The Agency developed a three-tier employee performance appraisal system, known as the Performance Assessment and Communication System (PACS). The elements concerning PACS are articulated in the Agency’s Personnel Policy Manual (PPM) § 430.1. Employees are rated at a level 1, 3, or 5 in four critical elements. A level 5 rating represents outstanding performance; a level 3 rating represents successful performance; and a level 1 rating represents unsuccessful performance. Under Article 21 of the parties’ agreement, the Agency must notify employees of their expectations for each level of performance (discussion requirements).

As relevant here, the grievant received a successful rating for three elements for the 2015 fiscal year. The Union filed a grievance challenging the grievant’s performance rating, and the grievance went to arbitration.

In his March 8, 2018, award, the Arbitrator found that PACS was a fair and appropriate policy for assessing employee performance and that the Agency complied with its discussion requirements. However, he concluded that the grievant’s rating failed to include the contributions described in her self-assessment. The Arbitrator also found that the Agency erred when it: (1) accepted the negative feedback of an unnamed administrative law judge (ALJ) rather than the “first-hand documented evidence strongly favoring an opposite observation”; (2) concluded that the grievant wasted time contacting the ALJs; and (3) failed to consider the ALJ attestations attached in the grievant’s self-assessment. Considering the Agency’s errors and weighing the evidence, the Arbitrator concluded that the grievant had sufficiently rebutted the Agency’s reasons for denying her an outstanding rating. The Arbitrator sustained the grievance.

On April 9, 2018, the Agency filed exceptions to the award, and the Union filed an opposition on May 8, 2018.2

III. Analysis and Conclusion: The award is not contrary to law.

The Agency argues that the Arbitrator’s finding in favor of the grievant conflicts with his express findings

1 Award at 19.
2 As a preliminary matter, the Union argues that the Agency now presents arguments that it did not present at arbitration. Opp’n Br. at 9-14. After a careful review of the record, we find that the Agency sufficiently raised its arguments to the Arbitrator. Exceptions, Attach. A, Agency’s Closing Br. at 7. Consequently, we will consider the Agency’s arguments. 5 C.F.R. §§ 2425.4(c), 2429.5.
that the Agency “develop[ed] a fair and appropriate procedure for assessing employee’s performance” and complied with its discussion requirements. Specifically, the Agency alleges that the award is “clearly against [government-wide] regulations” concerning the appraisal of employee performance because “the [A]rbitrator found that PACS itself was ‘wrong.’”

The Agency misinterprets the award. The Arbitrator explicitly found that PACS was “a fair and appropriate procedure for assessing employees’ performance.” However, the Arbitrator criticized the Agency’s application of PACS and the Agency’s failure to properly weigh the grievant’s contributions. Thus, contrary to the Agency’s arguments, the award is not a “simple disagreement” with PACS, and the award does not implicate PACS’s compliance with the regulations cited by the Agency. Because the Agency’s contrary-to-law exception relies on a misinterpretation of the award, we deny it.

For the foregoing reasons, we find that the Agency has not established that the award is contrary to law. And, because we deny the contrary to law exception, we also reject the Agency’s contrary to Agency policy exception based on the same arguments.

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3 Exceptions at 6-9.
4 Id. at 6.
5 When an exception involves an award’s consistency with law, the Authority reviews any question of law de novo. NAIL, Local 5, 70 FLRA 550, 552 (2018) (citing U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Bennettsville, S.C., 70 FLRA 342, 344 (2017)). In reviewing de novo, the Authority assesses whether an arbitrator’s legal conclusions are consistent with the relevant legal standards. Id.
6 Award at 21.
7 Id. (“The [A]rbitrator finds no violation of the law applicable to the Agency’s requirement to develop a fair and appropriate procedure for assessing employees’ performance. The same cannot be said of the . . . application of the PPM.”).
8 Exceptions at 9-11.
9 AFGE, Local 1101, 70 FLRA 644, 648 (2018) (citing AFGE, Nat’l Joint Council of Food Inspection Locals, 64 FLRA 1116, 1118 (2010) (party’s misunderstanding of award provides no basis for finding award contrary to law)).
10 Id.
11 The Agency argues that the Arbitrator’s finding in favor of the grievant is contrary to Agency policy in light of his express finding that the Agency complied with its discussion requirements. Exceptions at 8-11.
Member DuBester, concurring:

I concur in the decision to deny the Agency’s exceptions.