**66 FLRA No. 13**

UNITED STATES
DEPARTMENT OF DEFENSE
DEFENSE CONTRACT MANAGEMENT AGENCY
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
COUNCIL 170
(Union)

0-AR-4587

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DECISION

August 31, 2011

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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 a merits award (the merits award) and a remedy award (the remedy award) of Arbitrator Ronald F. Talarico filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Union filed an opposition to the Agency's exceptions.

In the merits award, the Arbitrator found that the Agency violated the parties' agreement by using organizational codes to determine the pools of employees to be considered for voluntary and involuntary reassignments to vacant positions. In the remedy award, the Arbitrator directed the Agency to conduct a mock recreation of the reassignment process in order to identify which employees would have been selected for reassignment if a pool "coextensive with the area in which the vacancy existed" had been properly determined. Remedy Award at 1-3. For the following reasons, we dismiss the Agency's exceptions in part and deny them in part.

## II. Background and Arbitrator's Awards

The Agency initiated a workforce "reshaping" process to address staffing imbalances and budgetary concerns. Merits Award at 6. Agency positions are grouped into teams, and each team is identified by a four-character organizational code. *Id.* at 4. Employees in the same commuting area may hold common positions, but on different teams. *Id.* at 5.

The Agency commenced the reshaping process at its offices in Texas and Dayton, Ohio. *Id.* at 7. The Agency determined where excess positions existed by team, and after reassigning volunteers, issued management-directed reassignment (MDR) letters to the remaining employees in affected positions. *Id.* at 8. Thereafter, the local union at the Texas location filed a grievance on behalf of all affected employees, alleging that the MDR process violated Article 40, Section 2.B. of the parties' agreement.[1] *Id.* The Agency denied the grievance, and completed the reshaping process by offering Voluntary Early Retirement Authority/Voluntary Separation Incentive Payments (VERA/VSIP) to employees who declined the MDR. *Id.* at 9. The local union did not invoke arbitration on the grievance. *Id.* at 11.

After the Agency initiated reshaping at a third location, the Union filed a grievance on behalf of the grievants[2] challenging the MDR process. *Id.* at 10. The grievance was unresolved and submitted to arbitration, where the Arbitrator framed the issue as: "Whether the within grievance is arbitrable," and, "[i]f so, . . . [w]hether the Agency violated the [parties'] agreement in the manner in which it implemented [its] workforce shaping reassignments?" *Id.* at 10.

As an initial matter, the Arbitrator found that the grievance was arbitrable. *Id.* at 11-14. Specifically, he determined that, consistent with Article 30, Sections 7 and 8.A. of the parties' agreement[3], the local

[1] The relevant language of Article 40, Section 2.B. is set forth *infra*.

[2] The grievance identified the grievants as "[u]nfunded/excess bargaining unit employees," "potential bargaining unit employee volunteers for MDRs improperly denied an opportunity to volunteer for a move in accordance with Article 40[,] Section 2.B.," and "bargaining unit employees who should and don't receive special consideration in the reassignment process." Merits Award at 10.

[3] Article 30, Section 7 provides, in pertinent part:

> A. A grievance may be classified as a local [u]nion grievance if the issue is within the authority of the organization to resolve and the resolution requested has no impact beyond the local organization.
> B. Resolution of any local [u]nion grievance will have no binding or

union's failure to invoke arbitration on its grievance did not preclude the Union from filing a subsequent grievance concerning the reshaping process. *Id.* at 11-13. In addition, the Arbitrator found that the grievants had standing to grieve, and that "whether specific members of the affected class can eventually be sufficiently identified for an award of damages without being speculative is purely a question of remedy." *Id.* at 14.

With respect to the merits, the Arbitrator found that Article 40, Section 2.B. requires that, "if there are more equally qualified volunteers than the number of positions to be filled[,] selection will be based upon the highest [service computation date (SCD)] -- which . . . is synonymous with seniority."[4] *Id.* at 16. He further determined that the Agency "essentially side stepped and ignored the significant seniority protections that were bargained for in Article 40, Section 2.B." by "utilizing four-digit organizational codes" to "creat[e] unnecessarily small pools of [competing] employees" for both voluntary and involuntary reassignments. *Id.* at 17, 20. In addition, he found that the Agency violated this provision by failing to consider factors such as the commuting distance and location of the position in making reassignment determinations. *Id.* at 19. Accordingly, the Arbitrator sustained the grievance, but remanded the matter to the parties to formulate an appropriate remedy. *Id.* at 20.

When the parties could not agree on a remedy, the Arbitrator issued a remedy award directing the parties to "conduct a 'mock' recreation of the 'Workforce Shaping' initiatives" to determine "who would have been solicited for vacancies" and "who would have been deemed as the incumbent of an 'excess' or 'unfunded' position subject to a potential or actual [MDR] if a pool of equally qualified" volunteers and non-volunteers "coextensive with the commuting area in which the vacancy or excess position existed had been properly determined[.]" Remedy Award at 1-2. He further determined that, "in the event that a non-volunteer employee is determined . . . [to have] accepted a[n] [MDR]" after the Agency improperly classified their position as "excess," the Agency "shall offer the employee the opportunity . . . to return to the employee's former commuting area at the same position and grade level." *Id.* In addition, with respect to non-volunteers who accepted VERA, VSIP, or regular retirement after improper classification, the Arbitrator directed the Agency to provide such employees with the opportunity to return to their previous jobs, and -- if necessary to secure reinstatement or backpay -- the right to pursue individual grievances to demonstrate constructive discharge. *Id.* at 2-3.

## III. Positions of the Parties

### A. Agency's Exceptions

The Agency contends that the awards are contrary to management's rights to assign employees, make selections from any appropriate source, and determine the personnel by which agency operations shall be conducted under § 7106(a) of the Statute. Exceptions at 7-9. In this connection, the Agency argues that the awards "impermissibly require[] the Agency to expand its source of employees for reassignment beyond those teams with excess personnel to include a broader area." *Id.* at 8. The Agency further alleges that the awards "deprive[] the Agency of its right to manage [its] budget" by "not allow[ing] the Agency to solicit volunteers from the location where the 'unfunded' or 'excess' position was located." *Id.* at 9. In addition, the Agency argues that the awards are based on a nonfact because the Arbitrator "err[ed] in concluding that the Agency did not consider the location of the position and commuting distance in evaluating which employees should be reassigned." *Id.* at 17-18.

The Agency also argues that the awards fail to draw their essence from the parties' agreement by: (1) "precluding the Agency from soliciting volunteers at the location where the 'excess' or 'unfunded' positions existed"; (2) "requiring the Agency to use [SCD] over all . . . other factors," thereby "ignoring [agreement] language" providing that "unless individuals are equally

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> precedential effect on any other organization.

Merits Award at 2.

Article 30, Section 8.A. provides, in pertinent part: "This [grievance] procedure covers disputes over actions taken (or alleged failure to take appropriate actions) by . . . the Agency that involved the interpretation and application of this Agreement." Merits Award at 2.

[4] Article 40, Section 2.B. of the parties' agreement provides, in relevant part:

> When the Agency finds it necessary to reassign employees due to staffing imbalances and the Agency determines there are more equally qualified individuals than the number of positions to be filled, volunteers will be solicited. Selections among those equally qualified volunteers will be based on the highest SCD. Should it become necessary to involuntarily reassign employees, the Agency will consider employee qualifications and capabilities, requirements of the position (knowledge, skills, and abilities), location of position, employee request and commuting distance. Equally qualified candidates for reassignment will be reassigned in inverse order of seniority based on SCD. The Agency will ensure that the needs of employees with disabilities are considered in reassignment actions.

Merits Award at 3.

qualified, [SCD] does not come into play"; (3) adding to the agreement the requirements that the Agency consider individuals "within the commuting area" when making reassignment decisions and essentially "conduct a [Reduction in Force (RIF)][-] like process any time it needs to make reassignments due to staffing imbalances"; (4) "ignoring the contractual requirement that individual grievants be identified along with their injuries, as set forth in [A]rticle 30, Section 6"; and (5) failing to address the threshold issues of arbitrability in a written decision prior to the hearing contrary to Article 31, Section 5 of the parties' agreement.[5] *Id.* at 9-13, 16-17.

Finally, the Agency contends that the Arbitrator violated the parties' agreement and exceeded his authority by disregarding the limitations on his authority set forth in Article 31, Sections 6.H. and 6.G.[6] *Id.* at 13-16, 18. Specifically, the Agency alleges that the Arbitrator added language to the parties' agreement by: (1) allowing individuals to invoke arbitration contrary to Article 31, Section 1 of the parties' agreement; (2) permitting employees to file individual grievances more than two years after the event that gave rise to the grievances occurred contrary to Article 30, Section 6; and (3) awarding a remedy to individuals who lack standing because they "remain unidentified and have suffered no proven harm."[7] Exceptions at 13-16. The Agency further alleges that the Arbitrator resolved an issue not submitted to him, specifically, whether some individuals had been forced to accept early retirement or involuntary discharge. *Id.* at 18.

B. Union's Opposition

The Union contends that the awards are not contrary to management's rights under § 7106(a) because Article 40, Section 2.B. is a negotiable procedure that assures that "among *equally qualified* employees only, procedures for selection of . . . reassignments . . . be based on seniority." Opp'n at 16-19. With respect to the Agency's nonfact exception, the Union argues that the finding challenged by the Agency was disputed at the hearing, and, moreover, is neither central nor clearly erroneous. *Id.* at 32-35. The Union also argues that the awards draw their essence from the parties' agreement, and that the Arbitrator did not exceed his authority. *Id.* at 19-32.

## IV. Preliminary Issue

The Authority's Regulations that were in effect when the Agency filed its exceptions provided that "[t]he Authority will not consider . . . any issue[] which was not presented in the proceedings before the . . . arbitrator." 5 C.F.R. § 2429.5 (§ 2429.5).[8] Under § 2429.5, the Authority will not consider any issue that could have been, but was not, presented to the arbitrator. *See, e.g.*, *U.S. Dep't of Homeland Sec., U.S. Customs & Border Prot., JFK Airport, Queens, N.Y.*, 62 FLRA 416, 417 (2008) (*Customs & Border Prot., JFK Airport*).

We construe the Agency's argument that the awards "deprive[] the Agency of its right to manage [its] budget" as a contention that the awards are contrary to management's right to determine its budget under § 7106(a)(1) of the Statute. The Agency also argues that, by requiring the Agency to draw from a pool "coextensive with the commuting area in which the vacancy existed" in making reassignment selections, the awards are contrary to management's rights to assign

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[5] Article 31, Section 5 provides, in pertinent part: "A. Disputes over the grievability or arbitrability of a grievance shall be submitted to the arbitrator as a threshold issue in the dispute. Grievability and arbitrability are preliminary questions that must be resolved at the earliest stage of the process . . . ." Merits Award at 2.

[6] Article 31, Section 6.H., provides, in pertinent part: "In arbitrating a grievance, no arbitrator has the authority to render an award that would add to, subtract from, modify or violate the [parties'] [a]greement." Exceptions, Attach. 4, Master Agreement at 116.

Article 31, Section 6.G. provides, in pertinent part: "The arbitrator's award shall be limited solely to answering the question(s) put to them by the parties' submission. In the event the parties are unable to agree to a submission statement, the arbitrator shall be empowered to formulate [his or her] own statement of the issue(s) to be resolved." *Id.*

[7] Article 31, Section 1 provides, in pertinent part: "Only the Agency and the Union may invoke arbitration." Exceptions, Attach. 4, Master Agreement at 113.

> Article 30, Section 6 provides, in pertinent part:
> SECTION 6 -EMPLOYEE GRIEVANCES
> . . .
> B. Grievances . . . will . . . provide at a minimum: . . . 1. the aggrieved employee(s) name, position, title, grade and organization; . . . 2. a description of the basis for the grievance[;] . . . 4. the relief being sought[.]
> . . .
> C. Steps
> Step 1. Grievances are to be presented in writing . . . within 21 days after the event which gave rise to the grievance or within 21 days after the date the employee became aware of the event.

*Id.* at 110.

[8] The Authority's Regulations concerning the review of arbitration awards, as well as certain related procedural Regulations, including § 2429.5, were revised effective October 1, 2010. *See* 75 Fed. Reg. 42,283 (2010). As the Agency's exceptions were filed before that date, we apply the prior Regulations.

employees, make selections from any appropriate source, and determine the personnel by which Agency operations shall be conducted under § 7106(a). Exceptions at 7-9.

There is no evidence in the record that the Agency raised its management rights arguments before the Arbitrator. *See* Merits Award at 15; Exceptions, Attach. 8, Agency's Reply to Union's Proposed Remedy; Exceptions, Attach. 10, Agency's Post-Hearing Brief. Moreover, the record reflects that the Agency could have made these arguments below. The Union presented its proposed remedy -- that the Agency conduct a mock recreation of the reshaping process to identify which employees would have been selected for reassignment if a pool "coextensive with the area in which the vacancy existed" had been properly determined -- before the Arbitrator. *See* Exceptions, Attach. 6, Union's Proposed Remedy. The Agency was therefore on notice about the issue to which the Agency now objects on management rights grounds. Consequently, the Agency could have presented its management rights arguments to the Arbitrator, but did not. Accordingly, we dismiss the exceptions under § 2429.5. *See Customs & Border Prot., JFK Airport*, 62 FLRA at 417 (Authority will not consider arguments raised for the first time in exceptions).

The Agency also argues that the awards fail to draw their essence from the parties' agreement because the Arbitrator violated Article 31, Section 5 by failing to address the threshold issues of arbitrability in a written decision prior to the hearing. Exceptions at 16-17. However, there is no indication in the record that the Agency argued before the Arbitrator, as it does here, that by addressing the issues of arbitrability during the hearing, rather than in an earlier written decision, the Arbitrator violated the parties' agreement. As the Agency could have made, but did not make, this argument before the Arbitrator, we dismiss the exception under § 2429.5.

## V. Analysis and Conclusions

### A. The awards are not based on a nonfact.

The Agency asserts that the awards are based on a nonfact because the Arbitrator "err[ed] in concluding that the Agency did not consider the location of the position and commuting distance in evaluating which employees should be reassigned." Exceptions at 17-18.

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.* Moreover, where the party in opposition contends that a matter alleged to be a nonfact was disputed before the arbitrator, and the excepting party does not argue to the contrary, the Authority has found no basis for finding the award deficient as based on a nonfact. *See U.S. Dep't of Energy, Nat'l Energy Tech. Lab.*, 64 FLRA 1174, 1175 (2010) (*Nat'l Energy*).

The Union contends that the issue of whether the Agency considered the location of the position and commuting distance in making reassignment determinations was disputed at the hearing. Opp'n at 32-33. The Agency does not argue to the contrary. Accordingly, consistent with *Nat'l Energy*, 64 FLRA at 1175, we deny the exception.

### B. The awards draw their essence from the parties' agreement.

The Agency argues that the awards fail to draw their essence from the parties' agreement. Exceptions at 9-13, 16-17. The Agency also argues that the Arbitrator exceeded his authority because the award "alters" the parties' agreement and "violates" agreement provisions "precluding the Arbitrator from adding to or subtracting from the [parties' agreement]," *id.* at 13, or from resolving issues not before him, *id.* at 18. We construe these arguments as additional contentions that the awards fail to draw their essence from the parties' agreement.[9]

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

[9] We also analyze these arguments as exceeded-authority exceptions below. Member DuBester would not construe the Agency's exceeded-authority exceptions as essence exceptions. However, as set forth in Section V.C. of this decision, because the Agency's exceeded-authority exceptions are based on the same premise as the Agency's arguments that the awards violate the parties' agreement, he would deny those exceptions.

(1990). The Authority and the courts defer to arbitrators in this context "because it is the arbitrator's construction of the agreement for which the parties have bargained." *Id*. at 576. Exceptions based on a misunderstanding of the Arbitrator's award do not provide a basis for finding that an award fails to draw its essence from the agreement. *See NAGE, Local R4-45*, 55 FLRA 789, 794 (1999) (*Local R4-45*). Moreover, where an arbitrator interprets an agreement as imposing a particular requirement, the fact that the agreement is silent with respect to that requirement does not, by itself, demonstrate that the arbitrator's award fails to draw its essence from the agreement. *See U.S. Dep't of Veterans Affairs, Ralph H. Johnson Med. Ctr., Charleston, S.C.*, 58 FLRA 413, 414 (2003) (*Johnson Med. Ctr*.).

The Agency's first essence claim is that the awards violate Article 40, Section 2.B. of the parties' agreement by "precluding the Agency from soliciting volunteers at the location where the 'excess' or 'unfunded' positions existed." Exceptions at 9-10. However, the Arbitrator did not find that the Agency could not solicit volunteers from locations with excess positions. Instead, after finding that the Agency violated Article 40, Section 2.B. "by limiting its solicitation of volunteers to such a miniscule pool," the Arbitrator directed the Agency to identify "who would have been solicited for vacancies if a pool (coextensive with the commuting area in which the vacancy existed) of equally qualified volunteers had been solicited at the time of the [shaping] initiatives." Merits Award at 20; Remedy Award at 1-2. Thus, although the Arbitrator required the Agency to expand the area from which volunteers were selected, he did not restrict the Agency from soliciting volunteers from locations with excess positions. Consequently, the Agency's assertion is based upon a misunderstanding of the Arbitrator's awards, and does not demonstrate that the awards fail to draw their essence from the parties' agreement. *See Local R4-45*, 55 FLRA at 794. Accordingly, we deny the exception.

The Agency's second essence argument is that, by "requiring the Agency to use [SCD] over all . . . other factors," the awards "ignore[] [agreement] language" providing that "unless individuals are equally qualified, [SCD] does not come into play." Exceptions at 11-13. In the remedy award, the Arbitrator directed the Agency to determine "who would have been solicited for vacancies if a pool . . . of *equally qualified* volunteers . . . and . . . a pool . . . of *equally qualified* non-volunteers had been properly determined at the time of the . . . initiatives." Remedy Award at 1-2 (emphasis added). The Agency provides no basis for finding that the awards require the Agency to consider SCD before determining whether employees are equally qualified based on other factors, or that the awards are irrational, unfounded, implausible, or manifest a disregard for the parties' agreement. Accordingly, we deny the exception.

The Agency's third essence claim is that the awards add to the agreement the requirements that the Agency consider individuals "within the commuting area" when making reassignment decisions and essentially "conduct a [RIF][-] like process any time it needs to make reassignments due to staffing imbalances." *Id.* at 10-12. However, nothing in the language of the parties' agreement precludes an arbitrator from requiring the Agency to conduct a "RIF[-]like process" when making reassignments due to staffing imbalances, or finding that the Agency must consider individuals "within the commuting area." *Id.* at 10, 11. Moreover, the fact that the agreement is silent with respect to these requirements does not demonstrate that the Arbitrator's awards fail to draw their essence from the agreement. *See Johnson Med. Ctr.*, 58 FLRA at 414. As such, the Agency's argument does not demonstrate that the Arbitrator's interpretation and application of the agreement manifests a disregard of the agreement, or is implausible, irrational, or unfounded. Accordingly, we deny the exception.

The Agency's fourth essence argument is that the awards "ignor[e] the contractual requirement that individual grievants be identified along with their injuries, as set forth in [A]rticle 30, Section 6." Exceptions at 16. Article 30, Section 6 of the parties' agreement applies only to employee-filed grievances. *See* Exceptions, Attach. 4 at 110. Here, the Union filed the grievance on behalf of affected employees. Merits Award at 10. Thus, the Agency's argument provides no basis for finding that the awards fail to draw their essence from the parties' agreement, and we deny the exception.

The Agency's fifth essence contention is that the Arbitrator "add[ed] language [by] affording . . . remedies" to individuals who lack standing because they "remain unidentified and have suffered no proven harm." Exceptions at 14-16. The Agency cites no agreement provision that precludes the Arbitrator from awarding relief to unspecified individuals where the grievance was filed on their behalf by the Union. Further, to the extent that the Agency's argument is a reiteration of its aforementioned claim that the awards "ignor[e] the contractual requirement that individual grievants be identified along with their injuries, as set forth in [A]rticle 30, Section 6," *id.* at 16, it provides no basis for finding the award deficient on essence grounds. Accordingly, we deny the exception.

The Agency's sixth essence argument is that, by allowing individuals to invoke arbitration in violation of Article 31, Section 1 of the parties' agreement, the Arbitrator "impos[ed] his own [agreement] language."

*Id.* at 14-15. However, the merits award indicates that, consistent with Article 31, Section 1 of the parties' agreement, the Union invoked arbitration. *See* Merits Award at 10. As such, the Agency's argument does not establish that the awards fail to draw their essence from the parties' agreement, and we deny the exception.

The Agency's seventh essence claim is that the Arbitrator "add[ed] language" inconsistent with Article 30, Section 6 of the parties' agreement by permitting employees to file individual grievances more than two years after the event that gave rise to the grievances occurred. Exceptions at 14. However, as previously noted, Article 30, Section 6 applies only to employee-filed grievances, *see* Exceptions, Attach. 4 at 110, and the instant grievance was filed by the Union. *See* Merits Award at 10. Thus, the Agency's argument provides no basis for finding that the awards fail to draw their essence from the parties' agreement. Accordingly, we deny the exception.

The Agency's eighth essence argument is that the Arbitrator violated Article 31, Section 6.G. of the parties' agreement by resolving an issue not before him, specifically, whether some individuals had been forced to accept early retirement or involuntary discharge. Exceptions at 18. Article 31, Section 6.G. provides that "[t]he arbitrator's award shall be limited solely to answering the question(s) put to them by the parties' submission[,]" but that "[i]n the event the parties are unable to agree to a submission statement, the arbitrator shall be empowered to formulate [his or her] own statement of the issue(s) to be resolved." Exceptions, Attach. 4, Master Agreement at 116. Here, the Arbitrator framed the relevant issue as "whether the Agency violated the [parties'] agreement in the manner in which it implemented [its] workforce reshaping reassignments?" Merits Award at 10. In resolving this issue, he determined that the Agency violated the parties' agreement if, as result of the Agency's reshaping efforts, some individuals had been forced to accept early retirement or involuntary discharge. Nothing in Article 31, Section 6.G. precludes the Arbitrator from resolving the formulated issue as he did. Thus, the Agency's argument does not demonstrate that the award fails to draw its essence from the parties' agreement, and we deny the exception.

C. The Arbitrator did not exceed his authority.

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). When the Authority denies an essence exception, and an exceeded-authority exception reiterates the same arguments as the essence exception, the Authority denies the exceeded-authority exception. *AFGE, Local 3354*, 64 FLRA 330, 334 (2009) (citing *NTEU*, 62 FLRA 45, 48 (2007)).

The Agency contends that the Arbitrator exceeded his authority by disregarding the limitations on his authority set forth in Article 31, Sections 6.H and 6.G. Exceptions at 13-16, 18. The Agency's exceeded-authority exceptions are based on the same premise as the Agency's arguments that the awards violate the parties' agreement, *see* Exceptions at 13-16, 18, which we have construed as essence exceptions. Consistent with our denial of the essence exceptions, we also deny the exceeded-authority exceptions. *See NTEU*, 62 FLRA at 48.

## VI. Decision

The Agency's exceptions are dismissed in part and denied in part.