74 FLRA No. 44

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 3972
(Union)

and

UNITED STATES
DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT
OFFICE OF MULTIFAMILY HOUSING
DENVER, COLORADO
(Agency)

0-AR-5983

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DECISION

July 30, 2025

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Before the Authority: Colleen Duffy Kiko, Chairman, and Anne Wagner, Member

I. Statement of the Case

The Agency notified certain bargaining-unit employees that it was altering their telework arrangements to require an additional day in the office per week, and directed them to update their telework agreements. The Union filed a grievance that went to arbitration before Arbitrator James A. Lundberg. Before the Arbitrator, the Union argued that the Agency violated the parties' collective-bargaining agreement and the Federal Service Labor-Management Relations Statute (the Statute) by (1) refusing to negotiate with the Union over these changes and (2) bypassing the Union and negotiating telework changes directly with bargaining-unit employees. The Arbitrator issued an award finding that the parties had already negotiated the procedures for changing telework agreements and that the Agency had followed those negotiated procedures. Therefore, the Arbitrator denied the grievance.

The Union filed exceptions alleging that the award is contrary to law and fails to draw its essence from the parties' agreement. Because the Union does not demonstrate that the Agency negotiated directly with bargaining-unit employees, or establish how the Arbitrator erred in concluding that the Agency satisfied its obligations to bargain with the Union, we deny the exceptions.

II. Background and Arbitrator's Award

In 2015, the parties executed their collective-bargaining agreement, which contains an article defining the procedures by which the parties execute, modify, and terminate telework agreements (Article 18). Article 18 distinguishes between temporary and permanent modifications to telework agreements. Regarding *permanent* changes, Article 18 provides, in relevant part, that, "[s]upervisors must give reasonable advance notice for permanent or long[-]term modifications to telework agreements," which, under "normal circumstances," will not be less than one full pay period.[1] Additionally, "[t]he modification must be in writing and provide the reason(s) for the modification."[2]

In 2022, the Union and the Agency signed a supplemental agreement altering some of Article 18's telework procedures (Supplement 34). As relevant here, Supplement 34 provides the process by which the Agency may *temporarily* modify employees' existing telework agreements, and notes that "the [p]arties agree that no provisions of Article 18[,] other than those specifically identified[,] . . . are modified by this [s]upplement."[3] The process by which the Agency may permanently modify telework agreements was among these unaltered provisions.

During the COVID-19 pandemic, the Agency directed all eligible employees to execute maximum-telework agreements, requiring only one day in the office per pay period. In the summer of 2022, the Agency notified employees that it was ending maximum telework and began requiring bargaining-unit employees to work in the office once per week – twice per pay period. On October 30, 2023, the Agency sent emails to certain bargaining-unit employees, and the Union, notifying them that, under Article 18, the Agency was modifying the in-person requirements for those employees to twice per week – four times per pay period. The Agency cited the reasons for its decision and directed the employees to execute new telework agreements by November 11, which

[1] Award at 4.
[2] *Id.*
[3] *Id.* at 6.

would take effect on January 14, 2024. The Union responded to the notification, requesting bargaining over the changes. The Agency denied the Union's request to bargain, asserting that Article 18 covered the matter. The Union grieved, and the matter proceeded to arbitration.

At arbitration, the parties did not stipulate to issues, but each party offered a proposed statement of the issues. Both parties requested that the Arbitrator determine whether the Agency had violated the parties' agreement, Supplement 34, or Agency policy by permanently modifying the employees' telework agreements. The Union's statement of the issues also included whether the Agency violated "any other law, rule[,] or regulation."[4] The Arbitrator did not frame any issues.

The Union argued that the Agency violated Article 49 of the parties' agreement, which requires the Agency to engage in midterm bargaining over "proposed changes relating to personnel policies, practices, and general conditions of employment."[5] The Union also argued that the Agency violated the parties' agreement and the Statute by unilaterally implementing changes without bargaining with the Union over appropriate arrangements for affected employees, and bypassing the Union by negotiating directly with bargaining-unit employees when supervisors directed employees to execute modified telework agreements.

The Arbitrator found that "[t]he modifications to telework assignments do not fall within Article 49 . . . [because they] were not mid-term changes to the contract."[6] Rather, the Arbitrator determined that "[t]he modifications were made by precisely following the procedures for changing telework assignments negotiated by the parties" in Article 18,[7] which include Article 18's requirement that "supervisor[s] must give [the affected employees] reasonable advance notice for permanent or long[-]term modifications" to their telework arrangements.[8] The Arbitrator further found that "Article 18 and Supplement 34 are the product of negotiations authorized by" § 7106(b) of the Statute.[9] As the parties established the process for changing telework arrangements through previous impact and implementation bargaining, the Arbitrator found that Article 49 did not require the Agency to bargain before changing the employees' agreements pursuant to that process. The Arbitrator denied the Union's grievance.

The Union filed exceptions on August 21, 2024, and the Agency filed an opposition on September 18, 2024.

II. Analysis and Conclusions

A. The award is not contrary to law.

The Union argues the award is contrary to law – specifically, §§ 7106(b)(3), 7114(a)(1), and 7116(a)(1) of the Statute[10] – because the Arbitrator erroneously failed to find that the Agency (1) violated its obligation to bargain with the Union and (2) bypassed the Union and negotiated directly with bargaining-unit employees in connection

[4] *Id.* at 2.
[5] *Id.* at 5.
[6] *Id.* at 17.
[7] *Id.*
[8] *Id.* at 4 (quoting Opp'n, Attach. 6, Collective-Bargaining Agreement, Art. 18 at 3); *see also id.* at 17-18 ("[T]he contract requires advanced notice of modification . . . . The steps taken by management precisely followed the procedures negotiated by the parties.").
[9] *Id.*; *see also id.* (finding "the [relevant] provisions of Article 18 . . . and Supplement 34 . . . result[ed] from the parties' impact and implementation bargaining").
[10] Section 7106(b)(3) of the Statute provides that nothing in § 7106 of the Statute "shall preclude any agency and any labor organization from negotiating . . . appropriate arrangements for employees adversely affected by the exercise of any authority under [§ 7106] by such management officials." 5 U.S.C. § 7106(b)(3). Section 7114(a)(1) provides, in pertinent part, that "[a] labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective[-]bargaining agreements covering, all employees in the unit." *Id.* § 7114(a)(1). Section 7116(a)(1) provides that it is an unfair labor practice for an agency "to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under" the Statute. *Id.* § 7116(a)(1).

with the new telework arrangements.[11] When resolving a contrary-to-law exception, the Authority reviews any question of law raised by the exception and the award de novo.[12] Applying a de novo standard of review, the Authority assesses whether the arbitrator's legal conclusions are consistent with the applicable standard of law.[13] In making that assessment, the Authority defers to the arbitrator's underlying factual findings unless the excepting party establishes they are nonfacts.[14]

At the outset, it is not clear whether the Arbitrator was assessing whether the Agency had a duty to bargain under the Statute, or only whether it had a contractual duty to bargain under Article 49. To the extent that the Arbitrator was assessing the Agency's duty to bargain under the Statute – or applying statutory principles to assess the Agency's compliance with Article 49 – the Union's arguments provide no basis for finding the award contrary to law, for the following reasons.

First, the Arbitrator did not find – and the Union provides no basis for finding – that the Agency actually "negotiated" anything with individual unit employees.[15] Rather, the Arbitrator found that the Agency "precisely followed the procedures" for permanently modifying telework arrangements,[16] which include the Agency's obligation to inform affected employees of an upcoming modification.[17] Therefore, to the extent the Union is claiming that the Agency bypassed the Union and negotiated directly with unit employees when supervisors directed employees to execute modified telework agreements, that claim is unavailing.

Second, the Union provides no basis for finding that the Agency failed to satisfy a statutory duty to bargain with the Union. Under the Authority's "covered-by doctrine," if parties have already bargained and reached agreement concerning a matter, then they have no statutory duty to bargain further over that matter during the term of the agreement.[18] For a matter to be "covered by" an agreement under this doctrine, there need not be an "exact congruence" between the matter and a provision of the agreement, so long as the agreement expressly or implicitly indicates the parties reached a negotiated agreement on the subject.[19] In assessing whether a matter is "covered by" a collective-bargaining agreement, the Authority applies a two-prong test that considers whether (1) the subject matter is "expressly contained in" the agreement; or (2) the subject matter is "inseparably bound up with and . . . thus [is] plainly an aspect of . . . a subject expressly covered by the contract."[20]

Here, the Union contends that the Statute required the Agency to bargain over the impact and implementation of the new telework arrangements on adversely affected employees.[21] However, the Union does not dispute the

[11] Exceptions at 4-5. In its opposition, the Agency contends the Authority should not consider the Union's argument that the Agency negotiated directly with bargaining-unit employees because that argument "is inconsistent with the issue and arguments the Union presented to the Arbitrator." Opp'n at 7. However, the record establishes that the Union raised this precise argument at arbitration. Award at 12 (reciting Union's argument that Agency violated the Statute by "negotiat[ing] directly with [b]argaining[-u]nit [e]mployees"); *see also* Exceptions, Attach. 1 at 20-21 (raising argument in post-hearing brief). Accordingly, the Agency does not establish grounds for dismissing this argument on this basis. *See AFGE, Nat'l Border Patrol Council, Loc. 2554 & 2595*, 70 FLRA 52, 53 (2016) (Member DuBester dissenting, in part, on other grounds) (declining to bar argument where record established excepting party raised argument before arbitrator). Additionally, the Agency contends that the Union's argument is inconsistent with the Union's essence argument, discussed below, which the Agency characterizes as arguing that the Agency did not negotiate at all. Opp'n at 8. The Agency's contention lacks merit because the Union is not arguing that the Agency failed to negotiate at all; it is arguing that the Agency failed to bargain *with the Union* and, instead, bargained directly with bargaining-unit employees. Further, the Agency argues that the Authority should reject the Union's contrary-to-law exception as unsupported. *Id.* at 5-7 (citing, among other things, 5 C.F.R. § 2425.6(e)(1)). However, the Union provides supporting arguments and citations to authority. *See* Exceptions at 4-5. We find that the Union adequately supports its contrary-to-law exception. *See, e.g.*, *Int'l Bhd. of Elec. Workers, Loc. 2219*, 69 FLRA 431, 432-33 (2016) (*Local 2219*) (finding exceptions adequately supported).

[12] *AFGE, Loc. 506*, 74 FLRA 201, 202 (2025) (citing *U.S. DOJ, Fed. BOP, U.S. Penitentiary McCreary, Pine Knot, Ky.*, 73 FLRA 865, 867 (2024)).

[13] *Id.*

[14] *Id.*

[15] Exceptions at 4.

[16] Award at 18.

[17] *Id.* at 4.

[18] *NTEU, Chapter 172*, 74 FLRA 80, 80 n.3 (2024) (*Chapter 172*).

[19] *Fed. BOP v. FLRA*, 654 F.3d 91, 94-95 (D.C. Cir. 2011) (quoting *NTEU v. FLRA*, 452 F.3d 793, 796 (D.C. Cir. 2006)) (internal quotation marks omitted); *see also AFGE, Nat'l ICE Council 118*, 73 FLRA 309, 311 (2022) (*Council 118*) (Chairman DuBester dissenting) (noting that, according to the U.S. Court of Appeals for the District of Columbia Circuit, the Authority "must construe the covered-by doctrine to give the parties the benefit of their bargain . . . [even if] the parties' agreement does not specifically mention every single possible" covered scenario).

[20] *U.S. DHS, CBP, Wash., D.C.*, 63 FLRA 434, 438 (2009) (*CBP*) (alteration in original) (quoting *U.S. Dep't of HHS, SSA, Balt., Md.*, 47 FLRA 1004, 1018 (1993)) (internal quotation marks omitted); *see also Chapter 172*, 74 FLRA at 86.

[21] Exceptions at 4.

Arbitrator's finding that "the provisions of Article 18 . . . and Supplement 34 . . . result[ed] from the parties' impact and implementation bargaining."[22] Nor does the Union address the Arbitrator's conclusion that "[t]he Agency met its obligation to bargain when it negotiated the terms of Article 18 and Supplement 34" because these provisions specifically covered "[t]he procedures for changing telework arrangements."[23] In other words, the procedures for changing telework agreements are "expressly contained in" – or, at a minimum, "plainly an aspect of . . . a subject expressly covered by" – the parties' agreement.[24] As such, the Agency had no statutory duty to bargain further over those procedures, and the Union does not demonstrate that the award is contrary to law in this respect.[25] Consequently, we deny this exception.[26]

In the context of its essence exception, the Union asserts that the Arbitrator erred by failing to find that the parties had a past practice of requiring no more than one in-person day per week, and that the Agency had a statutory duty to bargain over the change.[27] For support, the Union cites unfair-labor-practice precedent.[28] In resolving exceptions to arbitration awards – even in cases that involve an unfair-labor-practice allegation – the Authority reviews whether a past practice exists under the nonfact framework.[29] Although the Union raised this past-practice argument at arbitration,[30] the Arbitrator did not find such a past practice existed. To the extent that the Union is arguing the award is contrary to law in this regard, the Union "does not assert that the Arbitrator's failure to find that a past practice exists is based on a nonfact and, thus, does not demonstrate that the award is deficient in this regard."[31] Accordingly, the Union's argument provides no basis for finding the award contrary to law, and we deny this exception.[32]

For the above reasons, we deny the contrary-to-law exceptions.

B. The award draws its essence from the parties' agreement.

The Union argues the Arbitrator's finding that the Agency had no midterm-bargaining obligation fails to draw its essence from Articles 49 and 6 of the parties' agreement.[33] The Authority will find an award fails to draw its essence from a collective-bargaining agreement when the excepting party establishes 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.[34] Mere disagreement with an arbitrator's interpretation does

[22] Award at 17.
[23] *Id.* at 19.
[24] *CBP*, 63 FLRA at 438 (alteration in original) (citation omitted).
[25] To the extent the Arbitrator was addressing a purely contractual bargaining obligation, and not applying statutory principles to interpret the agreement, the Union's arguments provide no basis for finding the award contrary to law. *See, e.g., Broad. Bd. of Governors, Off. of Cuba Broad.*, 64 FLRA 888, 891 (2010) (where arbitrator found agency violated a contractual obligation to bargain, Authority denied contrary-to-law exception because "the Authority precedent cited by the [excepting party] – which involve[d] the duty to bargain under the *Statute* – [was] inapposite and provide[d] no basis for finding the award contrary to law"). Because the Union's contrary-to-law arguments do not establish the Arbitrator erred even under statutory principles, we need not determine whether the Arbitrator was resolving a statutory or contractual bargaining obligation.
[26] *See Council 118*, 73 FLRA at 311 (upholding finding that agency had no further bargaining obligation where "the parties ha[d] 'created a new set of enforceable rules' concerning the parties' respective roles . . . which necessarily cover[ed]" the disputed subject matter (citation modified)); *Pro. Airways Sys. Specialists*, 56 FLRA 798, 804 (2000) (finding no duty to bargain over training proposal where "the parties [had] agreed to a comprehensive provision regarding the [a]gency's obligations to provide training to employees"); *SSA, Tucson Dist. Off., Tucson, Ariz.*, 47 FLRA 1067, 1070-71 (1993) (finding no midterm bargaining obligation over work breaks for service representatives where parties' agreement addressed work breaks for all unit employees, including service representatives).
[27] Exceptions at 6.
[28] *Id.* (citing *U.S. DHS, CBP v. FLRA*, 647 F.3d 359 (D.C. Cir. 2011); *USDA, Food Safety & Inspection Serv.*, 62 FLRA 364 (2008); *U.S. DOL, Wash., D.C.*, 38 FLRA 899 (1990); *Dep't of Interior, U.S. Geological Surv. Conservation Div., Gulf of Mex. Region, Metairie, La.*, 9 FLRA 543 (1982)).
[29] *U.S. DOJ, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 74 FLRA 213, 214 (2025) (*DOJ*).
[30] Award at 11 (reciting Union's arguments at arbitration).
[31] *U.S. Dep't of Com., Nat'l Oceanic & Atmospheric Admin., Off. of Marine & Aviation Operations, Marine Operations Ctr.*, 67 FLRA 244, 246 (2014) (*Marine Operations*).
[32] *See DOJ*, 74 FLRA at 214 (denying contrary-to-law exception concerning unfair-labor-practice allegation where excepting party did "not challenge any findings" relating to the arbitrator's past-practice finding as nonfacts).
[33] Exceptions at 6. In its opposition, the Agency argues that the Authority should deny the Union's essence exception as unsupported. Opp'n at 17-19. However, the Union provides supporting arguments and citations to authority. *See* Exceptions at 6-7. We find that the Union adequately supports its essence exception. *See, e.g., Local 2219*, 69 FLRA at 432-33 (finding exceptions adequately supported).
[34] *AFGE, Loc. 446*, 73 FLRA 421, 421 (2023).

not establish the award fails to draw its essence from the agreement.[35]

According to the Union, Article 49 required the Agency to engage in midterm bargaining over the new telework arrangements.[36] However, the Arbitrator rejected this argument, finding that "[t]he modifications to telework assignments do not fall within Article 49 . . . [because they] were not mid-term changes to the contract."[37] The Arbitrator determined the parties' agreement – specifically, "Article 18, as amended by Supplement 34"[38] – already established the process by which the Agency could change telework arrangements, and he concluded that Article 49 did not require further bargaining over that topic.[39] Without addressing the Arbitrator's interpretation or explaining why his conclusion that the Agency "met its obligation to bargain"[40] is erroneous, the Union asserts that Article 49 required bargaining.[41] But simply stating disagreement with the Arbitrator's interpretation does not demonstrate that the award is deficient.[42] Consequently, we deny this exception.[43]

The Union also argues that the award fails to draw its essence from Article 6 of the parties' agreement,[44] which provides that "[e]mployees shall be treated fairly and equitably in the administration of this [a]greement and in policies concerning conditions of employment."[45] According to the Union, the Agency "failed to treat [b]argaining[-u]nit [e]mployees in a fair and equitable manner . . . by refusing to negotiate in accordance with Article 49."[46] But this allegation of unfair and unequitable treatment relies on the Union's contention that the Agency violated a bargaining obligation under Article 49. As discussed above, the Arbitrator found the Agency satisfied its contractual bargaining obligation, and the Union's exceptions do not demonstrate otherwise. Accordingly, we deny this exception as well.[47]

Finally, the Union contends that, under Article 49, the Agency could not unilaterally change the parties' alleged past practice of requiring no more than one in-office day per week.[48] As discussed above, in resolving exceptions to arbitration awards, the Authority reviews whether a past practice exists under the nonfact framework,[49] and the Union does not argue that the Arbitrator's failure to find a past practice is based on a nonfact. As such, and because the Union's essence exception is premised on the existence of a past practice, we deny the exception.[50]

For the above reasons, we deny the essence exceptions.

IV. Decision

We deny the Union's exceptions.

[35] *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Elkton, Ohio*, 74 FLRA 29, 31 (2024) (*Elkton*).
[36] Exceptions at 4.
[37] Award at 17.
[38] *Id.*
[39] *Id.* at 19 ("[T]he procedures [the Agency] used [to modify telework agreements] had already been bargained for, and there was no need to [further] bargain over them.").
[40] *Id.*
[41] Exceptions at 6 (arguing award fails to draw its essence from Article 49 because the Agency, "after receipt of a timely demand to bargain from the Union in accordance with Article 49 . . . [,] failed to bargain appropriate arrangements" for affected employees).
[42] *Elkton*, 74 FLRA at 31.
[43] *See id.* (denying essence exception where excepting party did "not cite any contractual wording that required the [a]rbitrator to reach a different conclusion"); *U.S. Dep't of VA, James A. Haley Veterans Hosp. & Clinics*, 73 FLRA 880, 883 (2024) (then-Member Kiko concurring) (denying essence exception that "merely argue[d] for [the excepting parties'] preferred interpretation and application" of the parties' agreement).
[44] Exceptions at 6-7.
[45] Award at 3.
[46] Exceptions at 7.
[47] *See SPORT Air Traffic Controllers Org.*, 73 FLRA 830, 833 (2024) (Chairman Grundmann concurring) (denying essence exception that relied on previously rejected arguments).
[48] Exceptions at 6.
[49] *DOJ*, 74 FLRA at 214.
[50] *See Marine Operations*, 67 FLRA at 246 (denying essence exception premised on existence of past practice where excepting party did not challenge as a nonfact the arbitrator's finding that no past practice existed).