72 FLRA No. 56

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

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
NATIONAL BORDER PATROL COUNCIL
LOCAL 1929
(Union)

0-AR-5508

_____

DECISION

May 24, 2021

_____

Before the Authority: Ernest DuBester, Chairman, and Colleen Duffy Kiko and James T. Abbott, Members
(Member Kiko concurring; Member Abbott concurring)

I. Statement of the Case

In this case, Arbitrator Bruce Ponder sustained a grievance alleging that the Agency wrongfully denied an employee (the grievant) official time. The Arbitrator found that the Agency violated the parties' master-collective-bargaining agreement by relying upon an inapplicable contractual standard to partially deny the grievant's official-time request. Based on that finding, the Arbitrator directed the Agency to approve reasonable official-time requests, instruct its supervisors to apply the correct standard when evaluating such requests, and pay the grievant backpay.

The Agency filed exceptions to the award on nonfact, essence, and contrary-to-law grounds. For the reasons that follow, we find that the Agency has failed to establish that the award is deficient. Therefore, we deny the Agency's exceptions.

II. Background and Arbitrator's Award

The grievant worked as a border patrol agent and served as a Union steward at the Lordsburg Border Patrol Station in New Mexico. Seeking eight hours of official time, the grievant submitted a written request to her watch commander. The request stated that the grievant would use two hours of official time to attend a step-two grievance presentation in El Paso, Texas and six hours to research and investigate complaints from Lordsburg agents. When the watch commander asked for additional information about the activities at Lordsburg, the grievant deferred to another Union representative who explained that the grievant would be investigating two complaints, one involving a safety issue and the other concerning work assignments.

The Agency denied the official-time request in part, approving two hours for the step-two grievance presentation and four of the six hours that the grievant requested for investigating complaints. The watch commander told the grievant that it was the Agency's policy to grant two hours of official time to investigate and prepare a step-one grievance. Because the grievant was investigating two complaints, the commander claimed he could grant no more than four hours. Subsequently, the grievant used the six hours of official time provided and then completed her investigations using two hours of personal leave.

The Union filed a grievance alleging that the Agency violated Articles 6 and 7 of the master agreement by denying two hours of official time to the grievant. Article 6 states that "[u]pon request and approval in advance, Union officials are authorized to perform and discharge the duties . . . assigned to them under the terms of the [master agreement]."[1] As relevant here, Article 7 provides that "[u]pon request and approval in advance, a reasonable period of [official] time . . . will be granted to accredited representatives of the Union."[2] The Agency denied the grievance, and the Union invoked arbitration.

The Arbitrator stated the issues as follows: "Did the [A]gency violate the [master] [a]greement or otherwise violate any applicable law, rule, [or] regulation when it denied [the grievant] official time? If so, what shall the remedy be?"[3] Interpreting Articles 6 and 7 of the master agreement, the Arbitrator determined that these provisions required the Agency to act "reasonably" in reviewing official-time requests, and created a "presumption" that employees performing representational activities were entitled to official time.[4] Additionally, the Arbitrator found that Article 33, which authorizes employees "up to a maximum of [two] hours [of official time] at [s]tep [one] . . . to prepare a grievance for presentation,"[5] did not apply to the grievant's request because that provision concerned "situations in which a grievance has already been filed," whereas the grievant requested official time to investigate complaints.[6]

[1] Exceptions, Ex. 6, Master Collective-Bargaining Agreement (MCBA) at 11-12.
[2] *Id.* at 12-13.
[3] Award at 2.
[4] *Id.* at 22-23 (emphasis omitted).
[5] MCBA at 56-57.
[6] Award at 22.

Reviewing the Agency's denial of official time, the Arbitrator determined that the Agency acted unreasonably by relying exclusively – and erroneously – on Article 33 to evaluate the grievant's official-time request. In making that finding, the Arbitrator noted that although the grievant's watch commander "had the ability to question [the] grievant about her time requested[,] . . . he did not do that in making his decision," because the Agency had predetermined to limit official time using Article 33.[7]

At arbitration, the Agency argued that the grievant should have contacted the watch commander and asked for more official time once she knew that four hours was not enough time to investigate the two complaints. But the Arbitrator rejected that argument, concluding that there is "nothing in the [master agreement] that requires such supplemental justification on the part of a union representative."[8]

Based on these findings, the Arbitrator concluded that the Agency's partial denial of official time constituted an "arbitrary limitation[]," in violation of Articles 6 and 7.[9] Accordingly, the Arbitrator sustained the grievance and directed the Agency to: (1) cease and desist from violating Articles 6 and 7 and "make every reasonable effort to approve official time"; (2) send an email to supervisory agents in the El Paso Sector, similar to a "2017 sector-wide order," reminding them to evaluate official-time requests under Article 7's standard of reasonableness, not Article 33; and (3) compensate the grievant with two hours backpay at the straight-time rate.[10] He also retained jurisdiction to consider a motion for attorney's fees if the Union filed a motion within fifteen days.

The Agency filed exceptions to the award on May 8, 2019, and the Union filed an opposition to the exceptions on June 7, 2019.

III. Analysis and Conclusions

A. The award is not based on nonfacts.

The Agency argues that the award is deficient because it is based on nonfacts.[11] The Authority will find that an award is based on a nonfact if the excepting party establishes that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result.[12]

First, the Agency challenges as a nonfact the Arbitrator's finding that the grievant's watch commander "had the ability to question the grievant about her time requested [but] he did not do that in making his decision."[13] The Agency maintains that contrary to the Arbitrator's finding, the grievant's watch commander *did* question the grievant about the investigations.[14] But, as the Agency itself concedes, the "award[] detail[s] at least six conversations that occurred between management officials, the [g]rievant, and the Union [p]resident" regarding the grievant's official-time request.[15] Moreover, the Arbitrator's conclusion that the Agency violated the master agreement was based on the Agency's improper application of Article 33 rather than an alleged failure to discuss the official-time request with the grievant and other Union representatives. Thus, the Agency fails to establish that the Arbitrator's alleged misstatement constitutes a central fact underlying the award, but for which the Arbitrator would have reached a different result.[16]

Second, the Agency argues that the Arbitrator's remedy – directing the Agency to send an email to supervisory agents in the El Paso Sector – was premised on a "2017 sector-wide order" that does not exist in the record.[17] The Agency contends that the Arbitrator's reference to a 2017 sector-wide order establishes that he "based his award on a document not in evidence."[18] But the record reflects that the Arbitrator admitted into evidence a 2017 grievance response, and the Agency acknowledges that this document served as the basis for the challenged remedy.[19] There is no basis to conclude that the Arbitrator's mischaracterization of the 2017 grievance response as a "2017 sector-wide order" is a clearly erroneous central fact, but for which the Arbitrator would have reached a different result.

---

[7] *Id.*
[8] *Id.* at 24.
[9] *Id.* at 23.
[10] *Id.* at 27.
[11] Exceptions Br. at 6-7, 10-12.
[12] *AFGE, Loc. 2302*, 70 FLRA 202, 204 (2017) (citing *NFFE, Loc. 1984*, 56 FLRA 38, 41 (2000)).
[13] Exceptions Br. at 6 (quoting Award at 22).
[14] *Id.*
[15] *Id.* (citing Award at 3-4); *see also* Award at 3 (noting that the grievant "explained there were two complaints from Lordsburg agents she wanted to look into; the watch commander asked grievant for details about what she was investigating"); *id.* at 4 ("In [the sixth] conversation . . . she informed [the commander] in detail the nature of the issues she was researching . . . ."); *id.* at 23 ("The grievant not only filled out the G-955 but also engaged [the commander] in conversation that provided him with more information.").
[16] *See United Power Trades Org.*, 67 FLRA 160, 163 (2013) (*United Power*) (denying nonfact exception where the agency failed to demonstrate that the arbitrator's alleged misstatement was a central fact underlying the award).
[17] Exceptions Br. at 11.
[18] *Id.*
[19] *Id.* (stating that the 2017 sector-wide order identified in the award "could only have been referring to the Step II [g]rievance [r]esponse . . . listed as Union Exhibit 17"); *see also* Opp'n, Ex. E, Hr'g Tr. at 13 (admitting the 2017 grievance response into evidence as Union Exhibit 17).

Consequently, the Agency has not established that the Arbitrator's remedy is deficient on nonfact grounds.[20]

Accordingly, we deny the Agency's nonfact exceptions.

B. The award does not fail to draw its essence from the master agreement.

The Agency asserts that the Arbitrator misinterpreted Article 7 when he found that nothing in the master agreement required the grievant to request additional official time after the Agency denied her initial request.[21] Specifically, the Agency insists that Article 7 allows for supplemental official-time requests and "suggests" that employees should submit them.[22] Yet, the Agency does not identify any specific language in Article 7 – and none is apparent – that *requires* employees to file supplemental requests. Accordingly, the Agency fails to demonstrate that the Arbitrator's interpretation of Article 7 is irrational, implausible, unfounded, or in manifest disregard of the parties' agreement, and we deny the Agency's essence exception.[23]

C. The award is not contrary to law.

The Agency contends that the award is contrary to § 7131 of the Federal Service Labor-Management Relations Statute (the Statute)[24] and the Back Pay Act (the Act)[25] on various grounds, which we address separately below. The Authority reviews questions of law de novo.[26] In doing so, the Authority determines whether the arbitrator's legal conclusions are consistent with the applicable standard of law.[27] Absent a successful nonfact exception, challenges to an arbitrator's factual findings or evaluation of the evidence, including the weight to be accorded such evidence, do not establish that an award is contrary to law.[28]

1. The Arbitrator's interpretation of the parties' agreement is not contrary to § 7131(d) of the Statute.

The Agency argues that the award "makes it patently impossible for the Agency to comply with the reasonableness requirements" of § 7131(d) because the Arbitrator found that the parties' agreement did not require the grievant to submit a supplemental request for official time.[29] In the Agency's view, the award establishes "that any amount of [official] time requested by Union [r]epresentatives would be per se reasonable, and that management was not in a position to question the reasonableness of a request."[30]

Once parties have agreed to procedures governing official time under § 7131(d) of the Statute, whether a party has complied with the agreement is a matter of contract interpretation for the arbitrator, unless the provision is unenforceable.[31] In its exception, the Agency offers its own interpretation[32] of § 7131(d) but does not allege that the parties' official time provision, Article 7, is inconsistent with § 7131(d). And as noted above, the Agency has not demonstrated that the Arbitrator's interpretation of Article 7 fails to draw its

[20] *See United Power*, 67 FLRA at 163; *U.S. Dep't of the Treasury, IRS, Wage & Inv. Div.*, 66 FLRA 235, 242-43 (2011) (*IRS*) (rejecting nonfact argument because the alleged nonfacts were not central to the arbitrator's award).

[21] Exceptions Br. at 9. The Authority will find an arbitration award deficient as failing to draw its essence from an 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 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. *AFGE, Loc. 3342*, 72 FLRA 91, 92 (2021) (citations omitted).

[22] Exceptions Br. at 9-10 (asserting that an employee "may" have to file a supplemental request because official time is "subject to local workload requirements" under Article 7(A)(1)); *id.* at 10 (arguing that Article 7(A)(4) "would suggest that [employees] may submit multiple official[-]time requests" because that provision contains only a partial list of activities qualifying for official time).

[23] *See AFGE, Loc. 2382*, 66 FLRA 664, 666-67 (2012) (denying essence exception that did not establish that the arbitrator's interpretation of the parties' agreement conflicted with "specific contractual wording").

[24] 5 U.S.C. § 7131(d).

[25] *Id.* § 5596.

[26] *AFGE, Loc. 1770*, 72 FLRA 74, 75 n.8 (2021) (Chairman DuBester concurring) (citing *NTEU, Chapter 24*, 50 FLRA 330, 332 (1995)).

[27] *Id.* (citing *NFFE, Loc. 1437*, 53 FLRA 1703, 1710 (1998)).

[28] *AFGE, Loc. 331*, 67 FLRA 295, 296 (2014) (*Loc. 331*) (citations omitted).

[29] Exceptions Br. at 8.

[30] *Id.*

[31] *Cong. Rsch. Emps. Ass'n, IFPTE, Loc. 75*, 64 FLRA 486, 491 (2010) (*Loc. 75*) (citing *U.S. DHS, U.S. CBP, U.S. Border Patrol, El Paso, Tex.*, 61 FLRA 122, 125 (2005)).

[32] According to the Agency, requiring employees to submit supplemental official-time requests is a "logical extension" of the reasonableness standard in § 7131(d). Exceptions Br. at 8. However, such a requirement is not found in, nor supported by, the plain wording of that statutory provision, and we reject the Agency's interpretation on that basis. *See* 5 U.S.C. § 7131(d) (providing that "any employee . . . shall be granted official time in any amount the agency and the [union] agree to be reasonable, necessary, and in the public interest").

essence from the parties' agreement.[33] Accordingly, we deny the exception.[34]

2. The Arbitrator's backpay remedy is not contrary to the Statute or the Act.

The Agency asserts that the Arbitrator's awarded remedy of two hours backpay at the grievant's straight-time rate is contrary to law, for several reasons.[35]

First, the Agency argues that the backpay remedy is contrary to § 7131(d) of the Statute because "the Arbitrator did not make a finding, and the record does not support, that the [g]rievant performed official[-]time activities on nonduty time."[36] However, the Arbitrator explicitly found that the grievant used two hours of personal leave for representational activities "directly related" to the activities she performed on official time.[37] The Agency's disagreement with the Arbitrator's factual findings on this issue does not provide a basis for finding that the award is contrary to law.[38]

Next, the Agency contends that its denial of official time did not result in a "withdrawal of pay, allowances, or differentials" warranting backpay.[39] The Authority has held that "where official time authorized by the provisions of a collective[-]bargaining agreement is wrongfully denied and the representational functions are performed on nonduty time, [§] 7131(d) entitles the aggrieved employee to be paid at the appropriate straight-time rate for the amount of time that should have been official time."[40] Here, the Arbitrator awarded backpay based on his finding that the grievant performed two hours of representational activity while on personal leave because the Agency wrongfully denied official time.[41] Consequently, the Agency fails to demonstrate that the backpay remedy is contrary to the Act, and we deny the exception.[42]

Finally, the Agency argues that the Arbitrator unlawfully awarded attorney fees.[43] We deny this exception as premature: the Arbitrator did not grant or deny attorney fees but merely retained jurisdiction to consider a petition for such fees.[44]

IV. Order

We deny the Agency's exceptions.

[33] *See* supra Part III.B.

[34] *See Loc. 75*, 64 FLRA at 491 (denying contrary-to-law exception where the union failed to demonstrate that the arbitrator's interpretation of an official-time provision failed to draw its essence from the parties' agreement or that the provision was unenforceable under § 7131(d)). Despite the Agency's insistence that the award prevents the Agency from denying official time, Exceptions Br. at 8, the Arbitrator found that the Agency could question requests for official time and deny unreasonable requests. *See* Award at 23 (finding that Article 7 authorized the watch commander to question the grievant about her official-time request); *id.* at 25 (stating that the parties' agreement does not provide a "blank check" for union representatives to use "unlimited amounts of official time").

[35] Exceptions Br. at 12-16.

[36] *Id.* at 12-13.

[37] Award at 5-6 (finding that the grievant "chose to use two hours of leave time to finish her research and investigation, i.e., on [U]nion business directly related to the activities for which she had requested the six hours of" official time).

[38] *See Loc. 331*, 67 FLRA at 296 (rejecting contrary-to-law arguments that disputed the arbitrator's factual findings and weighing of the evidence); *U.S. DHS, U.S. CBP*, 65 FLRA 356, 362 (2010) (agency's disagreement with the arbitrator's evaluation of the record evidence provided no basis for finding the award deficient as contrary to law).

[39] Exceptions Br. at 15.

[40] *U.S. DOD, Def. Cont. Audit Agency, Ne. Region, Lexington, Mass.*, 47 FLRA 1314, 1322 (1993) (*Ne. Region*). The Agency maintains that even if the grievant performed representational duties while on leave, the appropriate remedy would be restoration of her annual leave rather than backpay. Exceptions Br. at 12-13. However, the Authority has consistently held that straight-time compensation is an appropriate remedy for a wrongful denial of official time. *U.S. Dep't of Transp., FAA, Sw. Region, Fort Worth, Tex.*, 59 FLRA 530, 532 (2003) (citing *Ne. Region*, 47 FLRA at 1323; *SSA*, 19 FLRA 932, 933-35 (1985)).

[41] Award at 5-6, 27.

[42] *See USDA, Rural Dev., Wash., D.C.*, 60 FLRA 527, 529-30 (2004) (denying contrary-to-law exception because the arbitrator's § 7131(d) backpay remedy did not conflict with the Act).

[43] Exceptions Br. at 16.

[44] *See IRS*, 66 FLRA at 244 (denying attorney-fee exception as premature because the arbitrator had yet to receive or rule on a request for attorney fees); *U.S. Dep't of VA, Med. Ctr., Coatesville, Pa.*, 53 FLRA 1426, 1431-32 (1998) (same).

Member Kiko, concurring:

I agree that the Agency's exceptions fail to establish that the award is deficient and should be denied. However, I write separately to emphasize the Arbitrator's recommendation that these parties pursue bargaining a supplemental official-time agreement.[1] As our recent cases show, such a recommendation can easily be extended to the greater federal labor-relations community.

When carefully tailored and properly enforced, supplemental official-time agreements can play a pivotal role in preventing the prolonged and costly disputes that arise when agencies and unions inevitably disagree on what constitutes a "reasonable" amount of official time. The Authority has held that under § 7131(d) of the Statute,[2] agencies and unions have discretion to bargain supplemental official-time agreements that are customized to meet local needs and circumstances.[3] Despite having this opportunity for further bargaining, local subcomponents often rely exclusively, and to their detriment, on boilerplate official-time provisions found in their master collective-bargaining agreements. As the Agency demonstrated in this case, management denies official time at its own peril when such decisions are reviewable under a contractual "reasonable amount" standard that provides no real clarity.[4] All too often, the Authority is called upon to review awards in which the arbitrator had no choice but to apply a generic official-time provision that failed to provide any objective guidance for resolving the dispute.[5] Thus, it should come as no surprise that arbitrators routinely determine what constitutes an appropriate amount of official time based on considerations beyond the plain wording of the contract, including personal ideas of what is reasonable, necessary, and in the public interest.

Nevertheless, bargaining for supplemental official-time agreements at the local level is a fruitless exercise if those agreements are enforced in an irrational fashion. Here, the Agency provided the grievant with six hours of official time but declined to approve two additional hours. Yet, the Agency maintained that it acted reasonably because it could have *eventually* granted two more hours of official time but for the grievant's failure to submit a supplemental request.[6] The Agency's argument is not only specious but raises the question of whether the Agency actually believed that the grievant's official-time request was unreasonable to begin with.

Unfortunately, the Agency's decision to deny two hours of official time, and the Union's decision to grieve that denial, has resulted in protracted litigation at the public's expense. And because the Union's backpay recovery includes interest and potentially attorney fees, the final cost of this dispute will undoubtedly dwarf the value of the official time at issue. Although it should go without saying, engaging in drawn-out litigation over minor grievances neither "facilitates and encourages the amicable settlements of disputes"[7] nor "contributes to the effective conduct of public business."[8]

---

[1] The Arbitrator implored the parties to clarify the term "reasonable," as applied to official time, in a supplemental agreement after noting that the parties' "repeated failure . . . to reach and maintain an understanding of Articles 6 and 7" had made it exceedingly difficult for arbitrators to resolve official-time cases. Award at 17; *see id.* at 28 (encouraging the parties "to take advantage of the open door Article 7 provides" by bargaining for "a local agreement custom-tailored to the needs and practices of the parties").

[2] 5 U.S.C. § 7131(d) (entitling bargaining-unit employees to use official time "in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest").

[3] *See Cong. Rsch. Emps. Ass'n, IPFTE, Loc. 75*, 64 FLRA 486, 491 (2010) (holding that, "in addition to the amount of time, § 7131(d) 'makes all other matters concerning official time for unit employees engaged in labor-management relations activity subject to negotiation'" (quoting *U.S. Dep't of the Air Force, HQ Air Force Materiel Command*, 49 FLRA 1111, 1119 (1994))).

[4] *Compare* Exceptions, Ex. 6, Master Collective-Bargaining Agreement at 12-13 ("Upon request and approval in advance, a reasonable period of [official] time . . . will be granted to accredited representatives of the Union."), *with* 5 U.S.C. § 7131(d) (providing that "any employee representing [a union] . . . shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest").

[5] *E.g.*, *U.S. EPA*, 72 FLRA 114, 114-115 (2021) (Chairman DuBester concurring; Member Kiko concurring; Member Abbott concurring); *U.S. DHS, U.S. CBP, U.S. Border Patrol, El Paso, Tex.*, 61 FLRA 122, 123 (2005); *U.S. DOJ, INS*, 37 FLRA 362, 363-65 (1990).

[6] At arbitration, the Agency insisted that the grievant's watch commander could have exercised "reasonable discretion" and granted more official time if the grievant, "after starting on her research in El Paso and realizing that she needed more time, . . . called [the watch commander] and requested more time." Award at 24. However, the Arbitrator found that there was "nothing in the [master agreement] that requires such supplemental justification on the part of a union representative." *Id.*

[7] 5 U.S.C. § 7101(a)(1)(C).

[8] *Id.* § 7101(a)(1)(B).

Member Abbott, concurring:

I agree with the majority's conclusion and with the points raised in my colleague's concurrence. I write separately, as I have before,[1] to highlight the parties' complacency in wasting taxpayer money. This case involved a mere *two hours* of official time. It did not create lasting legal precedent or secure the Union a right to official time in the future. Therefore, the costs of this grievance far exceed the benefit gained — *two hours* of official time.

While arbitrators set their own fees, the average arbitrator fee per case is approximately six thousand dollars.[2] The Union is responsible for half of this, which leaves the taxpayer to foot the Agency's three-thousand-dollar expense. This does not include the additional resources dispensed by the Agency and the official time used by the Union in pursuing this grievance.[3] As Member Pizzella astutely pointed out, "[i]n reviewing . . . Authority cases, one must not forget that in every one of these cases[,] all of the parties — agencies, unions, arbitrators and employees of the Authority itself — and the costs associated with these cases[,] are paid for by hardworking American taxpayers."[4] The total costs of this grievance cannot be calculated with the information in the record. Rest assured, it astronomically exceeded the cost of the two hours of official time at issue in the grievance.

This is not to say that every grievance that has little dollar value may nonetheless raise important issues that must be resolved. And the rights of grievants and unions to pursue grievances and complaints should not be compromised. Nonetheless, I think few would disagree that if the costs of this grievance were paid out of the Union's bank account and the employer's assets or income (as would be the case in the private sector), I doubt that this grievance would have gone past step one of the grievance procedure.

[1] *See U.S. DHS, U.S. CBP*, 71 FLRA 744, 746 (2020) (Member Abbott concurring; then-Member DuBester dissenting) (Concurring Opinion of Member Abbott) (citing *U.S. Army Corps of Eng'rs, Little Rock Dist.*, 71 FLRA 451, 457 (2019) (then-Member DuBester concurring; Member Abbott concurring; then-Chairman Kiko dissenting) (Dissenting Opinion of then-Chairman Kiko) (noting agreement with Member Abbott that while the Authority was "bound to preserve employees' exercise of the rights provided for in the Statute, but that Congress, and taxpayers who foot the bill for all of these processes, expect those rights to be pursued in an effective and efficient manner")).

[2] *See* Christopher R. Drahozal, *Arbitration Costs and Forum Accessibility: Empirical Evidence*, 41 U. Mich. J.L. Reform 813, 821 (2008) (https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1299&context=mjlr).

[3] *See* Award at 2 (stating that the matter was pursued through the all three steps of the parties' grievance process prior to reaching arbitration); *see generally* Exceptions, Ex. 5, Hr'g Tr. (arbitration involved a one-day hearing, five witnesses, thirty-one exhibits, and a 247-page transcript); Exceptions, Ex. 3, Agency Post-Hr'g Br. (Agency submitted a twenty-six-page post-hearing brief); Exceptions, Ex. 4, Union Post-Hr'g Br. (Union submitted a sixty-two-page post-hearing brief); Exceptions Form (Agency submitted a seventeen-page brief with eight exhibits on appeal to the Authority); Opp'n Form (Union submitted a fifty-three-page brief with six exhibits in opposition).

[4] *U.S. DHS, CBP*, 67 FLRA 107, 112 (2013) (Chairman Pope and then-Member DuBester concurring; Member Pizzella concurring) (Concurring Opinion of Member Pizzella); *see also id.* ("And those are only part of the costs tabbed to the taxpayer. Even before the case is elevated to the Authority, countless union and agency resources — time, money, and human capital — are invested to process, challenge, and negotiate the initial conflicts and grievance processes.").