68 FLRA No. 12

UNITED STATES
DEPARTMENT OF AGRICULTURE
U.S. FOREST SERVICE
LAW ENFORCEMENT AND INVESTIGATIONS
REGION 8
(Agency)

and

NATIONAL FEDERATION
OF FEDERAL EMPLOYEES
LOCAL 5300
(Union)

0-AR-5032

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DECISION

November 7, 2014

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Before the Authority: Carol Waller Pope, Chairman, and Ernest DuBester and Patrick Pizzella, Members

I. Statement of the Case

The Agency paid overtime hours worked by certain employees (the grievants) as administratively uncontrollable overtime (AUO) – a type of premium payment that is a percentage of an employee's annual pay based on the number of overtime hours worked per year – instead of as time-and-a-half overtime under the Fair Labor Standards Act (the FLSA). Arbitrator Christopher M. Shulman found that, by paying the overtime as AUO, the Agency violated Articles 18 and 19 of the parties' collective-bargaining agreement, the FLSA, and 5 C.F.R. § 610.121(b)(3).

There are several substantive questions before us. The first five questions are whether: the award is contrary to an Agency-wide regulation; the award is incomplete, ambiguous, or contradictory as to make implementation of the award impossible; the award is contrary to 5 U.S.C. § 5542(a)(1) and 5 C.F.R. § 550.151; the cease-and-desist remedy is "flawed" and violates law, regulation, and the parties' agreement;[1] and the award fails to draw its essence from the parties' agreement. Because the Agency failed to support each of these exceptions, we deny all five under § 2425.6(e)(1) of the Authority's Regulations.[2]

The remaining question is whether the Arbitrator's award is contrary to several other laws and regulations regarding AUO and FLSA-overtime payments. Under 5 C.F.R. § 610.121(b)(3), if a supervisor who has the authority to schedule an employee's overtime "should have scheduled a period of work as part of the employee's regularly scheduled administrative workweek and failed to do so," then the employee is entitled to FLSA overtime for that period of work.[3] The Arbitrator found that the number of overtime hours that the grievants worked was reasonably predictable and should have been scheduled as part of their administrative workweeks under 5 C.F.R. § 610.121(b)(3). The Agency has not demonstrated that those findings are deficient. And as those findings support the Arbitrator's conclusion that FLSA overtime was warranted, we find that the award is not contrary to the cited laws and regulations regarding AUO or FLSA-overtime payments.

II. Background and Arbitrator's Award

The grievants are law-enforcement officers (officers) that the Agency assigned to work at the Ocala National Forest (Ocala) during a large event called the Rainbow Gathering (the event). The event, which has occurred in Ocala for many years, lasts for approximately two weeks each year. Historically, the officers' workdays were typically longer than eight hours during the event.

Prior to 2013 (the year of the event at issue in this case), when planning for the event, the officers' supervisors would request and receive authorization for at least two hours of FLSA overtime per day for the officers. In 2013, the officers' supervisors did not request authorization for FLSA overtime for each day of the event, and, instead, the Agency paid the grievants' overtime hours as AUO. The Union filed a grievance, which went to arbitration.

At arbitration, the parties stipulated the issues as: "Whether the Agency violated federal law, regulation, and the [agreement] when it failed to approve and pay FLSA time-and-a-half overtime to [the grievants] who worked during the [event], and if so, what shall the remedy be?"[4]

Under FLSA regulations, "[a]n agency shall compensate an employee who is not exempt [from the

[1] Exceptions Br. at 18.

[2] 5 C.F.R. § 2425.6(e)(1).

[3] *Id.* § 610.121(b)(3); *see also USDA, Forest Serv.*, 67 FLRA 558, 561 (2014) (*Forest Service*).

[4] Award at 3.

FLSA] . . . for all hours of work in excess of [eight] in a day or [forty] in a workweek at a rate equal to one and one-half times the employee's hourly regular rate of pay."[5] In contrast, AUO is an annual premium payment that is made to an employee who works "in a position in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty."[6]

AUO and FLSA overtime are mutually exclusive; when an employee who is eligible for both types of overtime works more than eight hours in a day, the time is compensated as AUO if those hours are "irregular, unscheduled work," but as FLSA overtime if the overtime is regularly scheduled and administratively controllable.[7] An employee who is eligible for both AUO and FLSA overtime may recover FLSA overtime only by either: (1) demonstrating that his or her supervisor "scheduled the overtime in advance of the administrative workweek"; or (2) meeting the fact-specific test set out in 5 C.F.R. § 610.121(b)(3), which is described below.[8]

The Arbitrator found that, under both the agreement and the FLSA regulations, the grievants were entitled to FLSA overtime for the disputed hours. First, the Arbitrator cited Articles 18.2, 18.4, and 19.6 as relevant provisions of the agreement. Article 18.2 states that an employee's "administrative workweek, established in accordance with 5 [C.F.R. §] 610.111," is that in which an employee is regularly scheduled for five consecutive, eight-hour days.[9] As relevant here, 5 C.F.R. § 610.111 states that an employee's "administrative workweek" is that employee's basic workweek "plus the period of regular overtime work, if any, required of each employee."[10] Under the regulation, a "basic workweek" consists of forty regular hours scheduled in less than six consecutive days, with the "days and hours within the administrative workweek" specified in a "written agency policy statement."[11] Article 18.4 of the agreement states that any hours over eight per day that an employee is "directed by management" to work are overtime hours.[12] And Article 19.6 of the agreement states that when a supervisor directs an employee, either orally or in writing, to work over eight hours per day, that employee is entitled to FLSA overtime.

The Arbitrator also referenced a statement from *Alozie v. United States* (*Alozie*),[13] which noted that an AUO-eligible employee can recover the one-and-one-half FLSA-overtime rate only if the employee's supervisor scheduled the overtime in advance of the employee's administrative workweek. But the Arbitrator explained that if the employee demonstrates that the agency "should have scheduled" the overtime in advance, then the employee is entitled to recover FLSA overtime for the hours over forty that the employee actually worked.[14] The Arbitrator stated that a supervisor's "scheduling of the overtime in advance of the workweek need not be in a specific written document, as required under 5 C.F.R. § 610.111," as long as the employee satisfies the test in 5 C.F.R. § 610.121(b)(3).[15] In this connection, the Arbitrator rejected the Agency's reliance on an Authority decision[16] that relied on 5 C.F.R. § 610.111(b), instead of 5 C.F.R. § 610.121(b)(3), to determine that AUO rather than FLSA overtime was appropriate.[17]

Under 5 C.F.R. § 610.121(b)(3):

> If it is determined that the head of an agency should have scheduled a period of work as part of the employee's regularly scheduled administrative workweek and failed to do so . . . the employee shall be entitled to the payment of premium pay for that period of work as regularly scheduled work under [the FLSA]. In this regard, it must be determined that the head of the agency: (i) [h]ad knowledge of the specific days and hours of the work requirement in advance of the administrative workweek, and (ii) had the opportunity to determine which employee had to be scheduled, or rescheduled, to meet the specific days and hours of that work requirement.[18]

The Arbitrator found that, in this case, the grievants' supervisor was aware of the need to request FLSA overtime for the event – unlike the supervisors in *Alozie* who did not know that employees were choosing to work overtime instead of taking scheduled meal breaks.[19] The Arbitrator found that the grievants'

[5] 5 C.F.R. § 551.501(a)(1).
[6] *Id.* § 550.151.
[7] *Forest Service*, 67 FLRA at 559 (citing *Alozie v. United States*, 106 Fed. Cl. 765, 766 (2012)); *see also* 5 U.S.C. § 5545(c)(2).
[8] *Forest Service*, 67 FLRA at 561 (citations omitted).
[9] Award at 4.
[10] 5 C.F.R. § 610.111(a)(2).
[11] *Id.* § 610.111(a)(1).
[12] Award at 4.
[13] 106 Fed. Cl. 765.
[14] Award at 8.
[15] *Id.*
[16] *U.S. DHS, ICE*, 66 FLRA 13, 15-16 (2011).
[17] Award at 8.
[18] 5 C.F.R. § 610.121(b)(3).
[19] Award at 9-10 (citing *Alozie*, 106 Fed. Cl. at 776).

supervisor had knowledge of the specific days and hours of the work requirement in advance of the administrative workweek based on the Agency's prior experience with the event as well as the permit application by the group that hosted the event in 2013. The Arbitrator also compared this case to the facts in a different arbitration award (the marijuana-eradication case),[20] and held that the event – like the assignment in the marijuana-eradication case – "entailed a specific period for which significant planned overtime was expected, well in advance of the workweeks at issue."[21]

The Arbitrator determined not only that the grievants' supervisor had "the opportunity" to determine which employee needed to be scheduled at a specific time, but also that she "took the opportunity."[22] In particular, the Arbitrator found that the supervisor required the grievants to complete reports and electronically "synchronize" that report data daily – instead of every few days – and that this caused the officers to work longer than eight hours each day.[23] The Agency argued that the grievants' supervisor "did not know how much overtime might be needed" because the supervisor had "no ability to predict when an [officer] might make an arrest or issue a citation."[24] However, the Arbitrator expressly rejected that argument.[25] The Arbitrator found that "[u]nlike the usual AUO situation, where an [officer] winds up with extended hours on a given day because something happens on his or her shift, here [the Agency] planned that the employees would be working the extra hours, but failed . . . to make these [extra hours] regularly scheduled overtime hours under 5 C.F.R. § 610.121(b)(3)."[26]

Accordingly, the Arbitrator concluded that the Agency violated Articles 18 and 19 of the agreement, the FLSA, and 5 C.F.R. § 610.121(b)(3) by paying the grievants' overtime as AUO rather than as FLSA overtime. As remedies, the Arbitrator directed the Agency, in relevant part, to convert all hours paid as AUO to FLSA overtime, pay the grievants backpay, and prospectively "cease and desist from failing to schedule the quantity of predictable and controllable, regularly scheduled FLSA time-and-a-half overtime for [officers] during [event] details on the Ocala . . . that the Agency in good faith believes will be needed."[27]

The Agency filed exceptions to the award, and the Union filed an opposition to the Agency's exceptions.

III. Preliminary Matters

A. The Agency timely filed its exceptions.

The Union argues that the Agency's exceptions are untimely.[28] For support, the Union cites a notice from the Authority's Office of Case Intake and Publication, which states that the Agency's exceptions are "dated April 25, 2014."[29] The Union argues that because the Arbitrator served the award on the parties on March 25, the Agency's exceptions were due on April 24.[30] However, while the Agency's exceptions are *dated* April 25, the exceptions were *filed* through the Authority's electronic-filing system on April 24 – the due date. Under the Authority's Regulations, the date on which the exceptions are filed, not the date printed on the exceptions themselves, controls whether the exceptions are timely.[31] As the Agency filed its exceptions on the due date, we find that they are timely, and we consider them.

B. We assume, without deciding, that the Agency's argument regarding 5 C.F.R. § 610.111(b) is properly before us.

The Agency argues that the Arbitrator failed to apply 5 C.F.R. § 610.111(b).[32] The Union claims that the Agency did not raise this regulation before the Arbitrator and, instead, cited only § 610.111(a).[33] Under § 2425.4(c) of the Authority's Regulations, a party may not rely on any argument that "could have been, but [was] not, presented to the arbitrator,"[34] and § 2429.5 likewise provides that the Authority will not "consider any . . . arguments . . . that could have been, but were not, presented in the proceedings before the . . . arbitrator."[35]

In its post-hearing brief to the Arbitrator, the Agency stated that "Article 18.2 of the [agreement] defines the regularly scheduled administrative workweek . . . as the period within the administrative workweek, established in accordance with 5 [C.F.R. §] 610.111."[36] The Agency did not specify a subsection of § 610.111, but the Arbitrator specifically referenced § 610.111(b) in his award.[37] In these circumstances, we assume, without

[20] *See NFFE, Local 5300*, FMCS Case No. 13-1203-51710-A (Nov. 11, 2013).
[21] Award at 10-11.
[22] *Id.* at 10.
[23] *Id.*
[24] *Id.* at 6-7.
[25] *Id.* at 11-12.
[26] *Id.* at 11.
[27] *Id.*
[28] Opp'n at 1-2.
[29] *Id.* at 2; *see also* 5 C.F.R. § 2425.2(b).
[30] Opp'n at 2.
[31] *See* 5 C.F.R. §§ 2429.21, 2425.2(b).
[32] Exceptions Br. at 12-13.
[33] Opp'n at 5-6.
[34] 5 C.F.R. § 2425.4(c).
[35] *Id.* § 2429.5.
[36] Exceptions, Attach. 8, Agency's Post-Hr'g Br. at 16-17.
[37] Award at 8.

deciding, that the Agency's argument regarding § 610.111 is properly before us. And, for the reasons discussed in Section IV.B., below, we find that the Agency's argument does not provide a basis on which to find the award deficient.

IV. Analysis and Conclusions

A. We deny the Agency's exceptions that fail to support a recognized ground for review under § 2425.6(e)(1) of the Authority's Regulations.

Under § 2425.6(e)(1) of the Authority's Regulations, an exception "may be subject to . . . denial if . . . [t]he excepting party fails to . . . support a ground" listed in § 2425.6(a)-(c), "or otherwise fails to demonstrate a legally recognized basis for setting aside the award."[38] The Agency makes five arguments that fail to support a recognized ground for review.

First, in the form filed with its exceptions (the exceptions form), the Agency states that the award is contrary to an Agency-wide regulation,[39] but never cites any Agency-wide regulation or makes any supporting argument in the brief that it provided with the exceptions form (the exceptions brief). Thus, we deny this exception as unsupported.

Second, in the exceptions form, the Agency states that the award is "incomplete, ambiguous, or contradictory as to make implementation of the award impossible,"[40] and claims that its supporting argument is set forth in the part of the exceptions brief that discusses the Arbitrator's remedy.[41] But the exceptions brief contains no explanation of how the award is incomplete, ambiguous, or contradictory so that implementation of the award is impossible. Consequently, the Agency fails to support its claim, and we deny this exception.

Third, the Agency asserts – in the introduction section of the exceptions brief – that the award is contrary to both 5 U.S.C. § 5542(a)(1) and 5 C.F.R. § 550.151.[42] Despite citing these provisions again in the background section of the exceptions brief, the Agency never explains how the award conflicts with either § 5542(a)(1) or § 550.151.[43] Therefore, we deny this exception as unsupported.

Fourth, the Agency claims that the Arbitrator's cease-and-desist remedy is "flawed" and violates law, regulation, and the agreement.[44] However, the Agency cites no law, regulation, or provision in the agreement to which the remedy is contrary. Thus, the Agency does not support its assertion, and we deny the exception.

Fifth, the Agency argues that the award fails to draw its essence from the agreement, specifically Articles 18.2, 18.4, and 19.6.[45] Under § 2425.6(b) of the Authority's Regulations, a party arguing that an award fails to draw its essence from the parties' collective-bargaining agreement must "explain how, under standards set forth in the decisional law of the Authority or [f]ederal courts," the award is deficient.[46] Thus, the excepting party must establish 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 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.[47]

As discussed previously, Article 18.4(a) of the agreement states that the hours "an employee is directed by management to work in excess of [eight] hours per day or [forty] hours per week are overtime hours"; and Article 19.6(a) states that "an employee directed (orally or in writing) to work in excess of [eight] hours a day or [forty] hours a week by his/her supervisor or authorized [m]anagement official has been 'officially ordered' with respect to overtime work."[48] The Agency argues that the grievants' supervisor "did schedule for the [event] but[,] contrary to the [A]rbitrator's finding[,] could not control when the overtime was to be utilized."[49] In this regard, the Agency argues that the Arbitrator made a "general finding" that "totally ignor[ed] the evidence adduced at the hearing" regarding whether the Agency could control the overtime.[50] The Agency further argues that the Arbitrator "ignored" and failed to address 5 C.F.R. § 610.111(b), which the Agency claims is "the very essence of Article 18.2."[51] As discussed previously, Article 18.2 provides that an employee's administrative workweek consists of five consecutive, eight-hour days, "in accordance with 5 [C.F.R. §] 610.111."[52] The Agency's arguments do not explain how the award is deficient under the essence standard set forth above.

[38] 5 C.F.R. § 2425.6(e)(1).
[39] Exceptions Form at 5.
[40] *Id.*
[41] *Id.* at 6.
[42] Exceptions Br. at 4.
[43] *Id.* at 8-9.
[44] *Id.* at 18.
[45] Exceptions Form at 9.
[46] 5 C.F.R. § 2425.6(b); *see also Forest Service*, 67 FLRA at 560.
[47] *U.S. DOL (OSHA)*, 34 FLRA 573, 575 (1990); *e.g., NTEU, Chapter 32*, 67 FLRA 354, 355 (2014).
[48] Exceptions Br. at 12.
[49] *Id.* at 14.
[50] *Id.* at 15.
[51] *Id.* at 12-13.
[52] Award at 4.

Accordingly, we find that the Agency has failed to support its claim that the award fails to draw its essence from the agreement, and we deny the exception.

B. The award is not contrary to law.

The Agency makes several arguments that the award is contrary to various laws regarding overtime payments. In resolving an exception claiming that an award is contrary to law, the Authority reviews any question of law raised by an exception and the award de novo.[53] 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.[54] Under this standard, the Authority defers to the arbitrator's underlying factual findings unless the excepting party establishes that they are nonfacts.[55] Challenges to an arbitrator's evaluation of the evidence do not demonstrate that an award is contrary to law.[56]

The Agency argues that the Arbitrator's findings, or lack thereof, regarding AUO render the award contrary to 5 C.F.R. §§ 550.153(c) and (d),[57] 550.163,[58] and 610.111(a).[59] Specifically, the Agency argues that the Arbitrator "failed to make [the] distinction" between the grievants working overtime because their supervisors ordered them, rather than because the grievants independently determined that their work situations required them to remain on duty.[60] The Agency asserts that the distinction is the "very definition of AUO," as provided by 5 C.F.R. § 550.153(c) and (d).[61] Under 5 C.F.R. § 550.153(c) and (d), an employee entitled to AUO is responsible for recognizing, without supervision, circumstances that require him to remain on duty.[62] In support of its argument, the Agency also cites "5 [U.S.C. §] 5545(a)(g)."[63] It appears that the Agency intended to cite 5 U.S.C. § 5545(c)(2), which provides that an employee who works substantial irregular or occasional overtime is entitled to AUO and that the employee is "generally . . . responsible for recognizing, without supervision, circumstances which require the employee to remain on duty."[64]

The Agency further argues that, just as the Arbitrator failed to address that issue, he "totally ignored" evidence that the overtime was appropriately paid as AUO under 5 C.F.R. § 550.163.[65] Section 550.163 addresses the relationship of AUO to other payments and provides, in part, that "[a]n employee receiving premium pay on an annual basis under [5 C.F.R.] § 550.151 may not receive premium pay for irregular or occasional overtime work under any other section of this subpart."[66] According to the Agency, the Arbitrator "totally ignor[ed] the evidence adduced at the hearing,"[67] "missed the significance of AUO[,] and failed to address AUO in relation to the scheduling of employees."[68] In regard to 5 C.F.R. § 610.111(a), discussed previously, the Agency reiterates the argument that it made in its essence exception that, "contrary to the [A]rbitrator's finding," the grievants' supervisor scheduled for the event, but "could not control when the overtime was to be utilized."[69]

The Agency's arguments that the Arbitrator ignored the requirements for AUO are without merit. As discussed previously, the Arbitrator rejected[70] the Agency's argument that the grievants' supervisor had "no ability to predict when an [officer] might make an arrest or issue a citation."[71] Instead, the Arbitrator found that

> [u]nlike the usual AUO situation, where an [officer] winds up with extended hours on a given day because something happens on his or her shift, here [the Agency] planned that the employees would be working the extra hours, but failed . . . to make these [extra hours] regularly scheduled overtime hours under 5 C.F.R. § 610.121(b)(3).[72]

Additionally, the Agency's arguments that the Arbitrator "ignored" evidence challenges the Arbitrator's factual findings, but the Agency did not file a nonfact exception.[73] Therefore, we defer to the Arbitrator's factual findings,[74] which support his conclusion that the Agency should have scheduled the grievants' overtime as FLSA overtime.

[53] *U.S. Dep't of the Army, White Sands Missile Range, White Sands Missile Range, N.M.*, 67 FLRA 619, 621 (2014) (citation omitted).
[54] *Forest Service*, 67 FLRA at 560.
[55] *Id.* (citation omitted).
[56] *Id.* (citing *AFGE, Local 331*, 67 FLRA 295, 296 (2014)).
[57] Exceptions Br. at 16.
[58] *Id.* at 19.
[59] *Id.* at 14.
[60] *Id.* at 16.
[61] *Id.*
[62] 5 C.F.R. § 550.153(c)-(d).
[63] Exceptions Br. at 16.
[64] 5 U.S.C. § 5545(c)(2).
[65] Exceptions Br. at 19.
[66] 5 C.F.R. § 550.163.
[67] Exceptions Br. at 15.
[68] *Id.* at 14.
[69] *Id.*
[70] *Id.* at 11-12.
[71] Award at 6-7.
[72] *Id.* at 11.
[73] Exceptions Br. at 15, 19.
[74] *Forest Service*, 67 FLRA at 560.

The Agency also argues that, "contrary to" 5 C.F.R. § 610.111(b), the Arbitrator determined that that regulation was not applicable to the case.[75] Section 610.111(b) states:

> When it is impracticable to prescribe a regular schedule of definite hours of duty for each workday of a regularly scheduled administrative workweek, the head of an agency may establish the first [forty] hours of duty performed within a period of not more than [six] days of the administrative workweek as the basic workweek. A [first-forty]-hour tour of duty is the basic workweek without the requirement for specific days and hours within the administrative workweek. All work performed by an employee within the first [forty] hours is considered regularly scheduled work for premium pay and hours of duty purposes. Any additional hours of officially ordered or approved work within the administrative workweek are overtime work.

The Agency states that because the regulation "speaks to regularly scheduled overtime[,] which is being contested," the Arbitrator's reasoning for not relying on 5 C.F.R. § 610.111(b) is "misplaced."[76] While the regulation does mention overtime, it applies to employees who, unlike the grievants, are subject to a first-forty-hour workweek – in which employees work overtime only after they have worked forty hours, regardless of how many hours per day are worked. As discussed in Section II., above, under the agreement, the grievants' administrative workweek was five consecutive, eight-hour days, with any hours worked over eight per day being overtime. The Agency offers no further explanation as to how 5 C.F.R. § 610.111(b) applies to this case. Thus, we find that the Agency's argument provides no basis on which to find the award deficient.

In its remaining arguments, the Agency makes essentially the same arguments that the Authority addressed in *USDA, Forest Service* (*Forest Service*) – the marijuana-eradication case.[77] The Agency argues that the Arbitrator's award is contrary to law because it awards FLSA overtime when, for various reasons, the Agency could not predict the hours that the grievants would need to work.[78] In particular, the Agency claims that it "could not [preschedule] the walkthroughs" performed by officers, "vehicle[-]compliance checkpoints" manned by officers, or operations requested by local law enforcement.[79] The Agency claims that although it could schedule overtime generally for the event, it could not regulate the work once the officers were in the field.[80] The Agency asserts that it was therefore the responsibility of the officers to recognize when circumstances required them to remain on duty for more than eight hours.[81] Thus, the Agency contends that, in addition to the government-wide regulations regarding AUO discussed above, the award is contrary to 5 C.F.R. § 610.121(b)(3).[82]

As stated previously, under 5 C.F.R. § 610.121(b)(3), an officer who is eligible for both AUO and FLSA overtime may recover FLSA overtime by demonstrating that his or her supervisor knew of the specific days and hours of the work requirement in advance of the workweek and had the opportunity to determine which employees needed to be scheduled to satisfy the work requirement.[83] However, as the Authority stated in *Forest Service*, "[n]either the regulations nor the case law requires that a supervisor know with certainty the exact number of overtime hours prior to the administrative workweek. Rather, they require only that a supervisor be able to 'reasonably predict[]' the hours in question."[84]

In that regard, the Arbitrator found that the period in which the overtime was performed was not "a single day or two of unpredictable or uncontrollable extra duty," but rather, "entailed a specific period for which significant planned overtime was expected, well in advance of the workweeks at issue."[85] While the Agency claims that it could not preschedule the overtime, the Arbitrator found that the Agency was aware of the hours that the grievants would be required to work – and planned in advance that the grievants would be working extra hours – because of its prior experience with the event, the permit application by the group hosting the 2013 event, and the supervisor's directive that the grievants complete and synchronize their report data each day.[86] The Arbitrator found that, despite this advance planning, the Agency "failed . . . to make these regularly scheduled overtime hours."[87]

[75] Exceptions Br. at 13.
[76] *Id.*
[77] 67 FLRA 558.
[78] Exceptions Br. at 14.
[79] *Id.* at 7.
[80] *Id.* at 16.
[81] *Id.*
[82] *Id.* at 19.
[83] *Forest Service*, 67 FLRA at 561.
[84] *Id.* (quoting *Battenfield v. United States*, 648 F.2d 1194, 1196 (9th Cir. 1980)).
[85] Award at 10-11.
[86] *Id.* at 10.
[87] *Id.* at 11.

Consistent with *Forest Service*, where the Authority rejected the same arguments regarding management's ability to predict overtime because it could not regulate officers once they were in the field, we find that the Agency's arguments in this case similarly fail to demonstrate that the award is contrary to law.

V. Decision

We deny the Agency's exceptions.