74 FLRA No. 52

UNITED STATES
DEPARTMENT OF THE ARMY
FORT HUACHUCA, ARIZONA
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1662
(Union)

0-AR-5989

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DECISION

December 22, 2025

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

I. Statement of the Case

The Agency denied an employee (the grievant) sick leave – and designated him absent without leave (AWOL) – because he did not provide documentation from a medical practitioner (medical certificate) to support his sick-leave request. After the Union grieved the matter, Arbitrator Richard R. Rice issued an award finding that, although the Agency required the grievant to submit a medical certificate, the Agency did not communicate to the grievant why he must do so. Absent such an explanation, the Arbitrator found the Agency's actions violated the parties' collective-bargaining agreement. The Agency filed exceptions to the Arbitrator's award, and the exceptions present the five questions below.

The first question is whether the Authority has jurisdiction over this case after the President's issuance of Executive Order 14,251 (the executive order),[1] which, as pertinent here, excluded certain agencies and agency subdivisions from the coverage of the Federal Service Labor-Management Relations Statute (the Statute) pursuant to § 7103(b)(1) of the Statute.[2] Importantly, the executive order did not exempt from the Statute's coverage "the immediate, local employing offices of any agency . . . firefighters."[3] Because the grievant is an Agency firefighter, we have jurisdiction over this dispute. Thus, the answer to the first question is yes.

The second question is whether the award is based on nonfacts. Because the Agency fails to establish that the contested findings are clearly erroneous, and for the additional reasons explained below, the answer is no.

The third question is whether the award fails to draw its essence from the agreement. The award interpreting the agreement's wording concerning medical certificates to substantiate sick leave is not irrational, unfounded, implausible, or in manifest disregard of the agreement, so the answer is no.

The fourth question is whether the award is contrary to 5 C.F.R. § 630.405 (§ 630.405), which pertinently provides that "[a]n employee must provide . . . medical certification for a request for sick leave . . . after . . . the agency requests such medical certification."[4] The Arbitrator's finding that the Agency did not comply with the agreement is consistent with the Agency's discretion concerning medical-certificate requests under § 630.405, so the answer to the fourth question is no.

The fifth question is whether the award conflicts with management's rights to assign work and discipline employees, under § 7106(a)(2)(A) and (B) of the Statute.[5] For the reasons discussed below, the award is consistent with management's rights, and the answer to the fifth question is also no.

II. Background and Arbitrator's Award

The grievant is a firefighter employed by the Agency's Directorate of Emergency Services, Fire Protection & Prevention Division. The Agency directed the grievant to attend a mandatory two-day training about medical skills for active-shooter incidents. The grievant requested official time to conduct Union-related activities – and, in the alternative, annual leave – that would excuse him from attending the training. The Agency denied those official-time and annual-leave requests, and the grievant completed the first day's training.

Partway through the second day's training, the grievant reported that he felt unwell, and he asked for sick leave that would excuse him from the remainder of the training. The Agency tentatively approved the sick-leave request but required the grievant, upon his return to duty, to provide a medical certificate to substantiate his sick-leave request. When he returned to duty, the grievant submitted a self-certification stating that he was "temporarily

[1] Exclusions from Federal Labor-Management Relations Programs, Exec. Order No. 14,251 (Mar. 27, 2025) (EO 14,251), 90 Fed. Reg. 14553 (Apr. 3, 2025) (amending Executive Order 12,171, 44 Fed. Reg. 66565 (Nov. 19, 1979)).

[2] 5 U.S.C. § 7103(b)(1).

[3] EO 14,251, sec. 2(b), § 1-499, 90 Fed. Reg. at 14554.

[4] 5 C.F.R. § 630.405(b).

[5] 5 U.S.C. § 7106(a)(2)(A), (B).

incapacitated," requiring his absence from the training.[6] The Agency rejected the self-certification because it was not a medical certificate, and, consequently, the Agency changed the tentatively approved sick leave to AWOL.

The Union grieved the denial of sick leave and AWOL designation, and the Agency denied the grievance. The parties stipulated the following issues for arbitration: "Did the Agency violate the [agreement] or federal law when it denied sick leave to [the grievant] and marked him AWOL . . . ; and if so, what shall be the remedy?"[7]

Addressing the basis for the sick-leave request, the Arbitrator credited the grievant's evidence that he has "anxiety[-]related issues that are treated by a medical practitioner," and his testimony that his anxiety is often "resolved through coping skills, rather than a trip to the emergency room."[8] Given the grievant's "history of anxiety," the Arbitrator found that it was reasonable to believe the grievant "suffer[ed] from anxiety" due to the active-shooter training, and that the grievant requested sick leave for that reason.[9]

Concerning the standards for requesting and approving sick leave, the Arbitrator identified Article 32, Section 12 (Section 12) of the agreement as the governing contract provision. That section states:

> Unit employees may be required to furnish a medical certificate to substantiate a request for approval of sick leave . . . when the [A]gency determines it is necessary for legitimate reasons. Supervisors are encouraged to verbally counsel an employee about sick leave abuse prior to issuing a written warning. The employee is entitled to review medical certificate requirements with the supervisor to discuss whether or not the requirement will be continued.[10]

The Arbitrator acknowledged that, under Section 12, the Agency *may* require a medical certificate if the Agency finds a certificate necessary for "*legitimate reasons*."[11] However, the Arbitrator found that the "second part" of Section 12 "requir[es] communication with the employee to prevent sick[-]leave abuse."[12] Based on that finding, the Arbitrator held that Section 12 "implicit[ly]" requires the Agency to communicate any legitimate reasons to the affected employee.[13]

Applying this requirement, the Arbitrator found the Agency did not communicate to the grievant any legitimate reasons for needing a medical certificate, rather than a self-certification. On that basis, the Arbitrator "[did]not find justification for the medical [certificate]; or for the rejection of the self-certification."[14] Thus, the Arbitrator concluded that the requirement for a medical certificate, the denial of sick leave, and the AWOL designation violated Section 12.

The Arbitrator determined that his contractual finding was consistent with § 630.405. He recognized that § 630.405 authorized the Agency to either rely on an employee's self-certification to support sick leave, or to determine that a medical certificate was necessary. However, he also found that this "standard must be tempered [by] some evidence supporting the request for documentation," and he faulted the Agency for "never communicat[ing] . . . to the [g]rievant" the reasons a medical certificate was necessary under the regulation.[15]

The Arbitrator sustained the grievance, directed the Agency to remove the AWOL designation, and awarded the grievant backpay for the compensation he would have received if the Agency had approved his sick-leave request.

The Agency filed exceptions to the award on September 20, 2024, and the Union filed an opposition on October 17, 2024.

III. Preliminary Matters

A. We have jurisdiction over this case, and we deny the Union's stay motion.

After the Agency filed its exceptions, the President issued the executive order, which excluded certain agencies and agency subdivisions – including the Department of Defense – from the coverage of the Statute.[16] Because the Agency is part of the Department of Defense, the Authority ordered the Agency to show cause why its exceptions should not be dismissed for lack of jurisdiction.[17] The Authority also provided the Union an opportunity to reply to the Agency's response to the show-cause order.[18]

In its response, the Agency cites Section 1-499 of the executive order (Section 1-499), which states, in pertinent part, "[N]othing in th[e executive order's new exclusions] shall exempt from the coverage of [the Statute] . . . the immediate, local employing offices of any agency

[6] Opp'n, Attach. 3, Self-Certification at 1.
[7] Award at 2.
[8] *Id.* at 6.
[9] *Id.* at 6-7.
[10] *Id.* at 3 (quoting Collective-Bargaining Agreement (CBA) Art. 32, § 12).
[11] *Id.* at 5 (quoting CBA Art. 32, § 12).
[12] *Id.* at 7.
[13] *Id.*
[14] *Id.* (emphasis omitted).
[15] *Id.* at 6.
[16] EO 14,251, sec. 2(b), § 1-402, 90 Fed. Reg. at 14553.
[17] Order to Show Cause at 1.
[18] *Id.*

police officers, security guards, or firefighters . . . ."[19] Relying on this wording, the Agency asserts the Authority has jurisdiction over the exceptions because the grievant is an Agency firefighter, and the arbitral remedies apply only to him.[20]

In its reply to the Agency's response, the Union moves for the Authority to stay the proceedings in this case.[21] The Union argues that: (1) the executive order's validity is at issue in pending federal-court litigation;[22] (2) the Department of Defense sought declaratory relief in federal court to allow the Agency to "rescind or repudiate" the parties' agreement;[23] and (3) the executive order raises complex questions of constitutional and statutory interpretation. Regarding those first two considerations, the Union argues the Authority would benefit from the courts' resolution of the issues under litigation.[24] Concerning the third consideration, the Union argues the Authority would benefit from more fulsome briefing.[25] Nevertheless, the Union agrees with the Agency that this case concerns an Agency firefighter.[26]

We agree with the Agency that this case falls within the scope of Section 1-499 because the grievant is a firefighter. Additionally, the award provides relief only to him.[27] Accordingly, none of the executive order's exclusions apply so as to deprive the Authority of jurisdiction in this case.[28]

Further, the pending challenges to the executive order are not a reason to stay this case. Before the executive order issued, the Authority had jurisdiction over this dispute; in accordance with Section 1-499, the executive order does not deprive the Authority of jurisdiction. Thus, there is no basis for finding that the litigation challenging the executive order could affect the Authority's jurisdiction to decide the Agency's exceptions.

Moreover, the Department of Defense's declaratory-judgment action seeking to rescind or repudiate the parties' agreement does not warrant a stay. Initially, since the parties responded to the show-cause order, the federal district court dismissed, without prejudice, the declaratory-judgment action for lack of jurisdiction.[29] Further, the government sought,[30] and received, a voluntary dismissal of its earlier appeal of the district court's order.[31] But because the district court's dismissal was without prejudice to refiling, the declaratory-judgment action could be re-filed.[32] Nevertheless, that possibility does not warrant a stay, because the Authority derives its jurisdiction to resolve arbitration exceptions from the Statute, not the parties' collective-bargaining agreement.[33] Thus, even if the Agency were to rescind or repudiate that agreement, and even if such action were consistent with a declaratory-judgment order, the rescission or repudiation would not affect the Authority's jurisdiction under the Statute.[34] In addition, the Authority has held that an agency's cancellation of a collective-bargaining agreement did not render exceptions moot where the agreement governed the parties' relationship at the time the award was issued.[35] This precedent lends further support to a conclusion that we have jurisdiction to resolve the exceptions here.

Finally, this case does not involve complex questions of law that require further briefing. As just stated, the Authority has jurisdiction here irrespective of the results of any pending federal-court litigation. We find that the parties' previously submitted briefs contain sufficient information to resolve this dispute.

[19] EO 14,251, sec. 2(b), § 1-499, 90 Fed. Reg. at 14554.
[20] Resp. at 1.
[21] Reply at 1.
[22] *Id.* at 1-2.
[23] *Id.* at 2 (citing *U.S. DOD v. AFGE, AFL-CIO, Dist. 10*, 792 F. Supp. 3d 711, 726 (W.D. Tex. 2025) (dismissing case without prejudice for lack of subject-matter jurisdiction), *appeal voluntarily dismissed*, No. 25-50784 (5th Cir. Dec. 2, 2025)).
[24] *Id.* at 2-3.
[25] *Id.* at 3.
[26] *Id.*
[27] We need not address whether Section 1-499 would apply if the award provided broader relief, because that circumstance is not currently before us.
[28] EO 14,251, sec. 2(b), § 1-499, 90 Fed. Reg. at 14554.
[29] *U.S. DOD*, 792 F. Supp. 3d at 726.
[30] Consent Mot. to Voluntarily Dismiss Appeal, *U.S. DOD*, No. 25-50784 (5th Cir. Nov. 25, 2025), Dkt. No. 11.
[31] Clerk's Order Granting Mot. to Dismiss Appeal Pursuant to Fed. R. App. P. 42(b), *U.S. DOD*, No. 25-50784 (5th Cir. Dec. 2, 2025), Dkt. No. 12.
[32] *Id.*
[33] *See* 5 U.S.C. § 7122 (granting the Authority power to review arbitration awards when exceptions are filed); *cf. NTEU, Chapter 208*, 4 FLRA 215, 216 (1980) ("[The Authority's negotiability] jurisdiction . . . cannot in any way be expanded by an agreement between the parties . . . ."); *IRS, Wash., D.C.*, 47 FLRA 1091, 1106 (1993) (finding that parties' agreement to include unfair-labor-practice (ULP) allegations within the scope of their negotiated grievance procedure could not deprive the Authority of jurisdiction under the Statute to address ULP charges filed by a party to that agreement); *U.S. Dep't of VA, Med. Ctr., Danville, Ill.*, 34 FLRA 131, 135-36 (1990) (where agency entered into agreement with employees as an exercise of discretion, rather than pursuant to a collective-bargaining obligation under the Statute, Authority had no jurisdiction to consider exceptions to an arbitration award that arose from that agreement); *LaBoube v. Dep't of the Treasury*, 105 M.S.P.R. 337, 340 (2007) ("[P]arties cannot confer [Merit Systems Protection] Board jurisdiction by agreement where it is otherwise lacking.").
[34] *Cf. U.S. Dep't of the Treasury, BEP, Wash., D.C.*, 41 FLRA 860, 865-66 (1991) (holding that agency's cancellation of collective-bargaining agreement provided no reason to find an award deficient, where the "agreement governed the parties' relationship at the time the award was issued").
[35] *Id.*

In sum, we have jurisdiction over this case,[36] and we deny the Union's stay motion.

B. Sections 2425.4(c) and 2429.5 of the Authority's Regulations do not bar the Agency's management-right arguments.

The Agency argues the award is contrary to its rights to assign work and discipline employees.[37] In its opposition, the Union argues the Authority should bar these arguments because "the Agency never raised the issue of management's rights . . . with the Arbitrator."[38] Under §§ 2425.4(c) and 2429.5 of the Authority's Regulations, the Authority will not consider arguments that could have been, but were not, presented to the arbitrator.[39]

The Agency raised the management rights to assign work and discipline employees in its closing brief at arbitration.[40] Accordingly, the Authority's Regulations do not bar the Agency from relying on those same rights in its exceptions.[41]

IV. Analysis and Conclusions

A. The award is not based on nonfacts.

The Agency argues the award is based on two nonfacts, discussed further below.[42] To establish an award is based on a nonfact, the excepting party must show that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result.[43] The Authority will not find an award deficient based on the arbitrator's determination of any factual matter that the parties disputed at arbitration.[44] Further, disagreement with an arbitrator's evaluation of evidence, including the weight accorded such evidence, does not provide a basis for finding that an award is based on a nonfact.[45]

The Agency's first nonfact argument is that the Arbitrator erred in finding that the Agency never communicated the reasons the grievant needed to provide a medical certificate.[46] According to the Agency, it clearly communicated the reason in the tentative approval: "to support his request for sick leave."[47] However, § 630.405 permits an agency to consider an employee's self-certification to support a sick-leave request.[48] Thus, under § 630.405, requiring an employee to "support"[49] a sick-leave request with a medical certificate is not, standing alone, a reason for requiring such a certificate. Further, the Arbitrator found that Section 12 requires the Agency to communicate its legitimate reasons to an employee when requiring medical documentation – and, as discussed below, we deny the Agency's essence exception challenging that finding. The Agency's communication did not convey *why* the Agency was asking the grievant to support his sick-leave request. For these reasons, the Agency does not demonstrate that the Arbitrator made a clearly erroneous factual finding when he determined that the Agency never communicated the reasons the grievant needed to provide a medical certificate.[50]

The Agency's second nonfact argument is that the Arbitrator erred in finding no justification for the medical-certificate requirement because the Agency explained at arbitration its reasons for insisting on a medical certificate.[51] However, even assuming this argument concerns a factual finding – rather than a contractual one – the parties disputed below whether the certificate requirement was justified,[52] and the Arbitrator found it was not.[53] This arbitral resolution of a factual dispute does not provide a basis for finding a nonfact.[54] Further, to the extent

[36] *See U.S. Dep't of the Navy, Commander Navy Region Nw., Fire & Emergency Servs.*, 74 FLRA 286, 288 (2025) (holding the executive order did not deprive Authority of jurisdiction over arbitration exceptions where there was no dispute that agency was "the immediate, local employing office of firefighters").
[37] *See* Exceptions Br. at 4-5.
[38] Opp'n Br. at 10.
[39] 5 C.F.R. §§ 2425.4(c), 2429.5.
[40] Exceptions, Encl. 8, Agency's Arb. Closing Br. (Agency's Arb. Closing Br.) at 3-4 (arguing Arbitrator would interfere with management's rights to assign work and discipline employees if he held Agency could not require grievant to provide medical certificate).
[41] *See, e.g.*, *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Ashland, Ky.*, 74 FLRA 13, 15 (2024) (finding §§ 2425.4(c) and 2429.5 did not bar an exception because the party raised the same argument in its post-hearing brief at arbitration).
[42] Exceptions Br. at 5.
[43] *NTEU, Chapter 46*, 73 FLRA 654, 655-56 (2023) (*Chapter 46*) (citing *AFGE, Loc. 4156*, 73 FLRA 588, 590 (2023)).
[44] *Id.* (citing *Int'l Bhd. of Boilermakers, Loc. 290*, 72 FLRA 586, 588 & n.28 (2021); *AFGE, Loc. 1698*, 70 FLRA 96, 99 (2016)).
[45] *Id.* (citing *AFGE, Loc. 12*, 70 FLRA 582, 583 (2018)).
[46] Exceptions Br. at 5.
[47] *Id.*
[48] 5 C.F.R. § 630.405(a) ("An agency may consider an employee's self-certification as to the reason for his or her absence as administratively acceptable evidence, regardless of the duration of the absence."); *see also* Award at 6 (finding "an employer may rely upon an employee's self-certification" (citing 5 C.F.R. § 630.405(a))).
[49] Exceptions Br. at 5.
[50] *See Chapter 46*, 73 FLRA at 655-57 (rejecting nonfact argument because party did not demonstrate clear factual error).
[51] Exceptions Br. at 5.
[52] Award at 5 (stating Union argued medical-certificate requirement was "arbitrary and discriminatory"); Agency's Arb. Closing Br. at 4 (asserting Agency had legitimate reason for requiring medical certificate).
[53] Award at 7 ("[T]his Arbitrator cannot find justification for the medical documentation [requirement]; or for the rejection of the self-certification.").
[54] *See Chapter 46*, 73 FLRA at 656 (rejecting nonfact challenge to arbitral resolution of disputed factual issue).

the Agency argues the Arbitrator "ignore[d] the record,"[55] contesting the Arbitrator's weighing of evidence also does not establish a nonfact.[56] Moreover, any explanation for the medical-certificate requirement that the Agency provided *at arbitration* does not demonstrate that the Arbitrator clearly erred in finding the Agency was unjustified in requiring a medical certificate without providing any explanation *to the grievant*.[57]

For these reasons, we deny the nonfact exception.

B. The award draws its essence from the agreement.

The Agency argues the award fails to draw its essence from the parties' agreement because the Arbitrator erroneously required the Agency to communicate legitimate reasons for requiring a medical certificate.[58] The Authority will find that 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.[59]

In its first essence argument, the Agency contends the Arbitrator's imposition of a requirement to communicate its legitimate reasons to an employee when requiring medical documentation is irrational and implausible because Section 12 does not contain such a requirement.[60] However, the Arbitrator found this requirement was "implicit" in Section 12, observing that the "second part of Section 12 requir[es] communication with the employee to prevent sick leave abuse."[61] Section 12 requires supervisors to verbally counsel employees, to review medical-certificate requirements with employees, and to discuss with employees whether medical-certificate requirements will be continued.[62] In other words, Section 12 contains several requirements for supervisors to communicate with employees about sick-leave usage – and medical certificates, in particular. Further, Section 12 authorizes the Agency to require a medical certificate "for legitimate reasons," but it would be impossible for the grievant to know whether the Agency had "legitimate reasons" for requiring a medical certificate unless the Agency communicated such reasons to him.[63] Consequently, it was not irrational, unfounded, implausible, or in manifest disregard of the parties' agreement for the Arbitrator to conclude that Section 12 required the Agency to communicate to the grievant its legitimate reasons for requiring a medical certificate.[64]

In its second essence argument, the Agency asserts the Arbitrator's interpretation of Section 12 disregards Article 35, Section 1(b)(1) (Section 1(b)(1)) – a provision that addresses when firefighters must provide medical certificates to support sick leave.[65] Section 1(b)(1) states, in pertinent part, "Operations firefighters who take sick leave . . . [,] when the [A]gency determines it is necessary for legitimate reasons[,] must provide a medical certificate . . . ."[66] However, this provision contains the same wording as Section 12 regarding the Agency's need to have legitimate reasons for requiring a medical certificate. Thus, for the same reason identified in the Section 12 discussion above – the Agency's failure to *communicate* any legitimate reasons to the grievant – the Agency does not show that the award is irrational, unfounded, implausible, or in manifest disregard of Section 1(b)(1).[67]

We deny the essence exception.

C. The award is consistent with § 630.405.

The Agency argues the award is contrary to § 630.405 because that regulation does not require the Agency to justify a medical-certificate requirement when evaluating sick-leave requests.[68] When exceptions involve an award's consistency with law, the Authority reviews any question of law raised by the exceptions and the award

[55] Exceptions Br. at 5.
[56] *See Chapter 46*, 73 FLRA at 656; *U.S. Dep't of VA, Puget Sound Health Care Sys., Seattle, Wash.*, 72 FLRA 441, 443 (2021) (Chairman DuBester concurring) (denying nonfact argument that a finding "ignore[d] the record").
[57] *See Chapter 46*, 73 FLRA at 655-57 (rejecting nonfact argument because party did not demonstrate clear factual error).
[58] Exceptions Br. at 6-7.
[59] *NLRB Union*, 74 FLRA 230, 234 (2025).
[60] Exceptions Br. at 7.
[61] Award at 7.
[62] *Id.* at 3.
[63] *Id.* (quoting CBA Art. 32, § 12).
[64] *See U.S. Dep't of the Treasury, IRS, Greensboro, N.C.*, 61 FLRA 103, 105 (2005) (Member Armendariz concurring in part and dissenting in part on other grounds) (denying essence challenge to award in which arbitrator interpreted contractually required "counseling" about performance deficiencies as necessitating "verbal discussions," not merely written notices).
[65] Exceptions Br. at 6-7.
[66] *Id.* at 7 (emphasis omitted) (quoting CBA Art. 35, § 1(b)(1)).
[67] *See U.S. Dep't of the Army, Fort Huachuca, Ariz.*, 65 FLRA 442, 445 (2011) (relying on arbitrator's interpretation of one contract provision to find that award drew its essence from "functionally identical" wording in another provision of the same agreement).
[68] Exceptions Br. at 3-4 (citing 5 C.F.R. § 630.405).

de novo.[69] In applying the standard of de novo review, the Authority assesses whether an arbitrator's legal conclusions are consistent with the applicable standard of law.[70] In making that assessment, the Authority defers to the arbitrator's underlying factual findings, unless the excepting party establishes they are based on nonfacts.[71]

Section 630.405(a) says, in relevant part, "An agency may also require a medical certificate . . . as to the reason for an absence . . . when the agency determines it is necessary."[72] Further, § 630.405(b) says, in pertinent part, "An employee must provide administratively acceptable evidence or medical certification for a request for sick leave . . . after the date the agency requests such medical certification."[73]

Emphasizing the word "must" in § 630.405(b), the Agency asserts that, once it requests a medical certificate, an employee is obligated to furnish one.[74] The Agency "essentially argues that it has an unreviewable right to determine that medical documentation is necessary."[75] But the Authority has previously held that an arbitrator may scrutinize whether an agency "*properly* determined that medical documentation was necessary," without running afoul of § 630.405(b).[76] In doing so, the arbitrator may examine whether the determination was "reasonable" or an "abuse[of] discretion."[77] Thus, the Authority has rejected the proposition that such determinations are unreviewable.

Further, the Authority has recognized that § 630.405 permits parties to negotiate, to the extent of an agency's discretion, over the circumstances in which the agency will require medical certificates.[78] Here, the parties negotiated the conditions set forth in Section 12, and the Arbitrator found that one of those conditions required the Agency to communicate to the grievant its legitimate reasons for requiring a medical certificate.[79]

In short, § 630.405 does not provide the Agency with unlimited or unreviewable discretion to determine when it will require a medical certificate; the parties bargained over the conditions that apply to such a requirement; and the Arbitrator remedied the Agency's failure to comply with one of those conditions. Under Authority precedent, the Arbitrator's interpretation of the parties' agreement is consistent with the Agency's discretion under § 630.405, and we reject the Agency's argument to the contrary.

D. The Arbitrator enforced an appropriate arrangement, so the award is consistent with management's rights.

The Agency argues that, by limiting its ability to require the grievant to provide a medical certificate to substantiate his sick leave, the award interferes with management's rights to assign work and discipline employees,[80] under § 7106(a)(2)(A) and (B) of the Statute.[81] The Union contends any such interference is lawful because Section 12 – which the Arbitrator enforced – is an appropriate arrangement under § 7106(b)(3) of the Statute.[82] In *Consumer Financial Protection Bureau* (*CFPB*), the Authority revised its test for resolving management-rights exceptions in cases where an arbitrator found a collective-bargaining-agreement violation.[83] We apply *CFPB* here.

Under the four-part *CFPB* framework, the first question is whether the excepting party establishes the arbitrator's interpretation and application of the parties' agreement, or the awarded remedy, affects a management right.[84] In *CFPB*, the Authority stated that "if it is clear that the [collective-bargaining-agreement] provision is

[69] *U.S. Dep't of the Treasury, IRS*, 73 FLRA 888, 889 (2024) (*IRS*); *see U.S. DHS, CBP*, 69 FLRA 579, 581 (2016) (analyzing argument that award was contrary to government-wide regulation using contrary-to-law framework).
[70] *IRS*, 73 FLRA at 889.
[71] *U.S. Dep't of the Navy, Naval Med. Ctr. Camp Lejeune, Jacksonville, N.C.*, 73 FLRA 137, 140 (2022).
[72] 5 C.F.R. § 630.405(a).
[73] *Id.* § 630.405(b).
[74] Exceptions Br. at 4.
[75] *U.S. DOJ, Fed. BOP, U.S. Penitentiary Marion, Ill.*, 59 FLRA 811, 813 (2004) (Member Pope dissenting in part on other grounds).
[76] *Id.* (emphasis added). The pertinent wording of § 630.405 previously appeared in 5 C.F.R. § 630.403, and older Authority decisions cited § 630.403 for that reason.
[77] *Id.*
[78] *See U.S. Dep't of the Navy, Norfolk Naval Shipyard, Portsmouth, Va.*, 55 FLRA 1103, 1105 (1999) (*Navy*) (arbitrator's finding that agreement permitted sick-leave-restricted employee to rely on self-certification to substantiate sick-leave usage for recurring medical condition was not contrary to § 630.403); *NAGE, SEIU, Loc. R1-134*, 47 FLRA 675, 682 (1993) (arbitrator's finding that agreement permitted agency to question the reasonableness of grievant's medical certificate was consistent with § 630.403); *AFGE, AFL-CIO, Loc. 2052*, 30 FLRA 837, 841 (1987) (finding parties could lawfully negotiate a proposal that prohibited supervisors from asking or ordering employees who requested sick leave to disclose their medical diagnoses because "§ 630.403 does not require employees to provide reasons in addition to the employee's certification as to the basis for sick[-]leave usage").
[79] *See* Award at 6-7.
[80] Exceptions Br. at 4-5.
[81] 5 U.S.C. § 7106(a)(2)(A), (B).
[82] Opp'n Br. at 13 (citing 5 U.S.C. § 7106(b)(3)).
[83] 73 FLRA 670, 676-81 (2023).
[84] *Id.* at 676-77.

enforceable under § 7106(b), then the Authority may assume, without deciding, that the interpretation and application of the [agreement] and/or the awarded remedy 'affects' a management right."[85] As explained further below, Authority precedent establishes that Section 12, as interpreted and applied by the Arbitrator, is an appropriate arrangement under § 7106(b)(3). Thus, we assume, without deciding, that the Arbitrator's interpretation and application of Section 12 affect management's rights under § 7106(a).[86]

Under *CFPB*'s second question, the Authority determines whether the arbitrator correctly found, or the opposing party demonstrates, that the pertinent contract language – as interpreted and applied by the arbitrator – is enforceable under § 7106(b).[87] As the Arbitrator did not address § 7106, we examine whether the Union demonstrates that Section 12, as interpreted and applied by the Arbitrator, is enforceable.[88] The Union argues that, in the event the Agency conditions sick-leave approval on the employee's production of a medical certificate, the Arbitrator's interpretation and application of Section 12 requires the Agency to communicate the reasons for this requirement.[89] The Authority has previously recognized that "provisions addressing the circumstances in which management can deny leave requests ameliorate the adverse [e]ffects flowing from management's right to deny leave requests."[90] Thus, the Union has shown that Section 12, as interpreted and applied by the Arbitrator, is an "arrangement" under § 7106(b)(3).[91]

Arrangements are "appropriate" within the meaning of § 7106(b)(3) when they do not "excessively interfere" with management rights – that is, when the "benefit to employees outweighs the . . . burden on the exercise of the management right involved."[92] The Union argues that Section 12 – as interpreted and applied by the Arbitrator – ensures that an employee understands why management has exercised its discretion to require a medical certificate so the employee can take the necessary steps to obtain approval for sick leave.[93] The Union argues this benefit is particularly important when management requires a medical certificate in circumstances that are "contrary to the normal practice."[94] Further, the Union argues the burden on management is slight because a supervisor need only tell the employee what the legitimate reasons are for requiring a medical certificate.[95]

The Authority "has determined that agreement pro[visions] that address requesting and granting sick leave . . . constitute appropriate arrangements within the meaning of [§]7106(b)(3) of the Statute,"[96] as long as they "afford[] management sufficient notice to make appropriate adjustments in the scheduling of work" and do "not require management to grant leave for any unsubstantiated reason."[97] Here, the Arbitrator's interpretation and application of Section 12 require only that the Agency (1) have a legitimate reason for requiring a medical certificate and (2) communicate that reason to the affected employee. The Agency fails to identify a management interest in either requiring a medical certificate without a legitimate reason or refusing to disclose its legitimate reason to the grievant. Moreover, the Arbitrator's interpretation and application of Section 12 do "not require management to grant leave for any unsubstantiated reason."[98] Accordingly, we find the Union has established that Section 12, as interpreted and applied by the Arbitrator, is

[85] *Id.* at 681 n.123.

[86] *See, e.g.*, *U.S. DHS, U.S. CBP*, 74 FLRA 6, 10 (2024) (assuming effect on § 7106(a) rights where Authority found provision interpreted and applied by arbitrator was enforceable as procedure under § 7106(b)(2)).

[87] 73 FLRA at 677-80.

[88] *See, e.g.*, *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Seagoville, Tex.*, 74 FLRA 40, 43-44 (2024) (where arbitrator did not address § 7106(b), Authority assessed whether opposing party demonstrated that contract provision, as interpreted and applied by arbitrator, was enforceable under § 7106(b)).

[89] Opp'n Br. at 12-13; *see also* Award at 7 (finding Agency violated Section 12 by denying the grievant's sick-leave request on the basis of the inadequacy of the grievant's self-certification without communicating any legitimate reasons to the grievant justifying the need for a medical certificate).

[90] *SSA*, 65 FLRA 339, 342 (2010) (citing *NTEU*, 45 FLRA 696, 724 (1992)).

[91] *See, e.g.*, *SSA*, 65 FLRA at 342. We presume that this amelioration is tailored to the grievant's circumstances because the Agency does not attempt to rebut that presumption. *CFPB*, 73 FLRA at 680 ("[I]n the arbitration context, we will not separately conduct a tailoring analysis; we will presume that the tailoring requirement is met. However, that presumption is rebuttable: If a party argues that the tailoring requirement is not met for some reason, then we will consider that argument in conducting our § 7106(b)(3) analysis.").

[92] *AFGE, Council 220*, 74 FLRA 114, 116 (2024).

[93] Opp'n Br. at 13.

[94] *Id.*

[95] *Id.*

[96] *Navy*, 55 FLRA at 1105 (citing *NAGE, SEIU, AFL-CIO*, 40 FLRA 657, 678-82 (1991) (*NAGE*)).

[97] *NAGE*, 40 FLRA at 681-82 (finding lawful a provision that established "substantive criteria governing management's decision to grant leave to employees for reasons of illness or medical treatment" because the provision did "not preclude management from requiring documentation" or "require management to grant leave for any unsubstantiated reason," and because the provision "afford[ed] management sufficient notice to make appropriate adjustments in the scheduling of work").

[98] *Id.* at 681.

an enforceable appropriate arrangement.[99]

CFPB's third question asks whether the excepting party challenges the remedy separate and apart from the underlying violation.[100] In this case, the Agency does not separately challenge the remedy.[101] Therefore, the *CFPB* analysis ends, and we need not reach the fourth question.[102]

Because the Union has established that Section 12 is enforceable under § 7106(b)(3), the award is not contrary to management's rights. Consequently, we deny the contrary-to-law exception.

V. Decision

We have jurisdiction over this case. We deny the Union's stay motion and the Agency's exceptions.

[99] *See Navy*, 55 FLRA at 1105; *NAGE*, 40 FLRA at 681-82. As such, we need not address the Union's argument that Section 12 – as interpreted and applied by the Arbitrator – is an enforceable procedure under § 7106(b)(2) of the Statute. Opp'n Br. at 11-12; *see U.S. Dep't of VA, James A. Haley Veterans Hosp. & Clinics*, 73 FLRA 880, 885 n.85 (2024) (then-Member Kiko concurring) (citing *CFPB*, 73 FLRA at 679 (explaining that opposing party need demonstrate only "that one of the subsections of § 7106(b) applies")).

[100] 73 FLRA at 680-81.

[101] *See, e.g.*, Exceptions Br. at 5 ("The Arbitrator cannot render a CBA interpretation that varies from law . . . .").

[102] 73 FLRA at 681 ("Does the excepting party challenge the remedy separate and apart from the underlying CBA violation? If no, then the Authority will deny the exception.").