**68 FLRA No. 112**

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1336
(Union)

and

SOCIAL SECURITY ADMINISTRATION
(Agency)

0-AR-5084

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DECISION

June 17, 2015

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

## I. Statement of the Case

After a series of incidents involving an employee (the grievant), the Agency suspended her for two days, and, subsequently, for an additional fourteen days. The Union grieved both suspensions, arguing that the Agency's conduct violated law and the parties' collective-bargaining agreement, and that the Agency lacked just cause for the suspensions. Arbitrator John A. Criswell issued two awards (the first award and the second award, respectively), in which he denied both grievances. The Union has filed consolidated exceptions to the awards. There are four substantive questions before us.

The first question is whether the Arbitrator's awards are contrary to the Privacy Act (the Act)[1] because, during the investigations leading to both suspensions, the Agency interviewed witnesses before it interviewed the grievant. Even assuming that the cited provision of the Act applies here, that provision requires the collection of information from the "subject individual" only where "practicable."[2] And, as discussed in greater detail below, courts have held that it is not practicable to do so in circumstances similar to those in this case. Therefore, the awards are not contrary to the Act.

The second question is whether the first award is contrary to 5 U.S.C. § 7503(a) because the Agency suspended the grievant for her failure to follow supervisory instructions and a single instance of discourteous conduct. Although § 7503(a) permits suspensions for "discourteous conduct to the public" where there are four confirmed instances of discourteous conduct within any one-year period,[3] nothing in § 7503(a) prohibits an agency from suspending an employee for fewer than four instances of discourteous conduct where the discourteous conduct is combined with another offense. Because the grievant's discourteous conduct was combined with another offense, the first award does not conflict with § 7503(a).

The third question is whether the awards are contrary to an Agency-wide regulation. Because § 2425.6(e)(1) of the Authority's Regulations requires an excepting party to support each of its exceptions,[4] and the Union fails to support this exception, the answer is no.

The fourth question is whether the first award fails to draw its essence from the progressive-discipline requirements in Article 23, Section 1 of the parties' agreement (Article 23). Because Article 23 provides that management may "bypass[]" progressive discipline in cases of "severe" behavior,[5] and the Arbitrator found that the grievant's actions were "rather extreme,"[6] the Union has not established that the first award is irrational, unfounded, implausible, or in manifest disregard of Article 23. Therefore, the answer is no.

## II. Background and Arbitrator's Awards

As stated previously, after a series of incidents involving the grievant, the Agency suspended her for two days, and, subsequently, for an additional fourteen days. The Union grieved both suspensions, arguing that the Agency's conduct violated law and the parties' agreement, and that the Agency lacked just cause for the suspensions. The Arbitrator issued two awards.

### A. The First Award

In the first award, the Arbitrator addressed the Agency's two-day suspension of the grievant, which the Agency based upon two alleged incidents. Regarding the first incident, the Arbitrator found that the grievant engaged in a "rude and loud exchange with a customer."[7] The Arbitrator found that the disruptiveness of this exchange was so "extraordinary" that one of the grievant's coworkers responded by retrieving the

[1] 5 U.S.C. § 552a(e)(2).
[2] *Id.*
[3] *Id.* § 7503(a).
[4] 5 C.F.R. § 2425.6(e)(1).
[5] Exceptions, Attach. 3, Collective-Bargaining Agreement (CBA) at 151.
[6] Opp'n, Ex. A (First Award) at 3.
[7] *Id.* at 2.

customer from the reception area, inquiring about the incident, and assisting the customer.[8]

Before the Arbitrator, the Union argued that the Agency's investigation of this incident violated the Act and a related provision of the parties' agreement. In pertinent part, the Act requires any federal agency that maintains a system of records to "collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under [f]ederal programs."[9] The Union asserted that the Agency violated this provision because the Agency interviewed the grievant's coworkers and the affected customer before interviewing the grievant about the incident. The Arbitrator assumed, without deciding, that the grievant's "work status within an agency" constituted a "right, benefit[,] or privilege under a [f]ederal program" for purposes of the Act.[10] However, the Arbitrator emphasized that the Act requires an agency to collect information from the subject individual "only *when it is practicable*."[11] And the Arbitrator found that "when an agency is investigating an incident that may lead to an employee's discipline," it is often necessary to "first determine the nature of that employee's alleged misconduct" by speaking to third parties before speaking to the subject employee.[12] Accordingly, the Arbitrator concluded that "it was really not 'practicable' to obtain [the] [g]rievant's version of . . . events" before speaking to "the persons who overheard [the] [g]rievant's exchange with the customer,"[13] and he rejected the Union's argument.

Regarding the second incident underlying the two-day suspension, the Arbitrator concluded, as relevant here, that the evidence supported the Agency's imposition of discipline for the grievant's failure to follow her supervisor's instructions to complete priority-action items by a specific deadline.

The Union argued to the Arbitrator that the imposition of a two-day suspension for these two incidents was too severe a penalty, especially considering that the grievant had never been disciplined before. But the Arbitrator found that the examples of other disciplinary actions that the Union relied on in making this argument were distinguishable, and noted that the "[g]rievant's actions in dealing with the customer in this case [were] rather extreme."[14] Thus, the Arbitrator concluded that suspending the grievant for two days was "reasonable[],"[15] and he cited *Douglas v. Veterans Administration* (*Douglas*)[16] to support that conclusion.[17] Accordingly, he denied the grievance.[18]

B. The Second Award

In the second award, the Arbitrator addressed the grievant's fourteen-day suspension. The Agency based this suspension on its allegations that the grievant: (1) criticized a particular coworker (the agent) in the presence of a customer; (2) belched in the agent's face; (3) repeatedly and improperly referred customers to the agent; and (4) overstayed a break and refused to coordinate her breaks with the agent. The Arbitrator determined that a preponderance of the evidence supported each of these four allegations.

Although the Arbitrator did not specify the order in which the Agency interviewed various individuals when investigating these allegations, the Arbitrator concluded that the Agency's "investigation of the incidents upon which the charge was based was appropriate and reasonably thorough."[19] The Arbitrator concluded that the fourteen-day suspension was "reasonable[],"[20] and he denied the grievance.

The Union filed consolidated exceptions to both awards, and the Agency filed an opposition to the Union's exceptions.

## III. Analysis and Conclusions

A. The awards are not contrary to law.

The Union asserts that both awards are contrary to the Privacy Act[21] and an Agency-wide regulation,[22] and that the first award conflicts with 5 U.S.C. § 7503(a).[23] When an exception involves an award's consistency with law, the Authority reviews any question of law de novo.[24] In making that assessment, the Authority defers to the arbitrator's underlying factual findings, unless the excepting party establishes that they are nonfacts.[25]

[8] *Id.*
[9] 5 U.S.C. § 552a(e)(2).
[10] First Award at 3.
[11] *Id.* (internal quotation marks omitted).
[12] *Id.*
[13] *Id.* (quoting 5 U.S.C. § 552a(e)(2)).
[14] *Id.* at 4.
[15] *Id.*
[16] 5 M.S.P.R. 280 (1981) (*Douglas*).
[17] First Award at 4.
[18] *Id.*
[19] Opp'n, Ex. B (Second Award) at 2.
[20] *Id.* at 3.
[21] Exceptions Br. at 8-10.
[22] Exceptions Form at 5.
[23] Exceptions Br. at 9.
[24] *NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)).
[25] *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Yazoo City, Miss.*, 68 FLRA 269, 270 (2015).

1. The awards are not contrary to the Act.

As discussed above, the Act requires, in pertinent part, that any federal agency that maintains a system of records must "collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under [f]ederal programs."[26] The Union asserts that the awards are contrary to the Act because, during the investigations leading to each suspension, the Agency interviewed persons other than the grievant about the grievant's alleged misconduct before it interviewed the grievant.[27] In response, the Agency argues that, in investigating the grievant's alleged misconduct, it was not "practicable," within the meaning of the Act, to speak to the grievant before interviewing other witnesses.[28] In addition, the Agency questions whether the grievant's work status is a "right[], benefit[], [or] privilege[] under [a] [f]ederal program[]" within the meaning of the Act.[29]

We assume, without deciding, that the grievant's work status is a "right[], benefit[], [or] privilege[] under [a] [f]ederal program" within the meaning of the Act.[30] However, for the following reasons, the Union does not demonstrate that the awards are contrary to the Act.

The Office of Management and Budget (OMB) is charged with developing guidelines and administering the Act.[31] In guidelines that OMB published in the Federal Register, OMB discusses "practicability" determinations under the Act, and states that "[p]ractical considerations . . . may dictate that a third-party source . . . be used as a source of information in some cases."[32] Specifically, OMB recognizes in its guidelines that "it may well be that the kind of information needed can only be obtained from a third party," particularly in "investigations of possible criminal misconduct."[33]

In the context of agency investigations of possible employee misconduct, courts have held, consistent with OMB's guidelines, that "the specific nature of each case shapes the practical considerations at stake that determine whether an agency has fulfilled its obligation under the . . . Act to elicit information directly from the subject of the investigation to the greatest extent practicable."[34] Specifically, where the inquiry may be resolvable by "objective evidence" in the employee's possession, then alleged concerns about the employee's credibility do not make it "impracticab[le]" to seek that evidence from the employee before contacting alternative sources.[35] Conversely, where the allegations against an employee cannot "be dispelled categorically" by the employee in a manner that would "obviate the need" to interview relevant witnesses, the Act does not require an agency to interview the employee first.[36] And where the allegations against an employee include threatening or harassing conduct, the possibility that the employee could impede or compromise the investigation after becoming aware of it by attempting to dissuade potential witnesses from cooperating is a legitimate "practicabil[ity]"[37] consideration under the Act.[38]

Regarding the investigation leading to the grievant's two-day suspension, the Arbitrator determined that, in order to "determine the nature of [the] . . . alleged misconduct," it was not "'practicable' [for the Agency] to obtain [the] [g]rievant's version of . . . events" before interviewing "the persons who overheard [the] [g]rievant's exchange with the customer."[39] Similarly, in *Carton v. Reno*,[40] the U.S. Court of Appeals for the Second Circuit found that an employer's investigation did not violate the Act where speaking to relevant witnesses first had the potential to "sharpen the issues and focus the

[26] 5 U.S.C. § 552a(e)(2).
[27] Exceptions Br. at 8-10.
[28] Opp'n at 10 (quoting U.S.C. § 552a(e)(2)) (internal quotation marks omitted).
[29] *Id.* at 8 (quoting 5 U.S.C. § 552a(e)(2)).
[30] 5 U.S.C. § 552a(e)(2); *see, e.g., Carton v. Reno*, 310 F.3d 108, 111 (2d. Cir. 2002).
[31] Responsibilities for the Maintenance of Records About Individuals by Federal Agencies, 40 Fed. Reg. 28,948, 28,948 (July 9, 1975).
[32] Privacy Act Guidelines, 40 Fed. Reg. 28,949, 28,961 (July 9, 1975) (OMB Guidelines).
[33] *Id.*
[34] *Cardamone v. Cohen*, 241 F.3d 520, 528 (6th Cir. 2001); *see also Carton*, 310 F.3d at 111-12.
[35] *Waters v. Thornburgh*, 888 F.2d 870, 873 (D.C. Cir. 1989), *abrogated on other grounds by Doe v. Chao*, 540 U.S. 614 (2004); *see also Thompson v. Dep't of State*, 400 F. Supp. 2d 1, 9 (D.D.C. 2005), *aff'd*, 210 F. App'x 5 (D.C. Cir. 2006); *Carton*, 310 F.3d at 112; *Cardamone*, 241 F.3d at 527-28.
[36] *Carton*, 310 F.3d at 112-13; *see also Thompson*, 400 F. Supp. 2d at 10-11 (where "interviewing other employees" was undisputedly "necessary to the investigation," the Act did not require plaintiff's employer to interview her first); *Brune v. IRS*, 861 F.2d 1284, 1287 (D.C. Cir. 1988) ("impracticable" to interview plaintiff first about allegedly false statement he made where "[t]he probability that, when confronted, he [would] advance an explanation of his own suspect statement sufficient to obviate the need to contact third parties is minimal") .
[37] *Brune*, 861 F.2d at 1288 (quoting 5 U.S.C. § 552a(e)(2)) (internal quotation marks omitted).
[38] *See Carton*, 310 F.3d at 112-13; *Cardamone*, 241 F.3d at 528; *Hudson v. Reno*, 130 F.3d 1193, 1205 (6th Cir. 1997); *Brune*, 861 F.2d at 1287-88 ("investigator . . . could reasonably infer that there was nothing to gain (by way of protecting the suspect's privacy) and much to lose (in terms of ascertaining the truth) by contacting the suspect before contacting the third party").
[39] First Award at 3 (quoting 5 U.S.C. § 552a(e)(2)).
[40] 310 F.3d 108.

charges in a way that would allow [the subject employee] to respond more particularly."[41] Further, as in *Carton*, the allegation against the grievant in this case "was incapable of being resolved by [her] say-so or by some documentation [s]he might be expected to have."[42] Thus, OMB's guidelines and relevant court decisions support the Arbitrator's conclusion that it was not "practicable,"[43] within the meaning of the Act, for the Agency to interview the grievant first.[44] Accordingly, the Union has not established that the first award is contrary to the Act.

Turning to the investigation underlying the grievant's fourteen-day suspension, the Agency based this suspension on its allegations that the grievant: (1) criticized the agent in the presence of a customer; (2) belched in the agent's face; (3) repeatedly and improperly referred customers to the agent; and (4) overstayed a break and refused to coordinate her breaks with the agent.[45] The Union asserts,[46] and the Agency does not dispute,[47] that the Agency interviewed the grievant's coworkers about these allegations before interviewing the grievant. Consequently, the Union argues that the investigation violated the Act, and that the second award is contrary to law.[48] However, courts have found that "it is . . . impracticable to think that charges of employee mistreatment and harassment could be resolved by interviewing [the subject of the investigation] before others."[49] Those same practicability considerations are implicated here, where the allegations against the grievant revolve primarily around her alleged mistreatment of the agent. Moreover, as in *Carton*, the allegations at issue here "could not be dispelled categorically by anything [that the grievant] could say or adduce,"[50] and, thus, it was necessary for the Agency to speak with witnesses. Therefore, consistent with the factors identified by OMB's guidelines and court decisions as relevant "practicab[ility]"[51] considerations under the Act,[52] we find that the Agency's investigation did not violate the Act, and that the second award is not contrary to law.

[41] *Id.* at 112.
[42] *Id.*
[43] 5 U.S.C. 552a(e)(2).
[44] *See Carton*, 310 F.3d at 112-13; *Cardamone*, 241 F.3d at 528-29; *Brune*, 861 F.2d at 1287-88; *Thompson*, 400 F. Supp. 2d at 10-11; OMB Guidelines, 40 Fed. Reg. at 28,961.
[45] Second Award at 1-2.
[46] Exceptions Br. at 10.
[47] *See* Opp'n at 15.
[48] Exceptions Br. at 9-10.
[49] *Cardamone*, 241 F.3d at 528; *see also Carton*, 310 F.3d at 112-13; *Brune*, 861 F.2d at 1287-88.
[50] 310 F.3d at 112.
[51] 5 U.S.C. § 552a(e)(2).
[52] *See Carton*, 310 F.3d at 112-13; *Cardamone*, 241 F.3d at 528-29; *Hudson*, 130 F.3d at 1205; *Brune*, 861 F.2d at 1287-88; *Thompson*, 400 F. Supp. 2d at 10-11; OMB Guidelines, 40 Fed. Reg. at 28,961.

2. The first award is not contrary to 5 U.S.C. § 7503(a).

Next, the Union argues that the first award – in which the Arbitrator upheld the Agency's two-day suspension of the grievant for her discourteous treatment of a customer and her failure to follow supervisory instructions – conflicts with 5 U.S.C. § 7503(a).[53] Section 7503(a) permits an employer to suspend an employee for fourteen days or less for "such cause as will promote the efficiency of the service."[54] Specifically, § 7503(a) permits suspensions for "discourteous conduct to the public" where there are four confirmed instances of discourteous conduct within any one-year period or "any other pattern of discourteous conduct."[55] The Union argues that the Agency's two-day suspension of the grievant for her allegedly discourteous treatment of a customer violated § 7503(a) because the suspension was based on fewer than four instances of discourteous conduct.[56] However, the Authority has held that "nothing in [§] 7503(a) prohibits an [a]gency from disciplining an employee . . . for discourtesy that is linked to another offense."[57] For example, where an agency suspended an employee for fewer than four instances of discourteous conduct *and* misuse of commissary items, the Authority held that the suspension did not conflict with § 7503(a).[58] Because the Agency's two-day suspension of the grievant was based on her discourteous conduct *and* her failure to follow supervisory instructions,[59] the Union has not established that the first award is contrary to §7503(a).[60]

B. The awards are not contrary to an Agency-wide regulation.

The Union states that the Arbitrator's awards are contrary to an Agency-wide regulation.[61] Section 2425.6(e)(1) of the Authority's Regulations provides, in relevant part, that 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."[62] In its exceptions, the Union does not cite any Agency-wide regulations, or provide any arguments in support of this ground. Therefore, we deny

[53] Exceptions Br. at 9.
[54] 5 U.S.C. § 7503(a).
[55] *Id.*
[56] *See* Exceptions Br. at 9.
[57] *SSA, Detroit Nw. Reg'l Office, Detroit, Mich.*, 56 FLRA 483, 485 (2000) (*SSA Detroit*).
[58] *Dep't of the Army, Headquarters, 101st Airborne Div. (Air Assault) & Ft. Campbell, Ft. Campbell, Ky.*, 7 FLRA 18, 20 (1981) (*Army*).
[59] *See* First Award at 1 ("The two-day suspension at issue here was based upon two separate incidents.").
[60] *See SSA Detroit*, 56 FLRA at 485; *Army*, 7 FLRA at 20.
[61] Exceptions Form at 5.
[62] 5 C.F.R. § 2425.6(e)(1).

this exception under § 2425.6(e)(1) of the Authority's Regulations.[63]

C. The first award does not fail to draw its essence from Article 23.

The Union argues that the first award fails to draw its essence from Article 23's requirement of progressive discipline.[64] In reviewing an arbitrator's interpretation of a collective-bargaining agreement, the Authority applies the deferential standard that federal courts use in reviewing arbitration awards in the private sector.[65] Under this standard, the Authority will find that an arbitration award is deficient as failing to draw its essence from the 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.[66] 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."[67] And the Authority has denied essence exceptions where the arbitrator's award does not conflict with the plain wording of the parties' agreement.[68]

Because the grievant had never been disciplined before the two-day suspension, the Union contends that the Arbitrator should have reduced her penalty to a reprimand,[69] and that the first award is therefore inconsistent with Article 23's requirement of progressive discipline.[70] For support, the Union cites[71] two decisions in which the Authority has addressed essence exceptions to arbitration awards interpreting Article 23: *SSA* (*SSA I*)[72] and *SSA* (*SSA II*).[73] Additionally, although the Arbitrator referenced the penalty mitigation factors set forth in *Douglas* (the *Douglas* factors) in the first award,[74] the Union argues that the Arbitrator's failure to properly apply the *Douglas* factors to mitigate the grievant's penalty further demonstrates the award's inconsistency with Article 23.[75]

In Article 23, the parties "agree[d] to the concept of progressive discipline."[76] Article 23 also states, in relevant part, that "[a] common pattern of progressive discipline is reprimand, short[-]term suspension, long[-]term suspension[,] and removal," but that "[a]ny of these steps may be bypassed where management determines by the severe nature of the behavior that a lesser form of discipline would not be appropriate."[77] Here, the Arbitrator found that the grievant's "rude and loud exchange with a customer"[78] was "extraordinary"[79] and "rather extreme."[80] Thus, read in context,[81] the most reasonable reading of the first award is that the Arbitrator found the grievant's misconduct to be sufficiently "severe" to justify the Agency's bypass of the reprimand step in the "common pattern of progressive discipline" under Article 23.[82] And the Union has not demonstrated that this interpretation of Article 23 is irrational, unfounded, implausible, or in manifest disregard of the agreement.

The Authority's decisions in *SSA I* and *SSA II* do not support a contrary conclusion. Although the Authority granted an essence exception challenging an arbitrator's interpretation of Article 23 in *SSA I*,[83] that decision did not involve an agency's bypass of progressive discipline for "severe" misconduct.[84] Rather, in *SSA I*, the Authority found that an arbitrator's interpretation of Article 23 as "precluding the [a]gency from imposing [a] two-day suspension" when the employee had already received a reprimand earlier that year failed to draw its essence from Article 23.[85] In *SSA II*, an arbitrator determined that an agency's fourteen-day suspension of an employee should be mitigated to a two-day suspension, and the Authority

[63] *E.g.*, *AFGE, Local 31*, 67 FLRA 333, 334 (2014).
[64] Exceptions Br. at 8.
[65] *See* 5 U.S.C. § 7122(a)(2); *AFGE, Council 220*, 54 FLRA 156, 159 (1998).
[66] *U.S. DOL (OSHA)*, 34 FLRA 573, 575 (1990).
[67] *Id.* at 576.
[68] *E.g.*, *U.S. Dep't of VA Med. Ctr., Wash., D.C.*, 67 FLRA 194, 196 (2014) (*VA*).
[69] *See* Exceptions Br. at 7-8.
[70] *Id.* at 7.
[71] *Id.* at 6-7.
[72] 64 FLRA 1119 (2010) (Chairman Pope dissenting).
[73] 65 FLRA 286, 288 (2010).
[74] *See* First Award at 4.
[75] *See* Exceptions Br. at 7-8.
[76] CBA at 151.
[77] *Id.*
[78] First Award at 1.
[79] *Id.* at 2.
[80] *Id.* at 4.
[81] *See, e.g.*, *U.S. Dep't of the Treasury, IRS*, 68 FLRA 145, 147 (2014) (when evaluating exceptions to an arbitration award, the Authority considers the award and record as a whole and interprets the language of the award in context) (citing *U.S. DOD, Def. Logistics Agency, Def. Distrib. Depot, Red River, Texarkana, Tex.*, 67 FLRA 609, 611 (2014)).
[82] CBA at 151.
[83] 64 FLRA at 1121-22.
[84] CBA at 151.
[85] 64 FLRA at 1121.
Chairman Pope notes that she continues to believe that *SSA I* was wrongly decided for the reasons stated in *SSA I*, 64 FLRA 1119, 1123-25 (2010) (Dissenting Opinion of Chairman Pope). However, she agrees that *SSA I* is distinguishable from the instant case for the reasons stated here.

denied the agency's essence exception to that award.[86] But nothing in *SSA II* compelled the Arbitrator to mitigate the grievant's suspension in this case, especially considering that, in *SSA II*, the Authority noted the discretion imparted by Article 23 to bypass the initial, reprimand step of progressive discipline in order to address more "severe" behavior.[87]

In addition, notwithstanding the Arbitrator's reference to *Douglas* in the first award, arbitrators are not required to apply the *Douglas* factors when resolving grievances concerning suspensions of less than fourteen days,[88] and nothing in the Arbitrator's discussion of *Douglas* conflicts with the plain wording of Article 23.[89] Therefore, the Union's reliance on *Douglas* provides no basis for finding that the award fails to draw its essence from Article 23.

For the foregoing reasons, we find that first award does not fail to draw its essence from Article 23, and we deny the Union's essence exception.

## IV. Decision

We deny the Union's exceptions.

[86] 65 FLRA at 288-89.
[87] *Id.* (quoting Article 23).
[88] *Id.* at 288.
[89] *See, e.g.*, *VA*, 67 FLRA at 196 (denying essence exception where excepting party did not demonstrate that award conflicted with plain wording of the parties' collective-bargaining agreement).