grounds for review that the Authority recognizes -- which are easily found in § 2425.6(a)-(b) of our Regulations -- or provided citation to legal authority that establishes the purported ground on which the Union relies under § 2425.6(c), Chairman Pope would dismiss the exception under § 2425.6(e). *See, e.g.*, *AFGE, Local 3627*, 65 FLRA 1049, 1051 n.1 (2011); *AFGE, Local 738*, 65 FLRA 931, 932 (2011); *AFGE, Local 3955, Council of Prison Locals 33*, 65 FLRA 887, 889 (2011) (Member Beck dissenting in part).

The Union claims that the Arbitrator erred by finding that: (1) neither the CBA nor the MOU required the Agency to spend all of the award money; (2) the Agency was not bound by past practices regarding award distribution because of changes reflected in Article 17 of the CBA; (3) the CBA did not clearly define "component" as a national-level component for the purposes of award distribution; and (4) the Union did not establish that the Agency violated the data-reporting requirement of the MOU. Exceptions at 9-10, 14-15, 19, 22-24. Each of these exceptions challenges the Arbitrator's interpretation of the CBA and/or the MOU. Thus, they do not provide a basis for finding the award deficient on nonfact grounds. *See ICE*, 65 FLRA at 795. Accordingly, we deny the exceptions.

C. The award is not contrary to law.

When an exception involves an award's consistency with law, the Authority reviews any question of law raised by an exception and the award de novo. *See NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)). In applying a de novo standard of review, the Authority assesses whether the arbitrator's legal conclusions are consistent with the applicable standard of law. *See NFFE, Local 1437*, 53 FLRA 1703, 1710 (1998). In making that assessment, the Authority defers to the arbitrator's underlying factual findings. *See id.* In addition, the Authority has recognized that when an arbitrator bases an award on separate and independent grounds, an appealing party must establish that all of the grounds are deficient in order to demonstrate that the award is deficient. *See Soc. Sec. Admin., Office of Disability Adjudication & Review*, 64 FLRA 1000, 1002 (2010) (*ODAR*) (citing *U.S. Dep't of the Treasury, IRS, Oxon Hill, Md.*, 56 FLRA 292, 299 (2000)). In those circumstances, if the excepting party does not demonstrate that the award is deficient on one of the grounds relied on by the arbitrator, then it is unnecessary to address exceptions to the other grounds. *Id.* Moreover, where the premise of a contrary-to-law exception is erroneous, the Authority denies the exception. *See AFGE, Local 648, Nat'l Council of Field Labor Locals*, 65 FLRA 704, 709 (2011) (*Local 648*).

The Union asserts that the Arbitrator improperly relied on *NTEU*, 45 FLRA 696, in finding that the Agency did not act in bad faith. Exceptions at 7-9. Citing *NTEU*, the Arbitrator determined that "there is much support for the proposition that [the] Agency is not entitled to issue all funds allocated for awards." Award at 19. However, contrary to the Union's assertion, she did not rely on that decision in finding that the Agency did not act in bad faith. *Id.* Instead, she stated that she "reviewed the record carefully to determine if there was evidence of bad faith[,] . . . did not find evidence of bad faith on the part of [the] Agency, and conclud[ed] that [the Agency] did not act in bad faith." *Id.* As the premise of the Union's assertion is erroneous, it provides no basis for finding the award deficient. *See Local 648*, 65 FLRA at 709.

The Union also argues that the award is inconsistent with the Authority's decision in *Fort Campbell*, 37 FLRA 186. Exceptions at 20-21. In this regard, the Union contends that Article 4, Section 3.A. of the CBA and the MOU define "component" as a "national[-]level" component and, therefore, this definition trumps the description of that term set forth in the PPM.[5] *Id.* at 21. In *Fort Campbell*, the Authority held that agency rules and regulations may govern the disposition of matters to which they both apply only when the rules and regulations do not conflict with provisions of an applicable collective bargaining agreement. 37 FLRA at 195. The Arbitrator found that "there was insufficient evidence presented to establish that 'component' meant at the national level," *see* Award at 20-21, and we have denied the Union's essence exception to this finding. As such, there is no basis for adopting the Union's interpretation of the CBA and the MOU, or finding that the award is inconsistent with *Fort Campbell*.

The Union further contends that the award is contrary to law because the Arbitrator relied on *SSA*, 30 FLRA 1156, in fashioning her remedy. Exceptions at 16-17. Although the Arbitrator cited the reconstruction standard set forth in *SSA*, she also determined that she had "no basis to award a retroactive remedy" based on her finding that, under the CBA and the MOU, the Agency "was not required to expend all award funds[.]" Award at 21. We have denied the Union's essence exception to this finding. Thus, even assuming that the Arbitrator relied on *SSA* as one basis for her remedy, her finding that she could not provide a retroactive remedy because the Agency had no contractual obligation to spend all the award money provides a separate and independent basis for her "cease and desist" remedy. *See ODAR*, 64 FLRA at 1002. Accordingly, the Union's argument does not provide a basis for finding the award deficient.

For the foregoing reasons, we deny the Union's contrary-to-law exceptions.

[5] The PPM provides, in pertinent part: "Component as used here is the lowest organizational level." Exceptions, Attach., Ex. O at 3.

D. The Arbitrator did not exceed her authority.

The Union argues that the Arbitrator exceeded her authority by "fail[ing] to resolve two important issues which both parties squarely placed before her," specifically, whether the Agency violated both Item #6 of the MOU and Article 3, Section 2.A. of the CBA. Exceptions at 17-19. 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 persons who are not encompassed within the grievance. *See U.S. Dep't of the Navy, Naval Base, Norfolk, Va.*, 51 FLRA 305, 307-08 (1995). In the absence of a stipulated issue, an arbitrator's formulation of the issues is accorded substantial deference. *See AFGE, Local 933*, 58 FLRA 480, 482 (2003). Moreover, arbitrators are not required to address every argument raised by the parties. *See U.S. Dep't of Homeland Sec., Customs & Border Prot. Agency, N.Y.C., N.Y.*, 60 FLRA 813, 816 (2005) (*DHS*).

Here, there is no indication in the record that the parties stipulated the issues to be resolved. As stated previously, the Arbitrator framed the issue, in pertinent part, as: "Did [the] Agency's administration of awards . . . violate Article 17 of the [CBA] [and/or] the [MOU]? If so, what is the appropriate remedy?" Award at 3. The Arbitrator found that certain aspects of the process violated the CBA and/or the MOU, while others did not. *Id.* at 20-21. As the parties did not stipulate the issues, the Arbitrator was not required to address every specific argument that the Union made regarding how the Agency allegedly violated the CBA and/or the MOU. *See DHS*, 60 FLRA at 816. Thus, the Union's argument provides no basis for finding that the Arbitrator exceeded her authority, and we deny the exception.

E. The Arbitrator did not fail to provide a fair hearing.

The Union argues that the Arbitrator denied it a fair hearing by allegedly requiring the Union to submit evidence to refute the Agency's assertion that employees who were in the bargaining unit during the performance evaluation period had transferred out of the unit before the awards were issued, but then prohibiting the Union from doing so. Exceptions at 24-27. In this regard, the Union asserts that: (1) it did not have the evidence to rebut the Agency's assertion until after the hearing; (2) the Arbitrator specifically stated at the hearing that the parties could not submit post-hearing evidence. *Id.* The Authority will find an award deficient on the ground that the arbitrator failed to provide a fair hearing when it determines that an arbitrator's refusal to hear or consider pertinent and material evidence, or other actions in conducting the proceeding, prejudiced a party and affected the fairness of the proceeding as a whole. *See AFGE, Local 1668*, 50 FLRA 124, 126 (1995).

At the close of the hearing, the Union requested, and the Arbitrator directed, that the Agency provide the Union with data identifying the bargaining unit status of the employees who received awards during the performance evaluation period. Award at 20. There is no indication in the record that the Arbitrator did not allow the Union to rebut the Agency's evidence. Although the Union argues that the Arbitrator specifically stated that the parties could not submit post-hearing evidence, *see* Exceptions at 27, the Arbitrator subsequently allowed the Agency to submit such evidence, and the Union had no reason to assume that it could not rebut the Agency's data by submitting its own post-hearing evidence. Thus, the Union does not demonstrate that the Arbitrator's actions prejudiced the Union or affected the fairness of the hearing. Accordingly, the Union has not established that the Arbitrator denied it a fair hearing, and we deny the exception.

V. Decision

The Union's exceptions are denied.

APPENDIX

Article 3, Section 2.A. of the CBA provides, in pertinent part: "All employees shall be treated fairly and equitably in all aspects of personnel management." Exceptions, Attach., Ex. E at 6.

Article 4, Section 3.A. of the CBA provides, in pertinent part: "The parties agree that notice of proposed changes which affect only one national component nationwide (Field, Program Service Centers, Headquarters, Hearings and Appeals, Office of Quality Assurance, Wilkes Barre Data Operations Center) . . . will be matters dealt with by the parties at the component level." *Id.* at 17.

Article 10, Section 6, Appendix C of the CBA provides, in pertinent part: "[M]anagement will approve employee requests for specific schedules . . . depending upon workload and differing demands of respective offices/components[.]" *Id.* at 72.

Article 17 of the CBA provides, in pertinent part:

> Section 1[]
>
> . . . .
>
> The program provides for various forms of recognition[.] It provides the flexibility necessary to adapt to a changing work environment and unanticipated circumstances. The intent of this program is that employees will be appropriately rewarded regardless of changes in the Agency's organizational structure, work processes or work initiatives.
>
> . . . .
>
> Section 5[]
>
> The [Agency] will provide the [U]nion with an electronic annual report on the awards program for bargaining unit employees.

Id. at 110, 113.

Article 24 of the CBA identifies the following as "components": "OHA (HQ)"; "OHA (Field)"; "Headquarters (Local 1923)"; "FO (DO/BO)"; "FO (Non-Mega TSC)"; "FO (Mega TSC)"; "ROQA"; "DOC"; "RO"; "OGC (Region)"; "OGC (Headquarters)"; "PSC." *Id.* at 152-53.

The MOU provides, in pertinent part:

> . . . .
>
> 3. The organizational component's allocation for ROC awards for FY 2008 . . . as defined below . . . : (a) SSA Headquarters within Local 1923[;] (b) Field Offices and Teleservice Centers[;] (c) Program Service Centers[;] (d) Wilkes-Barre Data Operations Center[;] (e) Office of Quality Performance[;] (f) Office of Disability Adjudication and Review.
>
> . . . .
>
> 6. The [p]arties agree that all unspent ROC award money . . . will be reallocated for the same group of employees to ECSA award funds.
>
> . . . .
>
> 7. [The Agency] agrees to provide a status report to [the Union] regarding unspent ROC award allocation of funds that were transferred to the ECSA funds within their jurisdictions. The Agency will provide a breakdown regarding the reallocation of funds for each group of employees.

Exceptions, Attach., Jt. Ex. 3 at 1-2.