

**74 FLRA No. 53**

ASSOCIATION OF  
ADMINISTRATIVE LAW JUDGES  
INTERNATIONAL FEDERATION  
OF PROFESSIONAL AND TECHNICAL ENGINEERS  
(Union)

and

SOCIAL SECURITY ADMINISTRATION  
OFFICE OF HEARING OPERATIONS  
(Agency)

0-AR-6035

—————  
DECISION

February 5, 2026

—————  
Before the Authority: Colleen Duffy Kiko, Chairman,  
and Anne Wagner and Charles O. Arrington, Members  
(Member Arrington concurring)

**I. Statement of the Case**

The Union filed a grievance alleging that the Agency violated the parties' collective-bargaining agreement and law based on the manner in which it assigns cases to administrative law judges (ALJs). Arbitrator Joshua M. Javits issued an award denying the grievance. The Union filed exceptions challenging the award on contrary-to-law, exceeded-authority, nonfact, and essence grounds. Because the Union fails to demonstrate that the award is deficient, we deny the exceptions.

**II. Background and Arbitrator's Award**

The ALJs adjudicate claims for disability benefits brought by claimants, who may or may not be represented. Before 2023, the Agency would assign cases to ALJs after case intake, but before scheduling a hearing. An Agency scheduler would then contact the claimant regarding availability for a hearing, and subsequently would schedule the hearing for a time when the assigned ALJ was available.

In 2023, the Agency implemented a new system that allows claimants' representatives (representatives) to electronically provide the weekdays and times that they are

available for a hearing. The Agency then uses that information – with certain exceptions – to schedule a hearing that matches the representative's availability and then assign the case to the next ALJ who is available at the scheduled hearing time (case-assignment system).

The Union filed a grievance alleging that the Agency violated Articles 5, 13, and 16 of the parties' agreement (Article 5, 13, and 16, respectively), and a provision of the Administrative Procedures Act (APA) concerning ALJ assignments,<sup>1</sup> because the Agency was not assigning cases "in rotation" under the case-assignment system.<sup>2</sup> The Agency denied the grievance, and the parties proceeded to arbitration.

The parties did not stipulate an issue. The Arbitrator framed the pertinent issue as whether "the Agency should – or must – assign cases in the order in which they come into the office, prior to contact between an Agency scheduler and [representatives]."<sup>3</sup>

To resolve this issue, the Arbitrator considered whether the Agency was assigning cases to ALJs in rotation consistent with the parties' agreement and the APA. He found that three provisions of the parties' agreement – Article 5, Section 5.B (Article 5.B); Article 13, Section B (Article 13.B); and Article 16, Section 1.A.3 (Article 16.1.A.3) – all provide, in pertinent part, that the ALJs "shall be assigned cases in rotation so

<sup>1</sup> 5 U.S.C. § 3105.

<sup>2</sup> Award at 3.

<sup>3</sup> *Id.* at 25.

far as practicable.”<sup>4</sup> He also found Article 5, Section 5.A (Article 5.A) provides that “[a]ssignment of cases shall be done in a fair and equitable manner.”<sup>5</sup> In addition, he set out the APA’s pertinent wording, which provides that “ALJs shall be assigned to cases in rotation so far as practicable.”<sup>6</sup>

The Arbitrator described the Union’s position as grieving “a change made in the [Agency’s] procedures from assigning ALJs to cases on a strict [f]irst-[i]n-[f]irst[-o]ut (FIFO) basis or ‘rotational basis’ – to one in which consideration is given to the availability of [representatives] before assigning ALJs cases.”<sup>7</sup> Before the Arbitrator, the Union asserted that the case-assignment system, “where there must be a ‘match’ between an ALJ’s schedule and a [representative’s] availability,” is not an assignment of cases “in rotation” under the APA.<sup>8</sup> The Union also asserted that “this case relates to the Agency’s assignment of cases on a rotation basis and in a fair and equitable manner.”<sup>9</sup> The Union contended that the purpose of the APA’s rotation requirement is “to ensure that ALJs are treated equally and to have cases assigned in a fair manner,” which is the same as Article 5.A’s purpose.<sup>10</sup>

The Union further argued before the Arbitrator that the case-assignment system “is precisely the type of assignment system the APA was designed to prevent”<sup>11</sup> because it allows representatives to “forum shop[]” by matching their availability to the typical schedule of an ALJ who has a known record of granting a high percentage of disability claims.<sup>12</sup> The Union contended that this forum shopping results in some ALJs never being assigned a particular representative’s cases, or in some ALJs being assigned more unrepresented claimants.

The Agency countered that the case-assignment system “complie[s] with the APA mandate to assign cases to ALJs . . . ‘in rotation so far as . . . practica[ble]’” because the Agency assigns cases to ALJs “at one of two times.”<sup>13</sup> Specifically, the Agency explained that certain cases requiring immediate attention are assigned to the next available ALJ when the relevant Agency office receives them, and the remainder “are assigned to ALJs in rotation at the time [the case is] scheduled for hearing.”<sup>14</sup> According to the Agency, “[representative] availability does not affect rotation, as cases are still assigned to the next ALJ in succession after matching a [representative’s] availability with an ALJ’s calendar” and considering other factors previously “agreed to” by the parties.<sup>15</sup> Moreover, the Agency contended that the Union’s concerns were based on “anecdotal reports”<sup>16</sup> but that there was “no evidence that [representatives] are engaging in forum shopping or attempting to appear[] before preferred ALJs.”<sup>17</sup>

The Arbitrator “note[d] that the Union ha[d] a legitimate concern” about the case-assignment system, and he found the Union’s assertions about the system’s “potential flaws . . . to be credible.”<sup>18</sup> He further noted that the “flaws” hypothetically *could* result in forum shopping or other abuses,<sup>19</sup> but he concluded “this does not automatically render the system biased towards certain [c]laimants” nor does it necessarily result in representatives forum shopping.<sup>20</sup> The Arbitrator then found that the Union’s “evidence, while persuasive in some ways,” was “anecdotal,” “subjective in nature,” and “not fully supported by statistical evidence” or “data.”<sup>21</sup> He further stated that “statistical evidence . . . would have supported [the Union’s] position that the

<sup>4</sup> *Id.* at 3-4 (quoting Art. 5.B, Art. 13.B, and Art. 16.1.A.3). Specifically, Article 5.B provides that ALJs “shall be assigned cases in rotation so far as practicable in accordance with 5 U.S.C. § 3105 and Agency policy,” Exceptions, Ex. 4 (CBA) at 17; Article 13.B provides, in pertinent part, that ALJs “shall be assigned cases in rotation so far as practicable . . .,” *id.* at 51; and Article 16.1.A.3 provides that ALJs “shall be assigned cases in rotation so far as practicable in accordance with 5 U.S.C. § 3105 and Agency policy,” *id.* at 67. Although the Arbitrator quoted Article 16.1.A.3 twice and did not quote Article 13.B, *see* Award at 3-4, we read the award as also addressing Article 13.B. In this regard, the Arbitrator noted that the grievance alleged violations of “Articles 5, 13, and 16,” *id.* at 3 (emphasis added), and denied the grievance because, as relevant here, he found that the Union “failed to establish a violation of the parties’ [agreement],” *id.* at 33. Further, both parties read the award as addressing Article 13.B. *See* Exceptions at 24 (stating that the award “recognize[d]” that the parties’ agreement requires rotational assignment “in three separate provisions,” including Article 13.B); Opp’n at 24 (stating that the Arbitrator “correctly found that the Agency’s case[-]assignment system was entirely consistent with the relevant [agreement] provisions,” and listing Article 13.B as a relevant provision).

<sup>5</sup> Award at 4.

<sup>6</sup> *Id.* (quoting 5 U.S.C. § 3105) (internal quotation marks omitted).

<sup>7</sup> *Id.* at 25.

<sup>8</sup> *Id.* at 13.

<sup>9</sup> *Id.* at 18.

<sup>10</sup> *Id.* at 13.

<sup>11</sup> *Id.* at 14.

<sup>12</sup> *Id.* at 15.

<sup>13</sup> *Id.* at 21.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 22-23 (referencing a “Scheduling [Memorandum of Agreement]” between the parties).

<sup>16</sup> *Id.* at 22.

<sup>17</sup> *Id.* at 23.

<sup>18</sup> *Id.* at 30.

<sup>19</sup> *Id.* at 30-31.

<sup>20</sup> *Id.* at 33.

<sup>21</sup> *Id.* at 32.

case[-]assignment [system] was neither fair nor equitable.”<sup>22</sup>

The Arbitrator “accept[ed] that Agency management may in some way need to consider [representatives’] availability when assigning cases to ALJs,” so long as such consideration does not “prejudice the system of adjudication” and “undermine the fair and equitable assignment of cases.”<sup>23</sup> In reaching his conclusions, the Arbitrator referenced the Agency’s argument that it “continues to assign cases on a rotation basis . . . after the various factors are examined.”<sup>24</sup> He further noted the Agency’s assertions that the case-assignment system is rotational “so far as . . . practicable” because “[i]t is not practicable to ignore [representatives’] availability and schedules in assigning cases,” which “would inevitably delay cases” to claimants’ detriment.<sup>25</sup> Ultimately, he rejected the Union’s arguments and concluded that the Union failed to demonstrate that the case-assignment system violated the parties’ agreement or the APA. On this basis, the Arbitrator denied the grievance.<sup>26</sup>

The Union filed exceptions on May 23, 2025, and the Agency filed an opposition on June 23, 2025.

### III. Analysis and Conclusions

- A. The Union does not demonstrate that the award is contrary to law.

The Union argues that the award is contrary to the APA.<sup>27</sup> When an exception involves an award’s

consistency with law, the Authority reviews any question of law raised by the exception and the award de novo.<sup>28</sup> In applying the standard of de novo review, the Authority assesses whether the arbitrator’s legal conclusions – not an arbitrator’s underlying reasoning – are consistent with the applicable standard of law.<sup>29</sup> In making that assessment, the Authority defers to the arbitrator’s underlying factual findings unless the excepting party establishes they are nonfacts.<sup>30</sup> In addition, exceptions that are based on a misunderstanding of an award do not demonstrate the award is contrary to law.<sup>31</sup>

First, the Union contends that the Arbitrator “conflat[ed] the APA’s rotational case[-]assignment mandate with the [parties’ agreement’s] requirement for fair and equitable case assignment[.]”<sup>32</sup> According to the Union, the Arbitrator assessed only that contractual requirement<sup>33</sup> before concluding that the Union “failed to establish a violation of the APA.”<sup>34</sup> The Union is correct that the Arbitrator did not expressly state that the case-assignment system complied with the APA’s rotation requirement. However, “when evaluating exceptions to an arbitration award, the Authority considers the award as a whole.”<sup>35</sup>

Contrary to the Union’s argument, the Arbitrator explained that he had considered both parties’ arguments regarding whether the case-assignment system was consistent with the APA.<sup>36</sup> He then detailed the Agency’s assertions about how the case-assignment system was rotational.<sup>37</sup> While the Arbitrator discussed the contractual “fair and equitable” wording, he did so in the course of evaluating the Union’s concerns about the “potential

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 29.

<sup>25</sup> *Id.* (internal quotation marks omitted).

<sup>26</sup> We note that the Union also alleged in its grievance that the Agency violated the Federal Service Labor-Management Relations Statute (the Statute) by repudiating the parties’ agreement when it failed to assign cases “in rotation” under the case-assignment system. Exceptions, Ex. 2 (Grievance) at 6. The Union also raised a repudiation claim to the Arbitrator. Award at 18-19. Although the Arbitrator did not expressly address the Union’s repudiation claim, the Union does not except to the Arbitrator’s failure to address that claim. Therefore, we do not address it further.

<sup>27</sup> Exceptions at 12-17.

<sup>28</sup> *U.S. Dep’t of the Treasury, IRS*, 73 FLRA 888, 889 (2024) (citing *U.S. DHS, U.S. CBP, U.S. Border Patrol, Rio Grande Valley Sector, Edinburg, Tex.*, 73 FLRA 784, 785 (2024)).

<sup>29</sup> See *NTEU, Chapter 46*, 73 FLRA 654, 658 (2023) (*Chapter 46*) (citing *AFGE, Council 222*, 73 FLRA 54, 55 n.19 (2022)).

<sup>30</sup> *U.S. Dep’t of the Navy, Naval Med. Ctr. Camp LeJeune, Jack., N.C.*, 73 FLRA 137, 140 (2022) (citing *U.S. DOL, Off. of Workers’ Comp.*, 72 FLRA 489, 490 (2021) (Member Abbott concurring)).

<sup>31</sup> *U.S. Dep’t of the Army, Fort Huachuca, Ariz.*, 74 FLRA 18, 20 (2024) (*Fort Huachuca*) (citing *U.S. Dep’t of the Interior, Nat’l Park Serv.*, 73 FLRA 418, 420 (2023)).

<sup>32</sup> Exceptions at 2.

<sup>33</sup> *Id.*; see *id.* at 13.

<sup>34</sup> *Id.* at 13.

<sup>35</sup> *NTEU, Chapter 172*, 74 FLRA 80, 83 (2024) (citation modified). We also note that the relevant wording of Article 5.B, Article 13.B, Article 16.1.A.3, and the APA – that ALJs shall be assigned to “cases in rotation so far as practicable” – is identical. Award at 3-4 (quoting Art. 5.B, Art. 13.B, Art. 16.1.A.3, and 5 U.S.C. § 3105) (internal quotation marks omitted).

<sup>36</sup> Award at 30-33 (stating that he “carefully review[ed] the submissions of both parties” and describing the arguments made by both parties related to whether the case-assignment system complied with the APA and the parties’ agreement before concluding that the Union had not demonstrated a violation of either).

<sup>37</sup> *Id.* at 29-30 (discussing the Agency’s arguments in the analysis); see also *id.* at 20-23 (describing the Agency’s position).

flaws” in the case-assignment system, and the Agency’s arguments that consideration of availability and other factors rendered the case-assignment system more fair and equitable than the prior system.<sup>38</sup> The Arbitrator found that any consideration of availability should not “undermine the fair and equitable assignment of cases,”<sup>39</sup> and he cited the Agency’s argument that the case-assignment system is rotational “so far as . . . practicable” because “[i]t is not practicable to ignore [representatives’] availability and schedules in assigning cases because failure to do so would inevitably delay cases.”<sup>40</sup> Reading the award as a whole, including the Arbitrator’s express conclusion that the Union had not shown a violation of the APA, we find that the Arbitrator concluded that the case-assignment system complied with the APA and the parties’ agreement, despite that system’s *potential* flaws.

Next, the Union argues that the Arbitrator “[d]isregarded” the APA’s rotational case-assignment requirement.<sup>41</sup> The Union claims the award is contrary to the APA because assigning cases based on matching representative and ALJ availability is not consistent with assigning cases “in rotation.”<sup>42</sup> The Union also claims that the Arbitrator interpreted the APA’s “so far as practicable” wording to mean that the APA’s requirements are met “as long as [the case-assignment system] does not result in automatic bias or inevitable forum shopping.”<sup>43</sup>

The APA states that “[ALJs] shall be assigned to cases in rotation so far as practicable,” but does not define “in rotation.”<sup>44</sup> The APA’s legislative history indicates that the rotation requirement is intended to prevent “an agency from disfavoring an [ALJ] by rendering him inactive”<sup>45</sup> and “[t]o [e]nsure equality of participation

among [ALJs] in the hearing and decision of cases.”<sup>46</sup> Apart from this purpose, there is nothing in the legislative history that demonstrates that Congress was concerned with parties manipulating the case-assignment process of ALJs.

Further, in *Ramspeck v. Federal Trial Examiners Conference (Ramspeck)*,<sup>47</sup> the U.S. Supreme Court held that the phrase “so far as practicable” informs the interpretation of “in rotation” and allows agencies to base case assignments on factors “beyond the mere mechanics of bringing the next case on the docket opposite the top name on the register of available” ALJs.<sup>48</sup> The Court explained that the “so far as practicable” language permits case assignments to be informed by other relevant factors, such as the complexity and difficulty of the case and the experience and ability of the ALJ.<sup>49</sup> In line with *Ramspeck*, federal courts have held that the “so far as practicable” language permits case assignments to be informed by considerations within an agency’s control, relevant to the particular assigning agency,<sup>50</sup> so long as the assignment is not made with “the intent or effect of interfering with the independence of the ALJ or otherwise depriving a party of a fair hearing.”<sup>51</sup> For instance, in *Tractor Training Service v. Federal Trade Commission*, the U.S. Court of Appeals for the Ninth Circuit held that “economical operation” of the agency was a permissible factor for an agency’s decision “to deviate from mechanical rotation” of case assignments when it reassigned a case from one geographical location to a different ALJ geographically located closer to where future hearings were scheduled.<sup>52</sup> In *Aacon Auto Transport, Inc. v. Interstate Commerce Commission*, the U.S. Court of Appeals for the D.C. Circuit held that it was “practicable” to reassign a case to a different ALJ on

<sup>38</sup> *Id.* at 31-33.

<sup>39</sup> *Id.* at 32.

<sup>40</sup> *Id.* at 29 (internal quotation marks omitted).

<sup>41</sup> Exceptions at 13-14; *see id.* at 2 (arguing the Arbitrator “erred as a matter of law by failing to assess whether the . . . case[-]assignment [system] comported with the APA’s statutory requirement that cases be assigned to ALJs in rotation”).

<sup>42</sup> *Id.* at 13-17.

<sup>43</sup> *Id.* at 16 (internal quotation marks omitted).

<sup>44</sup> 5 U.S.C. § 3105.

<sup>45</sup> S. Rep. No. 79-752, at 215 (1945) (Senate Report), <https://www.justice.gov/sites/default/files/jmd/legacy/2014/03/20/senaterept-752-1945.pdf>; H.R. Rep. No. 79-1980, at 280 (1946),

<https://www.justice.gov/sites/default/files/jmd/legacy/2014/06/09/houserept-1980-1946.pdf>; *see also* Exceptions, Ex. 20, Senate Report.

<sup>46</sup> Senate Report at 231.

<sup>47</sup> 345 U.S. 128 (1953).

<sup>48</sup> *Id.* at 139 (rejecting argument that “in rotation so far as practicable” solely means “that a case must be assigned to an [ALJ] when his name comes up on the register, unless he is on leave or sick or disqualified or has not completed another assignment, etc.”).

<sup>49</sup> *Id.* at 139-40.

<sup>50</sup> *See, e.g., Sykes v. Bowen*, 854 F.2d 284, 288 (8th Cir. 1988) (*Sykes*) (agency’s assignment of case on remand to same ALJ did not violate APA); *Aacon Auto Transp., Inc. v. Interstate Com. Comm’n*, 792 F.2d 1156, 1163 (D.C. Cir. 1986) (*Aacon*) (permissible factors include the complexity of the case and the ALJ’s experience and ability); *Tractor Training Serv. v. Fed. Trade Comm’n*, 227 F.2d 420, 423 (9th Cir. 1955) (*Tractor*) (noting that “economical operation” was a permissible factor for certain agencies’ deviation from a “mechanical rotation”); *Chocallo v. Bureau of Hearings & Appeals, SSA*, 548 F. Supp. 1349, 1369-70 (E.D. Pa. 1982) (equitable caseload and backlog considerations were permissible factors), *aff’d without opinion*, 716 F.2d 889 (3d Cir. 1983).

<sup>51</sup> *Sykes*, 854 F.2d at 288 (claimant given “full and fair hearing” where claimant did not argue that ALJ was biased or incompetent); *Aacon*, 792 F.2d at 1163 (no evidence that claimant deprived of a fair hearing); *see Tractor*, 227 F.2d at 423-24 (“no suggestion of any intention on the part of [the agency] to deprive petitioners of fair hearing or that [ALJ] was biased or incompetent”).

<sup>52</sup> 227 F.2d at 423.

remand after the agency considered such permissible factors as the presiding ALJ's "proven inability to cut through [claimant's] dilatory tactics and move the proceedings along."<sup>53</sup> In *Sykes v. Bowen*, noting considerations such as the "complexity of the case as well as the experience and ability of the ALJ," the U.S. Court of Appeals for the Eighth Circuit held that reassignment of a case on remand to the same ALJ who presided over the claimant's initial hearing did not violate the APA and the claimant was given a "full and fair hearing."<sup>54</sup> Finally, in *Chocallo v. Bureau of Hearings and Appeals, SSA*, the U.S. District Court for the Eastern District of Pennsylvania held that efficient case-management considerations, such as attaining equitable caseloads and avoiding case backlogs, warranted an agency's departure from rotational distribution of cases to ALJs.<sup>55</sup>

As discussed above, the Arbitrator considered the Agency's arguments that the case-assignment system was rotational "so far as is practicable" because the Agency assigns cases to the next available ALJ after considering availability and "other considerations agreed to" by the parties.<sup>56</sup> The Arbitrator found that cases are assigned to the next ALJ in succession who matches a representative's availability and who satisfies the applicable considerations agreed to by the parties.<sup>57</sup> We find that the Agency's consideration of representative availability as part of its assignment process is consistent with the APA's "so far as practicable" wording,<sup>58</sup> as interpreted by federal courts. Although the Union asserts that this process is not rotational, its arguments do not demonstrate that any deviation from a mere mechanical rotation, such as the successive assignment in the case-assignment system, is inconsistent with the APA's rotation requirement.

Nevertheless, the Union also argues that several of the Arbitrator's alleged findings, and evidence supporting those "findings," demonstrate that the Agency's case-assignment system is inconsistent with the APA's rotation requirement.<sup>59</sup> These findings, according

to the Union, indicate that the "Agency's case[-]assignment system is flawed and could result in the harms the APA's rotational requirement was designed to avoid, such as forum shopping," "unequal case assignment,"<sup>60</sup> and "bias."<sup>61</sup> But the Union misunderstands the award. While the Arbitrator expressed "concerns" about "*potential* flaws in the case[-]assignment system," he ultimately found that the Union failed to provide sufficient record evidence of actual forum shopping, inequitable distribution of cases, or bias.<sup>62</sup> Because the Union's arguments misunderstand the award, they do not demonstrate that the award is contrary to law.<sup>63</sup>

Finally, the Union asserts that "unrebutted testimony" established that the Agency's pre-2023 assignment methods allowed "a rotation of case assignments that protected against representatives choosing [preferred] ALJs," and, thus, demonstrated that "there is no credible claim . . . that it is not practicable to assign cases in rotation."<sup>64</sup> But the Union does not cite any authority for the notion that an agency can never decide that its existing case-assignment system is impracticable and change to a different system that it believes will be practicable. Thus, the Union's assertion provides no basis for finding the award contrary to the APA.

We deny the contrary-to-law exception.<sup>65</sup>

B. The Union does not demonstrate that the Arbitrator exceeded his authority.

The Union argues that the Arbitrator exceeded his authority for several reasons.<sup>66</sup> Arbitrators exceed their authority when, as relevant here, they fail to resolve an issue submitted to arbitration, resolve an issue not submitted to arbitration, or disregard specific limitations

<sup>53</sup> 792 F.2d at 1163.

<sup>54</sup> 854 F.2d at 288.

<sup>55</sup> 548 F. Supp. at 1370.

<sup>56</sup> Award at 21, 23.

<sup>57</sup> *Id.* at 22.

<sup>58</sup> 5 U.S.C. § 3105.

<sup>59</sup> Exceptions at 12-13, 15-16.

<sup>60</sup> *Id.* at 15.

<sup>61</sup> *Id.* at 13.

<sup>62</sup> Award at 33 (emphasis added).

<sup>63</sup> *Fort Huachuca*, 74 FLRA at 20.

<sup>64</sup> Exceptions at 17.

<sup>65</sup> The Union also notes that, before the Arbitrator, the Agency raised management's right to assign work under § 7106(a)(2)(B) of the Statute. *Id.* at 17 n.9. The Union asserts that arbitration awards affecting that management right "may enforce contractual procedures and arrangements or applicable law," and that the requirement of rotational assignment "is an applicable law (that also is repeated in the contract as a procedure and arrangement)." *Id.* To the extent that the Union's assertions could be read as contending that the award is contrary to § 7106 of the Statute, the Union does not make any supporting arguments. Therefore, we reject any such contention as unsupported. 5 C.F.R. § 2425.6(e)(1) (an exception "may be subject to dismissal or denial if . . . [t]he excepting party fails to . . . support a ground" listed in § 2425.6(a)-(c)); *AFGE, Loc. 506*, 74 FLRA 201, 204 n.42 (2025) (denying a contrary to-law exception as unsupported where excepting party failed to support its exception with any arguments).

<sup>66</sup> Exceptions at 18-21.

on their authority.<sup>67</sup> When parties do not stipulate to the issues, arbitrators have the discretion to frame them, and the Authority accords the arbitrator's formulation substantial deference.<sup>68</sup> The Authority has held that arbitrators do not exceed their authority where the award is directly responsive to the formulated issues.<sup>69</sup> Further, disagreements with an arbitrator's evaluation of the evidence do not demonstrate that the arbitrator exceeded his or her authority.<sup>70</sup> And the Authority has denied exceeded-authority exceptions where the excepting party's arguments misinterpreted the arbitrator's award.<sup>71</sup>

The Union asserts that the Arbitrator failed to resolve the issue presented in the grievance and grievance response, which was whether the Agency's case-assignment system comports with the APA's requirement that cases be assigned in rotation.<sup>72</sup> However, as discussed previously, the Arbitrator did address that issue. Therefore, the Union's assertion misinterprets the award and provides no basis for finding that the Arbitrator exceeded his authority.<sup>73</sup>

Additionally, the Union argues that the Arbitrator resolved an issue not submitted to arbitration because the framed issue was "an obvious misstatement of the issue."<sup>74</sup> As previously noted, the parties did not stipulate to the issue, so the Arbitrator framed the pertinent issue as whether "the Agency should – or must – assign cases in the order in which they come into the office, prior to contact between an Agency scheduler and [representatives]."<sup>75</sup> According to the Union, the issue raised in the grievance was "whether the Agency was assigning in rotation," not the method or timing of assignments.<sup>76</sup> However, the Union's grievance alleged that consideration of representative availability before assigning cases to ALJs was impermissible.<sup>77</sup> Therefore, the Arbitrator's formulation of the issue is consistent with the grievance. As such, the Union's argument provides no

basis for finding the Arbitrator exceeded his authority by resolving an issue not submitted to arbitration.<sup>78</sup>

Next, the Union argues that the Arbitrator "impos[ed] an improper standard of proof on the Union" by requiring the Union to "present 'statistical evidence,' when both parties conceded [that] no statistical evidence exists."<sup>79</sup> The Union identifies record evidence it introduced, and asserts that the Arbitrator failed to assess the credibility or weight of some of that evidence, including un rebutted testimony from the Union's expert witness.<sup>80</sup> Further, the Union claims that the award is "internally inconsistent" because the Arbitrator found that the Union introduced credible evidence of various concerns with the case-assignment system, yet he concluded that the Union failed to present sufficient evidence to establish violations.<sup>81</sup> According to the Union, the record and the Arbitrator's own findings demonstrate that the Union met its burden of proof.<sup>82</sup>

If a standard of proof is set forth in law, rule, regulation, or a collective-bargaining agreement, then an arbitrator's failure to apply the prescribed standard will constitute a basis for finding the award deficient.<sup>83</sup> However, the Authority has held that in the absence of a specified standard of proof, arbitrators have the authority to establish whatever standard they consider appropriate, and the Authority will not find an award deficient based on a claim that an arbitrator applied an incorrect standard.<sup>84</sup> The Union does not cite any specific limitations on the Arbitrator's authority to apply the evidentiary standard that he applied. Therefore, we do not find that the Arbitrator disregarded any such limitations.<sup>85</sup> Further, the Union's arguments that challenge the Arbitrator's evaluation of the evidence provide no basis for finding the Arbitrator exceeded his authority.<sup>86</sup>

We deny the exceeded-authority exception.

<sup>67</sup> *U.S. Dep't of VA, Winston-Salem, N.C.*, 73 FLRA 794, 795 (2024) (citing *AFGE, Loc. 2338*, 73 FLRA 522, 523 (2023); *Fraternal Ord. of Police, DC Lodge 1*, 73 FLRA 408, 411 (2023) (*DC Lodge 1*)).

<sup>68</sup> *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Victorville, Cal.*, 73 FLRA 835, 836-37 (2024) (citing *USDA, Food Safety & Inspection Serv.*, 73 FLRA 683, 684-85 (2023) (*USDA*)).

<sup>69</sup> *Id.* at 837 (citing *USDA*, 73 FLRA at 685).

<sup>70</sup> *AFGE, Loc. 1547*, 65 FLRA 624, 628 (2011) (*Local 1547*).

<sup>71</sup> *NTEU, Chapter 105*, 74 FLRA 257, 260 (2025) (*Chapter 105*).

<sup>72</sup> Exceptions at 2, 18-19.

<sup>73</sup> *Chapter 105*, 74 FLRA at 260.

<sup>74</sup> Exceptions at 18.

<sup>75</sup> Award at 25.

<sup>76</sup> Exceptions at 18-19.

<sup>77</sup> Grievance at 4.

<sup>78</sup> *U.S. Dep't of VA, Colmery-O'Neil VA Med. Ctr., Topeka, Kan.*, 73 FLRA 897, 899-900 (2024) (finding an arbitrator did not exceed his authority by resolving an issue raised in grievance).

<sup>79</sup> Exceptions at 19.

<sup>80</sup> *Id.* at 19-21.

<sup>81</sup> *Id.* at 19.

<sup>82</sup> *Id.* at 20.

<sup>83</sup> *SSA*, 66 FLRA 6, 8 (2011) (citing *U.S. Dep't of VA, Med. Ctr., Providence, R.I.*, 49 FLRA 110, 113 (1994)); *SSA, Balt., Md.*, 57 FLRA 181, 184 (2001) (*SSA Balt.*) (citing *AFGE, Loc. 2250*, 52 FLRA 320, 323-24 (1996) (*AFGE*)); *U.S. Dep't of the Navy, Naval Aviation Depot, Norfolk, Va.*, 36 FLRA 217, 222 (1990).

<sup>84</sup> *SSA*, 66 FLRA at 8 (citing *U.S. Dep't of VA, Nat'l Mem'l Cemetery of the Pac.*, 45 FLRA 1164, 1171 (1992)); *SSA Balt.*, 57 FLRA at 184 (citing *AFGE*, 52 FLRA at 324).

<sup>85</sup> *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Elkton, Ohio*, 74 FLRA 29, 30-31 (2024) (*Elkton*) (where a party does not cite any specific limitations on an arbitrator's authority, the Authority will not find that the arbitrator disregarded specific limitations on their authority).

<sup>86</sup> *Local 1547*, 65 FLRA at 628.

C. The Union does not demonstrate that the award is based on nonfacts.

The Union argues that the award is based on several nonfacts.<sup>87</sup> To establish that 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.<sup>88</sup> Disagreement with an arbitrator's evaluation of evidence, including the weight to be accorded such evidence, does not provide a basis for finding that an award is based on a nonfact.<sup>89</sup> The Authority also rejects nonfact exceptions that challenge alleged findings that an arbitrator did not actually make,<sup>90</sup> or that challenge an arbitrator's legal conclusion.<sup>91</sup> Further, the Authority has found that an arbitrator's interpretation of the scope of the issues before him or her is not a matter that can be challenged on nonfact grounds.<sup>92</sup> Moreover, arguments based on a misunderstanding of an award do not demonstrate that the award is based on nonfacts.<sup>93</sup>

The Union claims that the Arbitrator's findings that the Union's evidence was "anecdotal," "subjective in nature," and "not supported by adequate data/statistics" are based on a nonfact because the Union "submitted documentary evidence as well as unrebutted expert testimony" that was "neither subjective in nature nor anecdotal."<sup>94</sup> As these claims challenge the Arbitrator's evaluation of evidence, they do not demonstrate that the award is based on a nonfact.<sup>95</sup>

In addition, the Union argues that the Arbitrator based his "phrasing of the [pertinent] issue" on the nonfact that the Union demanded that the Agency revert to its previous method of assigning cases.<sup>96</sup> According to the Union, it "never sought relief that would dictate the manner of assignment."<sup>97</sup> However, the Union does not specify any finding made by the Arbitrator regarding the Union's position on assignment method, and only cites the

portion of the award that states the pertinent issue as framed by the Arbitrator.<sup>98</sup> To the extent the Union is challenging a finding that the Arbitrator did not actually make, that challenge does not establish that the award is based on a nonfact.<sup>99</sup> And to the extent that the Union is challenging the Arbitrator's formulation of the issue, that formulation cannot be challenged on nonfact grounds.<sup>100</sup> Thus, we reject the Union's arguments.

Next, the Union challenges as a nonfact the Arbitrator's statement that "he accepts that Agency management may in some way need to consider [representatives'] availability when assigning cases to ALJs."<sup>101</sup> For support, the Union asserts that "representative availability is not a condition for assignment within the APA"; and "for decades, the Agency assigned cases in rotation without regard to availability," which demonstrates that such a case-assignment system is "practicable" under the APA.<sup>102</sup> However, the Union provides no basis for concluding that the Arbitrator clearly erred in finding that – despite the Agency's prior use of a different case-assignment system – the Agency "may in some way need to consider [representatives'] availability when assigning cases" in order to more effectively conduct its work.<sup>103</sup> As the Union has not demonstrated that the Arbitrator made a clearly erroneous factual finding in this regard, it does not demonstrate that the award is based on a nonfact.<sup>104</sup> Further, to the extent that the Union is challenging the Arbitrator's legal conclusion that the Agency did not violate the APA, that conclusion may not be challenged on nonfact grounds.<sup>105</sup>

The Union further asserts that the Arbitrator "recognized the error of his rationale by acknowledging that '[c]onsideration of [representatives'] availability cannot . . . prejudice the system of adjudication and must not undermine the fair and equitable assignment of

<sup>87</sup> Exceptions at 21-24.

<sup>88</sup> *Chapter 46*, 73 FLRA at 655-56 (citing *AFGE, Loc. 4156*, 73 FLRA 588, 590 (2023)).

<sup>89</sup> *Id.* at 656 (citing *AFGE, Loc. 12*, 70 FLRA 582, 583 (2018)).

<sup>90</sup> *NFFE, Loc. 1998*, 73 FLRA 143, 145-46 (2022) (*Local 1998*) (citing *SSA, Off. of Hearing Operations*, 71 FLRA 177, 178 (2019)).

<sup>91</sup> *AFGE, Loc. 3954*, 73 FLRA 39, 41 (2022) (*Local 3954*).

<sup>92</sup> *AFGE, Council of Prison Locs., Council 33*, 70 FLRA 191, 194 (2017) (citing *NAIL, Loc. 17*, 68 FLRA 97, 99 (2014) (*Local 17*) (Member DuBester concurring on other grounds); *U.S. DOD, Def. Cont. Mgmt. Agency*, 59 FLRA 396, 403 (2003)).

<sup>93</sup> *AFGE, Loc. 3601*, 73 FLRA 515, 517 (2023) (*Local 3601*) (citing *AFGE, Council of Prison Locs. #33, Loc. 0922*, 69 FLRA 351, 353 (2016)).

<sup>94</sup> Exceptions at 22 (internal quotation marks omitted).

<sup>95</sup> *Chapter 46*, 73 FLRA at 656.

<sup>96</sup> Exceptions at 22.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* (citing Award at 25).

<sup>99</sup> *U.S. Dep't of VA, James A. Haley Veterans Hosp. & Clinics*, 73 FLRA 880, 882-83 (2024) (then-Member Kiko concurring on other grounds) (denying nonfact exception where excepting party failed to identify a specific factual finding that arbitrator actually made (citing *Local 1998*, 73 FLRA at 145-46; *AFGE, Loc. 2338*, 73 FLRA 229, 230 (2022))).

<sup>100</sup> *Local 17*, 68 FLRA at 99.

<sup>101</sup> Exceptions at 23 (quoting Award at 32) (internal quotation marks omitted).

<sup>102</sup> *Id.* at 11, 23.

<sup>103</sup> Award at 32.

<sup>104</sup> *DC Lodge 1*, 73 FLRA at 411 (denying nonfact exceptions because, even assuming the challenged finding concerned a factual matter, the excepting party failed to demonstrate that the arbitrator clearly erred).

<sup>105</sup> *Local 3954*, 73 FLRA at 41. We also note that, as discussed above, the Union does not demonstrate that the Arbitrator erred in that legal conclusion.

cases.”<sup>106</sup> However, when read in context, the Arbitrator’s statement is not an admission of error, but rather an explanation as to when consideration of availability in determining case assignments is appropriate. Therefore, the Union’s argument misunderstands the award, and does not demonstrate that the Arbitrator’s statement is a nonfact.<sup>107</sup>

Finally, the Union challenges as a nonfact the Arbitrator’s statement that “[t]he Union grieves a change made in the [Agency’s] procedures from assigning ALJs to cases on a strict [FIFO] basis or rotational basis – to one in which consideration is given to the availability of [representatives] before assigning ALJs cases.”<sup>108</sup> According to the Union, the grievance did not challenge an alleged failure to follow FIFO order in assigning cases, but merely concerned the Agency’s alleged failure to assign cases in rotation.<sup>109</sup> However, the grievance referenced both FIFO order and a rotational basis for assignment.<sup>110</sup> Even assuming that the Arbitrator’s interpretation of the grievance is a factual finding, the Union does not demonstrate that interpretation is clearly erroneous. Accordingly, the Union’s challenge lacks merit.<sup>111</sup>

We deny the nonfact exception.

- D. The Union does not demonstrate that the award fails to draw its essence from the parties’ agreement.

The Union argues that the award fails to draw its essence from Articles 5.B, 13.B, and 16.1.A.3 of the parties’ agreement.<sup>112</sup> The Authority will find an award fails to draw its essence from a collective-bargaining agreement when the excepting 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

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.<sup>113</sup> Mere disagreement with an arbitrator’s interpretation does not establish the award fails to draw essence from the agreement.<sup>114</sup> Further, exceptions that are based on a misinterpretation of an award do not provide a basis for finding the award deficient on essence grounds.<sup>115</sup>

As described previously, the above-cited provisions all provide, in pertinent part, that ALJs “shall be assigned cases in rotation so far as practicable.”<sup>116</sup> According to the Union, the Arbitrator failed to address whether cases are assigned “in rotation,” and the award permits the Agency to assign cases in a manner contrary to the cited provisions’ requirement to assign cases in rotation.<sup>117</sup> The Union asserts that the Arbitrator addressed only Article 5.A’s requirement that the case-assignment system be “fair and equitable.”<sup>118</sup>

As discussed in Section III.A., above, the Arbitrator addressed whether cases are assigned “in rotation” under the case-assignment system.<sup>119</sup> Thus, the Union is incorrect in arguing that the Arbitrator failed to address that issue. As for the merits of the Arbitrator’s resolution of that issue, the Union does not identify any contractual wording that requires the Agency to use a specific manner of rotation when assigning cases, such that the Arbitrator was required to reach a different conclusion than he did. Nor does the Union otherwise demonstrate that this aspect of the award is irrational, unfounded, implausible, or in manifest disregard of the parties’ agreement. Accordingly, these Union arguments do not establish that the award fails to draw its essence from the parties’ agreement.<sup>120</sup>

Additionally, the Union asserts that, by requiring the Union to present statistical evidence, the Arbitrator

<sup>106</sup> Exceptions at 23 (quoting Award at 32).

<sup>107</sup> *Local 3601*, 73 FLRA at 517-18.

<sup>108</sup> Exceptions at 23 (quoting Award at 25) (internal quotation marks omitted).

<sup>109</sup> *Id.* at 3, 23-24.

<sup>110</sup> Grievance at 3 (asserting that an Agency manual requires case assignment using a method of “FIFO[], unless there is a special situation that requires a change in the order of assignment” and that “these cases still require rotational assignment even though they result in a deviation from the FIFO assignment method”), 4-6 (arguing that the case-assignment system was not a rotation).

<sup>111</sup> *DC Lodge 1*, 73 FLRA at 411.

<sup>112</sup> Exceptions at 24-25.

<sup>113</sup> *AFGE, Loc. 446*, 73 FLRA 421, 421 (2023) (citing *U.S. Dep’t of VA, John J. Pershing VA Med. Ctr., Poplar Bluff, Mo.*, 73 FLRA 67, 69 (2022) (then-Member Kiko concurring on other grounds)).

<sup>114</sup> *Elkton*, 74 FLRA at 31.

<sup>115</sup> *Id.*

<sup>116</sup> Award at 3-4.

<sup>117</sup> Exceptions at 24-25.

<sup>118</sup> *Id.* at 25.

<sup>119</sup> Award at 22 (summarizing Agency’s argument that cases are assigned in rotation “after consideration of advocates['] availability”), 29 (noting Agency assertion that “it continues to assign cases on a rotation basis because, even after the various factors are examined, each case is then assigned to eligible ALJs (meeting the various criteria) on a FIFO rotating basis”).

<sup>120</sup> *NLRB Union*, 74 FLRA 230, 234 (2025) (denying essence exception where excepting party did not identify any contractual wording that required the arbitrator to interpret provision more narrowly); see *Elkton*, 74 FLRA at 31 (denying essence exception where excepting party did “not cite any contractual wording that required the [a]rbitrator to reach a different conclusion, and [did] not otherwise provide any basis for finding [the challenged] aspect of the award irrational, unfounded, implausible, or in manifest disregard of the agreement”).

imposed an evidentiary standard on the Union that is not contained in the parties' agreement.<sup>121</sup> The Authority has explained that, "[i]n the absence of any established burden of proof, an arbitrator is free to determine which party is required to bear the burden of proof regarding a specific issue."<sup>122</sup> Accordingly, the Authority has denied essence exceptions where the excepting party fails to identify any contract provision requiring a particular burden of proof.<sup>123</sup> The Union does not identify any provision that required the Arbitrator to apply a particular burden of proof. Therefore, the Union's argument does not demonstrate that the award fails to draw its essence from the parties' agreement.<sup>124</sup>

We deny the essence exception.

#### **IV. Decision**

We deny the Union's exceptions.

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<sup>121</sup> Exceptions at 2, 25-26.

<sup>122</sup> *Bremerton Metal Trades Council*, 68 FLRA 154, 156 (2014) (citation modified).

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*; see also *NLRB, Region 9, Cincinnati, Ohio*, 66 FLRA 456, 461 (2012).

**Member Arrington, concurring:**

I am happy to concur with my colleagues and make this decision unanimous. This case, my first as a new Member of the Authority, provides an excellent opportunity to emphasize that the Federal Service Labor-Management Relations Statute (Statute) “should be interpreted in a manner consistent with the requirement of an effective and efficient Government.”<sup>1</sup>

As a tenured government employee, it does not get any more simplistic than the term *public service*. When I started working for the U.S. federal government over twenty-five years ago, we still took an actual oath of office for every job, and we did it in front of the American flag. It is an oath I have taken so many times that, at my most recent swearing in, I was able to recite it from memory without prompting. It is not an accident, that when Congress wrote and enacted the Statute, it placed at the forefront the following tenets: safeguarding the public interest, ensuring the *effective* conduct of public business, demanding the *highest standards* of employee performance, promoting *modern and progressive* work practices, maintaining *efficient* operations, and required an *effective and efficient* government.<sup>2</sup>

As someone who has been a public-service customer and employee, a member of the military, a union official and a management official, a Wage Grade employee and a General Schedule employee, a supervisor, a member of the Senior Executive Service, a career employee, and now a Senate confirmed-presidential appointee, I bring a unique perspective and understanding of the federal government’s inner workings, both what it is and what it can be. Every stride forward in public service is driven by dedicated, mission-oriented employees. Unfortunately, the opposite can also be true, and it is the obligation and responsibility of every public servant to address and remedy such actions and situations to safeguard the public interest. As a taxpayer, customer, and employee, I understand that public service requires that the needs of taxpayers and the American public come first; this is precisely what § 7101 of the Statute requires.

In order to safekeep the taxpayer’s interests and fulfill the Authority’s mission, we must weigh the interests of every group who has a vested interest in labor relations. The construction of the Federal Labor Relations Authority’s (FLRA) seal embodies this principle: the cogwheel represents the production of work and progress in labor relations; the gavel symbolizes management; the wrench represents labor; and the torch represents the FLRA’s responsibility for new ideas and leadership. Consistent with the Arbitrator’s finding in this case that

“[i]t is not practicable to ignore [representatives’] availability and schedules in assigning cases” because to do so “would inevitably delay cases to claimants’ detriment,”<sup>3</sup> we must remain focused on our mission to provide fair, timely case processing that advances an effective, efficient government.

In a time of conflict, ego, and competing agendas, we are best served by returning to the basics of public service, which is safeguarding American taxpayers and putting their needs first. At my Senate confirmation hearing, I was asked essentially one core question: Would I follow the law? The answer was an emphatic yes. Chapter 71 of title 5 of the U.S. Code – specifically § 7101 – remains intact and will be well guarded on my watch.

Thank you. A humble public servant.

<sup>1</sup> 5 U.S.C. § 7101(b).

<sup>2</sup> *Id.* § 7101.

<sup>3</sup> Majority at 4 (quoting Award at 29) (internal quotation marks omitted).