69 FLRA No. 72

UNITED STATES
DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
NATIONAL CITIZENSHIP
AND IMMIGRATION SERVICES
COUNCIL 119
(Union)

0-AR-5040

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DECISION

August 3, 2016

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

I. Statement of the Case

Arbitrator Philip Tamoush found that the Agency violated the parties' collective-bargaining agreement and § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute)[1] by violating a memorandum of agreement (MOA) provision concerning the release of performance-award data. In *U.S. DHS, U.S. Citizenship & Immigration Services* (*USCIS I*),[2] the Authority determined that the Arbitrator's reasoning was flawed and that the Arbitrator's factual findings were insufficient to enable the Authority to assess whether the award (first award) was contrary to law or to resolve a related essence exception.

The Authority therefore remanded the matter with instructions to the Arbitrator to make additional factual findings and clarify the basis for his award. The Arbitrator then issued a clarification award (remand award), to which the Agency excepts on the grounds that: (1) the first award, as clarified by the remand award (the awards), is contrary to the Privacy Act[3] and the Freedom of Information Act (FOIA) (Privacy Act exception);[4] (2) the Arbitrator's finding of a repudiation is contrary to § 7116(a)(1) and (5) of the Statute (repudiation exception); (3) the Arbitrator's finding of a unilateral change is contrary to § 7116(a)(1) and (5) of the Statute (unilateral-change exception); (4) the Arbitrator exceeded his authority; (5) the awards fail to draw their essence from the MOA; and (6) the awards are so incomplete, contradictory, or ambiguous as to make them impossible to implement. We must decide three substantive questions.

The first question is whether the Agency's Privacy Act, repudiation, and essence exceptions are properly before us to the limited extent that they challenge the Authority's finding, in *USCIS I*, that the record was inadequate for the Authority to determine whether name-identified awards information would reveal employees' performance ratings. Because – to the extent they challenge the Authority's decision in *USCIS I* – these exceptions are untimely requests for reconsideration of *USCIS I*, the answer is no. As such, we do not consider them.

The second question is whether, insofar as the Arbitrator found that the Agency unilaterally changed employees' conditions of employment, the Arbitrator's finding is contrary to § 7116(a)(1) and (5) of the Statute. Because the MOA covers the release of performance-award data, the answer is yes. Accordingly, we set aside the Arbitrator's finding that the Agency unilaterally changed employees' conditions of employment.

The third question is whether the award is contrary to the Privacy Act and the Statute. Because – despite the Authority's instructions that the Arbitrator make additional factual findings and clarify the basis for his legal conclusions – the awards still do not contain factual findings sufficient for us to determine whether they are contrary to law, we remand this matter to the parties for resubmission to the Arbitrator, or a different one, absent settlement, for further proceedings consistent with this decision.

[1] 5 U.S.C. § 7116(a)(1), (5).
[2] 68 FLRA 272 (2015).
[3] 5 U.S.C. § 552a.
[4] *Id.* § 552.

II. Background and Arbitrator's Awards

A. The First Award and *USCIS I*

As *USCIS I* sets forth the facts of this case in detail, we will only briefly summarize them here.

The Union and the Agency are parties to an MOA concerning performance awards. The MOA requires the Agency to provide, on a semiannual basis, certain award-related information to the Union. The MOA does not expressly require the Agency to provide the names of award recipients; however, it does provide, in Section 1.4, that "[u]nless prohibited by law or government[-]wide rule or regulation, the Agency shall provide the Union with any information that is normally maintained by the Agency and is reasonable and necessary to process a grievance if it has not provided such information pursuant to this provision."[5]

The MOA also provides a scale for the Agency to use in paying performance awards, and the Agency used a similar scale in fiscal year (FY) 2010, immediately before the MOA went into effect.

In September 2011, the Agency provided the Union with the data specified in the MOA for FY2010 and part of FY2011. After receiving the data, the Union requested, as relevant here, the names of the award recipients, claiming that the information was necessary to process a grievance. The Agency refused to provide the additional information, claiming that providing the names of award recipients would violate the Privacy Act. Specifically, it claimed that because awards are based on performance ratings, revealing the amount of an employee's award would reveal the employee's performance rating. The Union then filed a grievance, which was unresolved, and the parties submitted the issue to arbitration.

Before the Arbitrator, the Agency argued that the MOA did not require it to provide names, and that the parties intentionally omitted from the MOA any requirement to provide names. Further, the Agency claimed that the Section 1.4 provision quoted above did not require it to release names because, under the circumstances, providing the names of award recipients would violate the Privacy Act. Specifically, it argued that "with little effort, a person or entity, like the Union, could ascertain, with certainty, a significant number of employees' ratings based on the information provided under the . . . MOA."[6]

Additionally, the Agency claimed that it did not repudiate the MOA, in violation of § 7116(a)(1) and (5), because repudiation requires a clear and patent breach that goes to the heart of the agreement, and that even assuming it breached the MOA, the breach was not clear and patent, nor did it go to the heart of the MOA.

Conversely, the Union claimed that it would not be possible to determine employees' ratings based on their awards. Moreover, it noted that Agency had provided name-identified awards information in the past.

The Arbitrator found in favor of the Union. He found that the relevant portion of Section 1.4 was "'a narrow exception to not providing names of employees when it is critical to resolving a specific issue,' and that '[t]he requirement does not mean the Agency must provide all names at all locations, but only those where relevant to the processing of a grievan[ce] in a particular location.'"[7] However, he found that the Agency violated the MOA. He further found that the Privacy Act and FOIA did not apply because "there would be no 'unwarranted invasion [of privacy],' since providing information would permit the parties to discuss and negotiate."[8] Finally, he found, without analysis or explanation, that the Agency violated § 7116(a)(1) and (5).

The Agency filed exceptions to the first award. The Union did not file an opposition to the Agency's exceptions.

In *USCIS I*, the Authority determined that the Arbitrator's conclusions regarding the Privacy Act relied on flawed reasoning, and that his factual findings were inadequate for the Authority to determine whether the Privacy Act applies. The Authority explained that the Arbitrator's conclusion that "there would be no 'unwarranted invasion,' since providing information would permit the parties to discuss and negotiate"[9] was contrary to Authority and U.S. Supreme Court precedent. And the Authority specifically noted that

> the Arbitrator made no factual findings as to whether it would be possible to determine employee performance ratings based on the award data – i.e., whether there is a privacy interest in the nondisclosure of recipients' names. Nor did the Arbitrator address how the inclusion of the names of award recipients would add to the public

[5] *USCIS I*, 68 FLRA at 272 (quoting First Award at 3).
[6] *Id.* at 273 (quoting Agency's Post-Hr'g Br. at 20).
[7] *Id.* (quoting First Award at 8).
[8] *Id.* (quoting First Award at 9).
[9] *Id.* at 274 (quoting First Award at 9).

> interest in disclosure of the information.[10]

Similarly, the Authority determined that it could not assess the legality of the Arbitrator's unfair-labor-practice (ULP) determination because the Arbitrator "did not explain his finding [that the Agency violated § 7116(a)(1) and (5) of the Statute], or even identify precisely what the violation was."[11]

Finally, the Authority found that it would be "premature" to resolve the Agency's essence exception, as that exception turned on whether the Arbitrator correctly applied the Privacy Act.[12]

Accordingly, the Authority "remand[ed] the award to the parties for resubmission to the Arbitrator, absent settlement, for further findings and clarification of the basis of the award, consistent with th[e] decision [in *USCIS I*]."[13]

B. The Remand Award

The parties were apparently unable to resolve their dispute and resubmitted the first award to the Arbitrator. In the remand award, the Arbitrator made the following "further findings and clarification"[14] regarding his Privacy Act determination:

> a) For several years, evidence produced at the hearing by Agency [m]anagement as well as the chief spokesperson for the Union indicated that names and amounts of awards were provided to the Union for it to perform its obligation in representing employees, without regard to any Privacy Act prohibitions.
>
> b) The Agency negotiated . . . [S]ection 1.4 of the [MOA] requiring it to produce the requested information to allow the Union to effectively process grievances when necessary.
>
> c) Producing the names of award recipients will permit the Union to rigorously represent employees in the [g]rievance process when an employee or the Union has an arguably reasonable suspicion that the Agency has discriminated against an employee in the issuance of [a]wards.[15]

Additionally, the Arbitrator relied on the Authority's decision in *U.S. Department of Energy, National Energy Technology Laboratory* (*Energy*),[16] which he termed "virtually 'on point,'"[17] as support for his conclusion that providing award recipients' names would not violate the Privacy Act.

Regarding his finding that the Agency committed a ULP, the Arbitrator found that the Agency "refused to follow its own past practice and provide limited information regarding the names of employee[]s and their performance awards. Such a refusal is 'de facto' bad faith bargaining when it negotiated its agreement to provide this category of information and then changed its position after the agreement was reached."[18]

The Agency filed exceptions to the remand award and the first award, as clarified. The Union did not file an opposition to the Agency's exceptions.

[10] *Id.* (citing *U.S. Dep't of Transp., FAA, N.Y. TRACON, Westbury, N.Y.*, 50 FLRA 338, 349 (1995); *Norwood v. FAA*, 993 F.2d 570 (6th Cir. 1993); *Ripskis v. Dep't of HUD*, 746 F.2d 1, 3-4 (D.C. Cir. 1984)).

[11] *Id.* at 275 (citing *AFGE, Local 3927, AFL-CIO*, 64 FLRA 17 (2009) (insistence to impasse over permissive subject of bargaining violates § 7116(a)(1) and (5)); *SSA*, 55 FLRA 978, 983 (1999) (bypassing union violates § 7116(a)(1) and (5)); *U.S. Army Corps of Eng'rs, Memphis Dist., Memphis, Tenn.*, 53 FLRA 79 (1997) (unilaterally changing conditions of employment violates § 7116(a)(1) and (5)); *Dep't of the Air Force, Warner Robins Air Logistics Ctr., Robins Air Force Base, Ga.*, 52 FLRA 225, 230, 232 (1996) (*Warner Robins*) (repudiation of negotiated agreement violates § 7116(a)(1) and (5)); *IRS, Wash., D.C. & IRS, Kan. City Serv. Ctr., Kan. City, Mo.*, 50 FLRA 661, 673 (1995) (failure to provide information violates § 7116(a)(1), (5), and (8))).

[12] *Id.* (citing *U.S. Dep't of the Army, U.S. Army Aviation & Missile Research Div., Redstone Arsenal, Ala.*, 68 FLRA 123, 125-26 (2014) (Member Pizzella dissenting)).

[13] *Id.*

[14] Remand Award at 2.

[15] *Id.*

[16] 64 FLRA 1174 (2010).

[17] Remand Award at 2.

[18] *Id.* at 3.

III. Analysis and Conclusions

A. To the extent that the Agency's Privacy Act, essence, and repudiation exceptions are an untimely motion for reconsideration, we do not consider them.

The Agency indicates that the Authority erred in concluding that the record in *USCIS I* was inadequate to determine whether it was possible to discern employee performance ratings based on awards information.[19] Section 2429.17 of the Authority's Regulations permits a party to file a motion for reconsideration of an Authority decision "within ten . . . days after service of the Authority's decision or order."[20] Thus, exceptions that "directly challenge" an earlier Authority decision in that proceeding are untimely if filed more than ten days after service of the earlier decision, and the Authority will not consider them.[21]

Here, the Agency filed its exceptions to the remand award more than ten days after the Authority issued its decision in *USCIS I*.[22] Accordingly, insofar as the Agency argues that the Authority should have found that it was possible to determine employees' performance ratings from their awards information, this argument is an untimely motion for reconsideration.[23] To the extent this argument underlies the Agency's Privacy Act, essence, and repudiation exceptions, we do not consider them.

B. To the extent that the Arbitrator found a unilateral-change ULP, this finding is contrary to the Statute.

The Agency claims that the Arbitrator found that the Agency unilaterally changed conditions of employment and that this finding is contrary to law because the MOA covered the alleged change.[24] Where a party claims that an award is contrary to law, the Authority reviews any question of law raised by an exception and the award de novo.[25] In applying a de novo standard of review, the Authority assesses whether the Arbitrator's legal conclusions are consistent with the applicable standard of law.[26] Under this standard, the Authority defers to the Arbitrator's underlying factual findings unless the excepting party establishes that they are nonfacts.[27]

It is well established that before changing conditions of employment, an agency must provide the union with notice and an opportunity to bargain over those aspects of the change that are within the duty to bargain.[28] However, the "covered by" doctrine provides a defense to a claim that an agency violated the Statute by unilaterally changing conditions of employment.[29] Under the Authority's covered-by doctrine, a party is not required to negotiate over terms and conditions of employment that have already been resolved through bargaining.[30]

The covered-by doctrine has two prongs,[31] but only the first is relevant here. Under the first prong, the Authority examines whether the subject matter of the change is expressly contained in the agreement.[32] The Authority does not require an exact congruence of

[19] Exceptions at 24.
[20] 5 C.F.R. § 2429.17.
[21] *Def. Sec. Assistance Dev. Ctr.*, 60 FLRA 292, 295 n.4 (2004) (*Def. Sec.*) (citing *U.S. Dep't of HHS, Navajo Area Indian Health Serv., Window Rock, Ariz.*, 56 FLRA 1035, 1039 (2000)); *but cf. U.S. Dep't of the Army, White Sands Missile Range, White Sands Missile Range, N.M.*, 67 FLRA 619, 625-26 (2014) (permitting agency to renew exceptions that were previously dismissed without prejudice because the renewed exceptions raised no new facts or arguments).
[22] *Compare USCIS I*, 68 FLRA at 272 (indicating Feb. 4, 2015 issuance date) *with* Exceptions, Attach. 2, Certificate of Service at 1 (indicating filing date of May 22, 2015).
[23] *See Def. Sec.*, 60 FLRA at 295 n.4.
[24] Exceptions at 34.
[25] *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)).
[26] *NFFE, Local 1437*, 53 FLRA 1703, 1710 (1998).
[27] *U.S. DHS, U.S. CBP, Brownsville, Tex.*, 67 FLRA 688, 690 (2014) (*citing U.S. Dep't of the Treasury, IRS, St. Louis, Mo.*, 67 FLRA 101, 104 (2012)).
[28] *E.g., U.S. Dep't of the Interior, U.S. Geological Survey, Great Lakes Sci. Ctr., Ann Arbor, Mich.*, 68 FLRA 734, 737 (2015) (*Interior*) (citing *U.S. Army Corps of Eng'rs, Memphis Dist., Memphis, Tenn.*, 53 FLRA 79, 81 (1997)).
[29] *E.g., U.S. DHS, U.S. CBP, El Paso, Tex.*, 69 FLRA 261, 264 (2016) (*CBP El Paso*) (citing *U.S. Dep't of the Interior, Wash., D.C. & U.S. Geological Survey, Reston, Va.*, 56 FLRA 45, 53 (2000)).
[30] *E.g., NTEU*, 68 FLRA 334, 338 (2015) (citing *NATCA, AFL-CIO*, 62 FLRA 174, 176 (2007)).
[31] *E.g., CBP El Paso*, 69 FLRA at 264 (citing *U.S. Customs Serv., Customs Mgmt. Ctr., Miami, Fla.*, 56 FLRA 809, 814 (2000) (*Customs Miami*)).
[32] *Id.* (citing *Customs Miami*, 56 FLRA at 814).

language.[33] Instead, the Authority finds the requisite similarity if a reasonable reader would conclude that the contract provision settles the matter in dispute.[34]

Here, the Arbitrator found that the Agency "refused to follow its own past practice and provide limited information regarding the names of employee[]s and their performance awards,"[35] but the Arbitrator also found that Section 1.4 of the MOA obligated the Agency to provide award recipients' names; that this disclosure was not contrary to the Privacy Act; and that, therefore, the Agency breached that provision.[36] Because the past practice the Arbitrator found in the second award mimics the requirements he found in the MOA, it did not establish any additional condition of employment.[37] Because the Arbitrator found that the MOA requires the production of award recipients' names, it covers the subject of providing name-identified awards information. As such, the Agency did not have a statutory duty to bargain before it allegedly changed its practices regarding the provision of award recipients' names.

Insofar as the Arbitrator determined that the Agency violated § 7116(a)(1) and (5) by unilaterally changing its practice of providing the Union with name-identified awards data, we set aside that finding.

C. We are unable to determine whether the award is otherwise contrary to law.

The Agency argues that the award is contrary to the Privacy Act[38] and that the Arbitrator's apparent ULP determination is contrary to the Statute.[39]

The Authority, in *USCIS I*, found that it was unable to determine whether the Arbitrator's Privacy Act and ULP determinations were consistent with law, and it "remand[ed] the case . . . for further findings regarding the Agency's Privacy-Act claim and the basis for the Arbitrator's ULP determination."[40] And the Authority specifically noted that the Arbitrator: (1) incorrectly held that the public interest in collective bargaining justified disclosure of award recipients' names, when "the only relevant public interest to be considered . . . is the extent to which the requested disclosure would shed light on the agency's performance of its statutory duties, or otherwise inform citizens as to the activities of their [g]overnment;"[41] (2) " [did not] address how the inclusion of the names of award recipients would add to the public interest in disclosure of the information";[42] (3) "made no factual findings as to whether it would be possible to determine employee performance ratings based on the award data";[43] and (4) "did not explain his [ULP] finding, or even identify precisely what the violation was."[44]

The remand award has done little to address these deficiencies. The remand award does not acknowledge the first deficiency. Indeed, to the extent that the Arbitrator addressed whether disclosure of award recipients' names would add to the public interest, he compounded the first error by repeating a public interest – representing employees in the grievance process – that is unique to the Union.[45] Likewise, the Arbitrator made no factual findings regarding whether it will be possible to identify award recipients' performance ratings.

Further, the Arbitrator's reliance on *Energy* is misplaced. *Energy* upheld an award finding that the Privacy Act did not prohibit the "disclosure of name-identified awards information [that] would 'likely' result in revealing individual employees' performance ratings" where "the disclosure itself would not cause such a result."[46] Rather, the arbitrator in *Energy* found that the fact "that it [wa]s 'common knowledge' that only employees who have been rated as significantly exceeding expectations received a performance award" would reveal employees' ratings.[47] Conversely, the Arbitrator here made no finding that "common knowledge,"[48] rather than disclosure of award recipients' names, would reveal award recipients' performance ratings. As such, *Energy* is inapposite.

Although it appears that the Arbitrator attempted to clarify his ULP determination,[49] to the extent he found that the Agency unilaterally changed its employees' conditions of employment, this finding is contrary to law, as we have held earlier in this decision. Also, he did not make the factual findings necessary to support any other violations of § 7116(a)(1) and (5) of the Statute. In this regard, the Arbitrator appears to have concluded that the

[33] *Id.* (citing *Fed. BOP v. FLRA*, 654 F.3d 91, 94-95 (D.C. Cir. 2011)).
[34] *Id.* (citing *U.S. Dep't of HHS, SSA, Balt., Md.*, 47 FLRA 1004, 1018 (1993)).
[35] Remand Award at 3.
[36] *See* First Award at 10.
[37] *See Interior*, 68 FLRA at 737 (stating that "parties may establish conditions of employment through a past practice").
[38] Exceptions at 20-22.
[39] *Id.* at 32-33.
[40] *USCIS I*, 68 FLRA at 275.
[41] *Id.* at 274 (quoting *U.S. Dep't of the Air Force, 375th Mission Support Squadron, Scott Air Force Base, Ill.*, 51 FLRA 599, 603 (1995)).
[42] *Id.* (citations omitted).
[43] *Id.*
[44] *Id.* at 275 (citations omitted).
[45] Remand Award at 3.
[46] *Energy*, 64 FLRA at 1176.
[47] *Id.* (quoting agency's exceptions at 9, 19).
[48] *Id.*
[49] *See* Remand Award at 3.

Agency repudiated the MOA.[50] But a finding of repudiation requires a clear and patent breach that goes to the heart of a collective-bargaining agreement.[51] Here, the remand award does not address whether the Agency's alleged breach of the MOA was clear and patent or whether the relevant portion of Section 1.4 of the MOA is at that agreement's heart.

Accordingly, we find ourselves again in a position where we are unable to determine whether the award is contrary to law due to the inadequate findings by the Arbitrator. As the Authority stated in *USCIS I*, when the Authority is unable to determine whether an award is contrary to law, the Authority ordinarily remands the award for further findings by the arbitrator.[52] However, the Authority has already remanded this case once, and the remand award has not clarified any of the deficiencies identified in *USCIS I*. Thus, we have no confidence that yet another remand to the same Arbitrator will sufficiently clarify the awards.

The Statute permits the Authority to "take such action and make such recommendations concerning [an arbitration] award as it considers necessary, consistent with applicable laws, rules or regulations."[53] In unusual cases, these actions have included permitting the parties to choose a different arbitrator, absent settlement, upon remand.[54] The Authority has remanded to permit parties to select a different arbitrator where "the record clearly demonstrated that the original arbitrator could no longer be of any help to the parties."[55] Additionally, the Agency requested that the Authority not remand this issue to the Arbitrator for further findings.[56]

Here, given the circumstances and history of this case, we believe that the record "clearly demonstrate[s]" that the Arbitrator "c[an] no longer be of any help to the parties."[57] Accordingly, we will give the parties the option of selecting a different arbitrator upon remand. Upon remand, the parties' mutually chosen arbitrator should address the following issues: (1) whether it would be possible to determine employee performance ratings based on the award data[58] and, if not, address how the inclusion of the names of award recipients would add to the public interest in disclosure of the information;[59] and (2) whether the Agency violated § 7116(a)(1) and (5) of the Statute by repudiating the MOA.[60] If the chosen arbitrator cannot provide factual findings that support the Arbitrator's finding that there would be no unwarranted invasion of privacy by disclosing the names of award recipients in violation of the Privacy Act, or that the Agency committed a ULP by repudiating the MOA, the chosen arbitrator must reject those respective findings and violations as contrary to law.

In light of these determinations, it is unnecessary for us to address the Agency's remaining exceptions, that is, the Agency's essence,[61] exceeds-authority,[62] and impossible-to-implement exceptions.[63] Because the parties' chosen arbitrator will have an opportunity on remand to either address these alleged deficiencies or to render them moot by a subsequent award, we have no need to address them now.

IV. Decision

We grant the Agency's unilateral-change exception. We remand the issues of whether the Agency violated and repudiated the MOA to the parties for resubmission to arbitration, absent settlement. On remand, either party may object to resubmission of this matter to the Arbitrator. Should such an objection arise, the parties are directed to select a different arbitrator.

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[50] *Id.* at 3 ("The Agency['s] . . . refus[al] to follow its own past practice . . . is 'de facto' bad[-]faith bargaining when it negotiated its agreement to provide this category of information and then changed its position after the agreement was reached.").

[51] *See, e.g., U.S. DOJ, Fed. BOP*, 68 FLRA 786, 788 (2015).

[52] *USCIS I*, 68 FLRA at 275.

[53] *U.S. DOJ, Fed. BOP, Metro. Det. Ctr., Guaynabo San Juan, P.R.*, 67 FLRA 417, 420 (2014) (quoting 5 U.S.C. § 7122(a)).

[54] *U.S. Dep't of the Navy, Naval Surface Warfare Ctr., Indian Head Div., Indian Head, Md.*, 56 FLRA 848, 854 (2000).

[55] *Bremerton Metal Trades Council*, 59 FLRA 583, 588 (2004) (*Bremerton*) (citation omitted).

[56] Exceptions at 20.

[57] *Bremerton*, 59 FLRA at 588.

[58] *Energy*, 64 FLRA at 1176 (citations omitted) ("[W]here the disclosure of award recipients' names would necessarily reveal those recipients' performance ratings, the Privacy Act bars disclosure of their names.").

[59] *USCIS I*, 68 FLRA at 274 ("[T]he Authority balances the public interest in disclosure against the employee privacy interests at stake.").

[60] *See Warner Robins*, 52 FLRA at 230, 232 (repudiation of negotiated agreement violates § 7116(a)(1) and (5) of the Statute.).

[61] Exceptions at 30 ("Neither the plain language of the MOA, nor the evidence provided at the hearing support the Arbitrator's conclusion that the last sentence of Section 1.4 was meant to be an avenue for the Union to receive information (names) that it was not otherwise entitled to receive.").

[62] *Id.* at 29 ("By not addressing any of the issues raised by the Authority, the Arbitrator exceeded his authority by failing to make findings necessary for the resolution of the issues submitted for arbitration.").

[63] *Id.* at 40 ("The Agency cannot implement the Arbitrator's order to produce names of award recipients in accordance with [S]ection 1.4 of the MOA, i.e., information that is necessary to process a grievance, because the only request for information pending in this grievance is the Union's demand for all of the names of the award recipients, and it is not linked to a particular grievance.").