

**70 FLRA No. 14**

NATIONAL TREASURY  
EMPLOYEES UNION  
(Union)

and

UNITED STATES  
DEPARTMENT OF HOMELAND SECURITY  
U.S. CUSTOMS AND BORDER PROTECTION  
(Agency)

0-AR-4933  
(68 FLRA 829 (2015))  
(68 FLRA 253 (2015))

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DECISION

November 28, 2016

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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 filed exceptions to Arbitrator Andrew M. Strongin's (the Arbitrator's) award on compliance (award), which determined that the Agency has failed to comply with the arbitration award in the underlying case. We must decide four substantive questions.

First, we must decide whether the award is contrary to public policy or based on a nonfact. Because the Agency fails to support these exceptions with any arguments, the answer to this question is no.

Second, we must decide whether the Arbitrator exceeded his authority because he failed to address the "actual" question that was before him at arbitration.<sup>1</sup> Because the Agency misconstrues the issue that was before the Arbitrator, the parties did not stipulate to an issue, and the Arbitrator clearly resolved the issue that was before him, the answer to this question is no.

Third, we must decide whether the Arbitrator exceeded his authority by extending his jurisdiction indefinitely, in violation of the doctrine of *functus officio*. Because an arbitrator may retain jurisdiction to resolve

disputes over interpretation or implementation of an award, the answer to this question is no.

Fourth, we must decide whether the award is contrary to law because it violates the Custom Officers Pay Reform Act (COPRA), the doctrine of sovereign immunity, and the Antideficiency Act. Because the Agency advances the very same contrary-to-law arguments that were considered and rejected in the underlying cases, the answer to this question is no.

For the foregoing reasons, as well as the reasons explained below, we dismiss, in part, and deny, in part, the Agency's exceptions.

**II. Background and Arbitrator's Award**

The Authority more fully detailed the circumstances of this dispute in the three underlying cases.<sup>2</sup> As such, this decision discusses only those aspects of the case that are pertinent to the Agency's exceptions immediately before us.

This dispute arose out of the Agency's use of its Revised National Inspectional Assignment Policy (RNIAP) to determine staffing levels and tours of duty at the local level. The Union requested bargaining over the RNIAP and a new "bid-and-rotation" system.<sup>3</sup> After the Agency refused the request, the Union filed a grievance in 2006 alleging that the Agency violated several federal laws and regulations, as well as the parties' collective-bargaining agreement. The grievance was unresolved, and the parties submitted the matter to arbitration.

**A. The Interim Award**

Following the first arbitration hearing between the parties, Arbitrator Margery F. Gootnick found that the Agency violated numerous legal provisions. She then issued an interim award that ordered the Agency to cease and desist from continuing these violations; to post a notice; and to provide the Union with information concerning the affected grievants' work-assignment changes. She further ordered the parties to meet and confer regarding remedies, and she retained jurisdiction for sixty days for the limited purpose of considering remedial issues and issuing an appropriate remedy.

<sup>2</sup> *U.S. DHS, U.S. CBP*, 68 FLRA 253, 253 (2015) (*DHS*); *see also U.S. DHS, U.S. CBP*, 65 FLRA 978, 978 (2011) (*DHS II*); *U.S. DHS, U.S. CBP, recons. denied*, 68 FLRA 829, 829 (2015) (*DHS III*).

<sup>3</sup> *DHS*, 68 FLRA at 253 (citing *DHS II*, 65 FLRA at 978 (internal quotations omitted)).

<sup>1</sup> Exceptions at 8.

### B. The First Remedial Award

When the parties could not agree to a remedy, they brought the matter back to Arbitrator Gootnick. Arbitrator Gootnick found that, with certain exceptions, the Agency's unjustified or unwarranted personnel action, in changing the grievants' established work schedules in violation of applicable law and regulation, resulted in the reduction of their pay, allowances, or differentials. Accordingly, Arbitrator Gootnick again ordered the relief set out in her interim award, along with compensation under the Back Pay Act<sup>4</sup> (BPA), and granted the Union's request for attorney fees.

The Agency filed exceptions to the first remedial award with the Authority. The Authority dismissed the Agency's exceptions, in part, and denied them, in part.<sup>5</sup>

### C. The Second Remedial Award

When the parties were again unable to resolve the remaining remedial issues – and after the death of Arbitrator Gootnick – they submitted the matter to Arbitrator Susan R. Meredith. Arbitrator Meredith noted that Arbitrator Gootnick had: found that the grievants whose work schedules were changed in violation of applicable law and regulation were entitled to retroactive adjustments in their pay; determined the period for which retroactive pay could be made; and ruled on objections the Agency raised regarding those payments. Arbitrator Meredith concluded, therefore, that the only issue before her was “how these retroactive adjustments are to be accomplished.”<sup>6</sup> The parties each submitted a proposed claims procedure to Arbitrator Meredith, and she adopted the Union's proposed claims procedure, and ordered the parties to implement it in order to determine the amount of backpay owed to each individual grievant.

Arbitrator Meredith also stated that she would retain jurisdiction over “any potential implementation disputes and/or to clarify the terms of [the second remedial award] . . . for a period of one year from the date [the second remedial award] becomes final and binding.”<sup>7</sup>

The Agency filed exceptions to the second remedial award, which the Authority addressed in *U.S. DHS, U.S. CBP (DHS)*.<sup>8</sup>

<sup>4</sup> 5 U.S.C. § 5596.

<sup>5</sup> See *DHS II*, 65 FLRA at 978.

<sup>6</sup> *DHS*, 68 FLRA at 255 (quoting Second Remedial Award at 5) (internal quotation marks omitted).

<sup>7</sup> Exceptions at 7 (quoting Second Remedial Award at 15).

<sup>8</sup> 68 FLRA at 253.

### D. The Authority's Decision in *DHS*

In *DHS*, the Authority dismissed in part, and denied in part, all of the Agency's exceptions.<sup>9</sup> As is relevant to the instant matter, the Authority rejected the Agency's argument that the second remedial award was contrary to the BPA because it awarded backpay without determining whether individual grievants had suffered an actual (as opposed to speculative) loss in pay, allowances, or differentials.<sup>10</sup> The Authority also found that, because the second remedial award was consistent with the BPA, the second remedial award thus was not contrary to the doctrine of sovereign immunity.<sup>11</sup> Additionally, the Authority dismissed, under §§ 2425.4(c) and 2429.5 of its Regulations, the Agency's argument that the second remedial award was contrary to COPRA.<sup>12</sup>

The Agency filed a motion for reconsideration of *DHS*, which the Authority denied.<sup>13</sup> The Agency subsequently appealed *DHS* to the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit), which dismissed the Agency's appeal for lack of jurisdiction.<sup>14</sup>

### E. The Compliance Hearing and Arbitrator's Award

Following the Authority's denial of the Agency's motion for reconsideration of *DHS*, the Union requested that the Arbitrator hold a hearing to determine whether the Agency has failed to comply with the second remedial award. The Union asserted that such a finding was a necessary predicate to the processing of an unfair-labor-practice (ULP) charge that the Union filed, with the Federal Labor Relations Authority's (FLRA's) Washington Regional Office, in Case No. WA-CA-0346 – which is currently being held in abeyance.<sup>15</sup> As the Authority has consistently found it appropriate to take official notice of other FLRA proceedings,<sup>16</sup> we take official notice of the Union's pending ULP case.

The Arbitrator framed the issue before him as whether “the Agency has failed to comply with the remedial order set forth in [the second remedial

<sup>9</sup> *Id.* at 254.

<sup>10</sup> *Id.* at 256.

<sup>11</sup> *Id.* at 258 (citing *U.S. DHS, U.S. CBP*, 67 FLRA 461, 464 (2014); *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Milan, Mich.*, 63 FLRA 188, 189-90 (2009)).

<sup>12</sup> *Id.* at 256 (citing 5 C.F.R. §§ 2425.4(c) & 2429.5).

<sup>13</sup> See *DHS III*, 68 FLRA at 829.

<sup>14</sup> *U.S. DHS v. FLRA, mot. to dismiss for lack of jurisdiction granted*, No. 15-1351 (D.C. Cir. Mar. 9, 2016).

<sup>15</sup> Award at 4.

<sup>16</sup> *AFGE, Local 3690*, 70 FLRA 10, 11 (2016) (citing *U.S. Dep't of the Air Force, Air Force Materiel Command, Eglin Air Force Base, Hurlburt Field, Fla.*, 66 FLRA 375, 377 n.4 (2011)).

award].”<sup>17</sup> The Arbitrator found that “the available facts make clear that the Agency has not yet implemented the terms of the [second remedial award].”<sup>18</sup> Additionally, the Arbitrator indefinitely extended his jurisdiction in order to “permit the parties sufficient opportunity to seek and secure compliance with the terms of the [second remedial award].”<sup>19</sup>

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

### III. Preliminary Matters

- A. Sections 2425.4(c) and 2429.5 of the Authority’s Regulations bar one of the Agency’s exceptions.

Under §§ 2425.4(c) and 2429.5 of the Authority’s Regulations, the Authority will not consider issues that could have been, but were not, presented to the Arbitrator.<sup>20</sup> Where a party makes an argument to the Authority that is inconsistent with its position before the arbitrator, the Authority applies §§ 2425.4(c) and 2429.5 to bar the argument.<sup>21</sup>

In its exceptions, the Agency argues that the Arbitrator exceeded his authority because he disregarded the limits on his jurisdiction.<sup>22</sup> In the second remedial award, Arbitrator Meredith extended her jurisdiction “for a period of one year from the date [on which the second remedial award] becomes final and binding or for a period of 120 days after all payments ordered above have been satisfactorily resolved, whichever comes first.”<sup>23</sup> The Agency argues that the second remedial award became final and binding on January 28, 2015 – the day on which the Authority denied the Agency’s exceptions to that award – and asserts that the Arbitrator exceeded the time limit on his jurisdiction by issuing his award more than one year after that date.<sup>24</sup>

However, the Agency argued at arbitration that the second remedial award had not yet become final and binding as of the date of the hearing on January 7, 2016.<sup>25</sup>

Thus, the Agency’s argument that the award became final and binding on January 28, 2015 is inconsistent with the position it took before the Arbitrator. Therefore, §§ 2425.4(c) and 2429.5 of the Authority’s Regulations bar this exception, and we dismiss it.<sup>26</sup>

- B. One of the Agency’s exceptions is moot.

A dispute becomes moot when there is no longer a legally cognizable interest in the case.<sup>27</sup> In this respect, although there may have been a justiciable controversy when a case was filed, once that controversy ceases to exist, the issues arising out of that controversy will be dismissed for want of jurisdiction.<sup>28</sup> Accordingly, issues will be dismissed as moot if they have been resolved by interim events.<sup>29</sup>

In its exceptions, the Agency argues that the award fails to draw its essence from the parties’ agreement, which states in part that an “arbitrator’s award will not be implemented until all appeals are exhausted and a final decision is rendered by the [Authority] or the court of highest authority to which the case has been appealed.”<sup>30</sup> The Agency notes that, following the D.C. Circuit’s dismissal of the Agency’s appeal of *DHS*, it filed a petition for rehearing or rehearing en banc with the D.C. Circuit.<sup>31</sup> According to the Agency, because the D.C. Circuit is still considering this petition, the aforementioned provision of the parties’ agreement mandates that the second remedial award shall not be implemented until the Agency’s appeals are exhausted.

However, after the Agency filed its exceptions, the D.C. Circuit denied the Agency’s petition for rehearing or rehearing en banc.<sup>32</sup> Although that decision from the D.C. Circuit is not part of the record in this case, the Authority was a party to that proceeding and our Regulations allow us to take official notice “of such matters as would be proper.”<sup>33</sup> As such, we take official notice of the D.C. Circuit’s denial of the Agency’s petition for rehearing or rehearing en banc.

<sup>17</sup> Award at 2.

<sup>18</sup> *Id.* at 7.

<sup>19</sup> *Id.* at 8.

<sup>20</sup> 5 C.F.R. §§ 2425.4(c), 2429.5; *Broadcasting Bd. of Governors, Office of Cuba Broadcasting*, 66 FLRA 1012, 1016 (2012) (*BBG*).

<sup>21</sup> *BBG*, 66 FLRA at 1016 (citing *NTEU, Chapter 26*, 66 FLRA 650, 652 (2012)); see also *U.S. Dep’t of the Navy, Trident Refit Facility, Kings Bay, Ga.*, 65 FLRA 672, 675 (2011); *U.S. Dep’t of Transp., FAA, Detroit, Mich.*, 64 FLRA 325, 328 (2009).

<sup>22</sup> Exceptions at 6-8.

<sup>23</sup> *Id.* at 7 (quoting Second Remedial Award at 15).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* Attach. 6, Hr’g Tr., Jan. 7, 2016, at 14:16-24.

<sup>26</sup> 5 C.F.R. §§ 2425.4(c), 2429.5.

<sup>27</sup> *NTEU*, 63 FLRA 26, 27 (2008) (citing *Ass’n of Civilian Technicians, Show-Me Army Chapter*, 59 FLRA 378, 380 (2003)).

<sup>28</sup> *Id.* (citation omitted).

<sup>29</sup> *Id.* (citation omitted).

<sup>30</sup> Exceptions at 10 (citing Exceptions, Exh. D, Collective-Bargaining Agreement, Art. 28, § 12).

<sup>31</sup> *Id.* at 10 n.6.

<sup>32</sup> *U.S. DHS v. FLRA, order denying petition for rehearing en banc*, No. 15-1351 (D.C. Cir. Sept. 8, 2016).

<sup>33</sup> 5 C.F.R. § 2429.5; see *U.S. DHS, Citizenship & Immigration Serv.*, 68 FLRA 772, 774 (2015).

Therefore, there are no longer any appeals currently pending in relation to this case. Because all of the Agency's appeals have been resolved, it is no longer necessary for us to address the issue raised in the Agency's exception described above.

Accordingly, as this exception has been resolved by interim events, we dismiss it as moot.<sup>34</sup>

- C. The Authority's Regulations do not bar the Agency's contrary-to-law argument.

The Agency argues in its exceptions that the award is contrary to law.<sup>35</sup> In its opposition to the Agency's exceptions, the Union argues that the Agency failed to raise this argument before the Arbitrator, and as such, the Agency's contrary-to-law exception must be dismissed under §§ 2425.4(c) and 2429.5 of the Authority's Regulations.<sup>36</sup> However, in his award, the Arbitrator notes that the Agency argued that the Meredith Award was contrary to law, and requested that the Arbitrator "issue a decision that is consistent with the COPRA, [the BPA], and the DHS Appropriations Act's statutory and regulatory language."<sup>37</sup> This language is consistent with that contained in the Agency's contrary-to-law exception.<sup>38</sup> Accordingly, we reject the Union's contention that the Authority's Regulations bar the Agency's contrary-to-law exception.

#### IV. Analysis and Conclusions

- A. The Agency fails to support two of its exceptions.

Section 2425.6(e)(1) of the Authority's Regulations provides that an exception "may be subject to dismissal or denial if . . . [t]he excepting party fails to raise and support a ground" listed in § 2425.6(a)-(c).<sup>39</sup> Consistent with § 2425.6(e)(1), when a party does not provide any arguments to support its exception, the Authority will deny the exception.<sup>40</sup>

Here, in the preliminary form attached to its exceptions, the Agency states that it is arguing that the award is contrary to public policy and that the award is based on a nonfact.<sup>41</sup> However, the Agency fails to

support these exceptions with any arguments. Accordingly, we deny these exceptions as unsupported under § 2425.6(e)(1) of the Authority's Regulations.<sup>42</sup>

- B. The Arbitrator did not exceed his authority.

The Agency argues that the Arbitrator exceeded his authority.<sup>43</sup> An arbitrator exceeds his or her authority when the arbitrator fails to resolve an issue submitted to arbitration, resolves an issue not submitted to arbitration, disregards specific limitations on his or her authority, or awards relief to persons who are not encompassed by the grievance.<sup>44</sup> Where the parties fail to stipulate the issue, the arbitrator may formulate the issue on the basis of the subject matter before him or her, and this formulation is accorded substantial deference.<sup>45</sup> In those circumstances, the Authority examines whether the award is directly responsive to the issue the arbitrator framed.<sup>46</sup>

1. The Arbitrator did not fail to address the "actual" question at issue.

The Agency argues that the Arbitrator exceeded his authority by failing to address the "actual" question that was before him.<sup>47</sup> The Agency asserts that the question before the Arbitrator was: "whether the [second remedial award] is final and binding when the Agency has not exhausted its appeal options."<sup>48</sup>

However, the Arbitrator clearly specified in his award that the issue before him was "the Union's request for a finding that the Agency has failed to comply with the [second remedial award]."<sup>49</sup> As explained above, where the parties fail to stipulate the issue, the arbitrator may formulate the issue on the basis of the subject matter before him or her, and this formulation is accorded

<sup>34</sup> *NTEU*, 63 FLRA at 27.

<sup>35</sup> Exceptions at 12-15.

<sup>36</sup> Opp'n at 16-17; 5 C.F.R. §§ 2425.4(c), 2429.5.

<sup>37</sup> Award at 6.

<sup>38</sup> Compare *id.* with Exceptions at 12-15.

<sup>39</sup> 5 C.F.R. § 2425.6(e)(1).

<sup>40</sup> *NTEU*, Chapter 67, 67 FLRA 630, 630-31 (2014) (citing *AFGE, Nat'l Border Patrol Council, Local 2595*, 67 FLRA 361, 366 (2014)).

<sup>41</sup> Exceptions Form, at 7-8.

<sup>42</sup> 5 C.F.R. § 2425.6(e)(1); see *NAGE, Local R3-10 SEIU*, 69 FLRA 510, 510 n.11 (2016) (exceptions are subject to denial under § 2425.6(e)(1) of the Authority's Regulations if they fail to support arguments that raise recognized grounds for review) (citing *U.S. DOJ, Fed. BOP, Metro. Corr. Ctr., N.Y.C., N.Y.*, 67 FLRA 442, 450 (2014); *Fraternal Order of Police, Pentagon Police Labor Comm.*, 65 FLRA 781, 784-85 (2011)).

<sup>43</sup> Exceptions at 6-9, 11-12.

<sup>44</sup> *AFGE, Council of Prison Locals #33, Local 0922*, 69 FLRA 351, 352 (2016) (*Local 0922*) (citing *U.S. DOD, Army & Air Force Exch. Serv.*, 51 FLRA 1371, 1378 (1996)).

<sup>45</sup> *Id.* (citing *AFGE, Local 522*, 66 FLRA 560, 562 (2012) (*Local 522*); *U.S. DOD, Educ. Activity, Arlington, Va.*, 56 FLRA 887, 891 (2000); *U.S. Dep't of the Army, Corps of Eng'rs, Memphis Dist., Memphis, Tenn.*, 52 FLRA 920, 924 (1997)).

<sup>46</sup> *Id.* (citing *Local 522*, 66 FLRA at 562).

<sup>47</sup> Exceptions at 8-9.

<sup>48</sup> *Id.* at 8.

<sup>49</sup> Award at 2.

substantial deference.<sup>50</sup> Given that the Arbitrator formulated and resolved this issue in his award, the Agency's assertion that the Arbitrator failed to address the "actual" issue before him provides no basis for finding the award deficient.<sup>51</sup>

Therefore, we deny this exception.

2. The Arbitrator did not exceed his authority by extending jurisdiction indefinitely to resolve disputes over implementation.

The Agency argues that the Arbitrator exceeded his authority by extending his jurisdiction on this matter "indefinitely."<sup>52</sup> According to the Agency, by extending his jurisdiction indefinitely without the agreement of both parties, the Arbitrator violated the principle of *functus officio*.<sup>53</sup>

Under the doctrine of *functus officio*, once an arbitrator resolves matters submitted to arbitration, the arbitrator is generally without further authority.<sup>54</sup> Consistent with this principle, the Authority has found that, unless an arbitrator has retained jurisdiction or received permission from the parties, the arbitrator exceeds his or her authority when reopening and reconsidering an original award that has become final and binding.<sup>55</sup> However, where an arbitrator retains jurisdiction to resolve disputes over interpretation or implementation of an award, the arbitrator may issue a supplemental award resolving such disputes without a joint request from the parties.<sup>56</sup>

Here, the Arbitrator retained jurisdiction for the sole purpose of "permit[ing] the parties sufficient opportunity to seek and secure compliance with the terms of the [second remedial award]."<sup>57</sup> As seeking compliance with the second remedial award is clearly related to the implementation of the second remedial award, the Arbitrator is not reopening or reconsidering

the original award by extending his jurisdiction in this fashion. Moreover, although the Agency declares that it "does not and did not agree to an expansion of the [A]rbitrator's jurisdiction,"<sup>58</sup> as explained above, an arbitrator may resolve implementation disputes without a joint request from the parties.<sup>59</sup>

Accordingly, we deny this exception.

- C. The award is not contrary to law.

The Agency argues that the award is contrary to law.<sup>60</sup> When an exception involves an award's

<sup>58</sup> Exceptions at 12.

<sup>59</sup> *Local 1156*, 57 FLRA at 603; *see also SSA, Louisville, Kent.*, 65 FLRA 787, 790-91 (2011) (an arbitrator may retain jurisdiction for the purpose of overseeing the implementation of remedies, even absent a joint request) (citing *U.S. Dep't of the Navy, Naval Surface Warfare Ctr., Indian Head Div., Indian Head, Md.*, 56 FLRA 848, 852 (2000)); *U.S. Dep't of the Army Corps of Eng'rs, Northwestern Div. and Portland Dist.*, 60 FLRA 595, 596 (2005) (where an arbitrator retains jurisdiction to resolve disputes over interpretation or implementation the arbitrator may issue a supplemental award resolving such disputes without a joint request).

<sup>60</sup> Exceptions at 12-15. Member Pizzella notes that the Agency presents its contrary-to-law arguments under the heading that "[The Arbitrator] [f]ailed to [c]onsider [the] Agency's [d]efenses." *Id.* at 12. Because the Authority does "not construe . . . exceptions," Member Pizzella would dismiss this exception under § 2425.6(e)(1) of our Regulations for failure to raise any grounds currently recognized by the Authority. *AFGE, Local 1815*, 68 FLRA 26, 27 (2014) (*Local 1815*) (citing *AFGE, Local 3955, Council of Prison Locals 33*, 65 FLRA 887, 889 (2011) (*Local 3955*)); 5 C.F.R. § 2425.6(e)(1). Construing the Agency's argument that the Arbitrator "[f]ailed to [c]onsider [its] [d]efenses" as a contrary-to-law exception would appear to be inconsistent with other recent decisions. *E.g., U.S. Dep't of VA, Gulf Coast Veterans Health Care System*, 69 FLRA 608, 610 (2016) (citing *Local 1815*, 68 FLRA at 27); *U.S. Dep't of Agriculture, Forest Serv.*, 67 FLRA 558, 559 (2014) (citing *Local 3955*, 65 FLRA at 889); *see also AFGE, Local 1858*, 68 FLRA 283, 283 n.4 (2015); *AFGE, Nat'l Border Patrol Council, Local 2455*, 69 FLRA 171, 174-75 (2016) (Concurring Opinion of Member Pizzella). Member Pizzella also reiterates that, as he explained in his dissent in *AFGE, National Council 118*, his viewpoint is not a simple "claim" which may be summarily dismissed by the Majority. 69 FLRA 183, 196 n.62 (2016) (Dissenting Opinion of Member Pizzella).

In response to Member Pizzella, Chairman Pope and Member DuBester note the following. While the *heading* of the Agency's exceptions does not state a recognized ground for review, the *arguments* under that heading clearly raise contrary-to-law arguments. *See* Exceptions Br. at 12-15. And, in its exceptions form, the Agency responded "Yes" to the question, "Are you arguing that the award is contrary to law or government-wide regulation?" Exceptions Form at 4. Therefore, the Agency is clearly making contrary-to-law arguments here, and we are not construing anything. Further, there is no indication that, in the decisions that Member Pizzella

<sup>50</sup> *Local 0922*, 69 FLRA at 352 (citing *Local 522*, 66 FLRA 560, 562 (2012); *U.S. DOD, Educ. Activity, Arlington, Va.*, 56 FLRA 887, 891 (2000); *U.S. Dep't of the Army, Corps of Eng'rs, Memphis Dist., Memphis, Tenn.*, 52 FLRA 920, 924 (1997)).

<sup>51</sup> Exceptions at 8.

<sup>52</sup> *Id.* at 11-12.

<sup>53</sup> *Id.* (quoting *NTEU Chapter 33*, 44 FLRA 252, 263 (1992); *Devine v. White*, 697 F.2d 421, 432 (D.C. Cir. 1983)).

<sup>54</sup> *E.g., SSA*, 63 FLRA 274, 278 (2009).

<sup>55</sup> *See U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Coleman, Fla.*, 66 FLRA 300, 302 (2011) (citing *Overseas Fed'n of Teachers AFT, AFL-CIO*, 32 FLRA 410, 415 (1988)).

<sup>56</sup> *See AFGE, Local 1156*, 57 FLRA 602, 603 (2001) (*Local 1156*), *recons. denied*, 57 FLRA 748 (2002).

<sup>57</sup> Award at 8.

consistency with law, the Authority reviews any question of law raised by the exception and the award de novo.<sup>61</sup> In applying the standard of de novo review, the Authority assesses whether an arbitrator's legal conclusions are consistent with the applicable standard of law.<sup>62</sup> In making that assessment, the Authority defers to the arbitrator's underlying factual findings unless the excepting party establishes that they are nonfacts.<sup>63</sup>

The Agency argues that the award is contrary to the doctrine of sovereign immunity, COPRA, and the Anti-Deficiency Act.<sup>64</sup> However, the Authority considered and rejected these very arguments in *DHS*, and the question of whether or not the Agency violated these laws is no longer before us.<sup>65</sup> The Agency's attempt to relitigate conclusions that the Authority already reached does not provide a basis for setting aside the award.<sup>66</sup> Accordingly, we deny the Agency's argument that the award is contrary to the BPA.

## V. Decision

We dismiss, in part, and deny, in part, the Agency's exceptions.

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cites, the Authority declined to consider any arguments that raised recognized grounds – let alone that the Authority did so because of where those arguments were located in the exceptions. Therefore, there is no basis for his claim that our analysis here “appear[s] to be inconsistent with” those decisions.

<sup>61</sup> *AFGE, Local 3506*, 65 FLRA 121, 123 (2010) (citing *NTEU, Chapter 24*, 50 FLRA 330, 332 (1995); *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)).

<sup>62</sup> *U.S. Dep't of the Navy, Commander, Navy Region Haw., Fed. Fire Dep't Naval Station, Honolulu, Haw.*, 64 FLRA 925, 928 (2010) (citing *U.S. DOD, Dep'ts of the Army & the Air Force, Ala. Nat'l Guard, Northport, Ala.*, 55 FLRA 37, 40 (1998)).

<sup>63</sup> *E.g., AFGE, Nat'l INS Serv. Council*, 69 FLRA 549, 552 (2016).

<sup>64</sup> Exceptions at 13-15.

<sup>65</sup> See *DHS*, 68 FLRA at 256-57.

<sup>66</sup> *E.g., DHS III*, 68 FLRA at 834 (citing *Bremerton Metal Trades Council*, 64 FLRA 543, 545 (2010)).