74 FLRA No. 54

UNITED STATES
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
(Agency)

and

PROFESSIONAL AVIATION SAFETY SPECIALISTS, AFL-CIO
(Union)

0-AR-5733

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DECISION

February 24, 2026

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Before the Authority: Colleen Duffy Kiko, Chairman, and Anne Wagner and Charles O. Arrington, Members

I. Statement of the Case

Arbitrator Amy Lynne Itzla issued two awards (awards A and B, respectively) finding the Agency violated a memorandum of agreement between the parties concerning off-duty time between shifts (the MOA). She awarded two employees (grievants A and B, respectively) "excused absence or paid administrative leave" for the number of hours they would have been off duty, but for the MOA violations.[1] The Agency filed exceptions to the awards on essence, contrary-to-law, and exceeded-authority grounds. For the reasons explained below, the Agency does not establish the awards are deficient on these grounds.

II. Background and Arbitrator's Awards

The grievants are airways transportation system specialists who work with Agency systems "used by air traffic controllers and airlines to navigate and communicate."[2] In 2014, the Agency and Union negotiated the MOA "to provide objective written criteria for equitable application of fatigue guidance."[3] Section 4 of the MOA (Section 4) states, "Employees must have a minimum of nine . . . consecutive hours, free of duty, between shifts for all scheduled activities[,] to include shift changes, exchanges[,] and scheduled overtime."[4] Section 5 of the MOA (Section 5) states that Section 4's nine-hour provision "must be adhered to," even in situations "that may require an employee to perform unscheduled overtime."[5]

On June 25, 2019, grievant A requested administrative leave to end his regular duties at 1:00 p.m., so he would have nine off-duty hours before a 10:00 p.m. overtime assignment. The Agency denied the request. Grievant A finished his regular duties at 4:30 p.m. and returned five-and-a-half hours later for the overtime assignment. The Agency provided grievant A excused leave for the first part of his next regular shift, in order to ensure he had nine hours off duty after his overtime work.

On July 18, 2019, grievant B similarly requested administrative leave to end his regular duties at 1:00 p.m. to allow for nine off-duty hours before a 10:00 p.m. overtime assignment. The Agency denied grievant B's request. Grievant B finished his regular duties at 5:00 p.m. and returned to work five hours later. Because grievant B was not scheduled to work the following day, the Agency did not provide any excused leave after the overtime work.

In separate grievances, the grievants alleged the Agency violated the MOA by failing to provide each of them with nine off-duty hours between their regular and overtime work. The parties consolidated the grievances for arbitration, but requested an individual award for each grievant. In each award, the Arbitrator framed the issues as whether the Agency violated the MOA by not providing the grievant nine hours off duty between regular and overtime work assignments, and, if so, what is the appropriate remedy?

Although the individual awards contain facts relevant to the respective grievants, the awards' analyses are identical. The Union argued the MOA's nine-hour off-duty requirement applied both before and after overtime assignments, whereas the Agency contended it applied only "between overtime hours and regular work hours, in that sequential order."[6] The parties also disagreed over whether the grievants' overtime assignments were scheduled or unscheduled and, therefore, which MOA provision controlled. The Union maintained that the grievants' overtime assignments were scheduled and the Agency countered that the assignments were unscheduled.

The Arbitrator found the parties created the MOA to address "health and safety concerns associated with fatigue," and the Agency presented "no evidence" those concerns "are not present between regular and overtime

[1] Award A at 23; Award B at 23.
[2] Award A at 7; Award B at 7-8.
[3] Award A at 3 (quoting MOA § 1); Award B at 3 (same).
[4] Award A at 3 (quoting MOA § 4); Award B at 3 (same).
[5] Award A at 3 (quoting MOA § 5); Award B at 3 (same).
[6] Award A at 8-9; Award B at 8-9.

shifts."[7] She determined that, under the plain wording of Sections 4 and 5, the term "shifts" includes "all scheduled activities" and "unscheduled overtime."[8] Therefore, she found it unnecessary to determine whether the grievants' overtime shifts were scheduled or unscheduled. She further determined that whether a regular shift came before or after an overtime shift was irrelevant under Section 4. Rather, she found that "[w]hen there are two shifts, 'between shifts' is where the nine hours [of off-duty time] goes."[9] On this basis, the Arbitrator concluded the Agency violated the MOA by failing to provide nine off-duty hours between the grievants' regular and overtime shifts.

With regard to remedies, the Arbitrator determined the grievants were entitled to leave in an amount equivalent to the difference between the off-duty hours each received and the nine hours the MOA required. Thus, she awarded grievant A three-and-a-half hours, and grievant B four hours, of "excused absence or paid administrative leave."[10]

The Agency filed exceptions to the awards on May 17, 2021, and the Union filed an opposition to the exceptions on June 16, 2021. On September 26, 2023, the Authority issued *Consumer Financial Protection Bureau* (*CFPB*),[11] which revised the test the Authority applies in cases where parties file management-rights exceptions to arbitration awards that find collective-bargaining-agreement violations. The Authority allowed the parties to file supplemental briefs concerning how the *CFPB* test should apply in this case. Neither party filed a supplemental brief.

III. Preliminary Matters

On May 28, 2021,[12] the Union filed a motion to dismiss the exceptions. The motion alleged the Agency untimely filed the exceptions, improperly served them on the Union by email without the Union's consent, and did not serve the Union with all the attachments to the exceptions.[13] The Agency requested leave to file a response to the motion, along with a response (Agency response).[14] After receiving the motion to dismiss, the Agency realized it had not successfully filed its exceptions brief when it filed its exceptions using the Authority's eFiling system.[15] Therefore, on June 3, the Agency requested leave to file, and filed, an exceptions brief as a supplemental submission.[16] On June 9, the Union filed a response to the Agency's request (Union response).[17] Then, in its June 22 opposition, the Union retroactively requested leave to file both the motion to dismiss and the Union response.[18]

On July 22, the Authority's Office of Case Intake and Publication (CIP) issued a deficiency order directing the Agency to properly serve the Union with the exceptions and all attachments by August 5.[19] The Agency complied.[20]

We address the procedural issues separately below.

A. We deny the motion to dismiss.

The Authority's Regulations do not provide for the filing of supplemental submissions, but allow the Authority, in its discretion, to grant leave to file "other documents" as it deems appropriate.[21] Generally, a party must request leave to file a supplemental submission, and must explain why the Authority should consider the submission.[22] The Union did not request leave to file the motion to dismiss at the time of filing,[23] but later did so in its opposition.[24] Because consideration of the motion would not alter our ultimate decision, we assume, without deciding, that it is properly before us.[25] Therefore, we consider it and the Agency response.

As to timeliness, the Union asserts the exceptions were filed more than thirty days after the award issued.[26] The time limit for filing exceptions to an arbitration award is thirty days "after the date of service of the award."[27] As relevant here, the date of service is determined by the

[7] Award A at 18; Award B at 18.
[8] Award A at 21; Award B at 21.
[9] Award A at 21; Award B at 21.
[10] Award A at 23; Award B at 23.
[11] 73 FLRA 670 (2023).
[12] All dates in this section are in 2021.
[13] Mot. to Dismiss at 1-4.
[14] Agency Resp. at 1.
[15] Agency Mot. at 2.
[16] *Id.* at 1.
[17] Union Resp. at 1.
[18] Opp'n at 1.
[19] Order at 2.
[20] Resp. to Order at 1.
[21] 5 C.F.R. § 2429.26(a); *AFGE, Loc. 2516*, 72 FLRA 567, 568 (2021) (*Local 2516*) (citing 5 C.F.R. § 2429.26; *IFPTE, Loc. 4*, 70 FLRA 20, 21 (2016) (*IFPTE*)).
[22] *Local 2516*, 72 FLRA at 568 (citing *IFPTE*, 70 FLRA at 21).
[23] *See* Mot. to Dismiss at 1.
[24] Opp'n at 1.
[25] *AFGE, Loc. 2814*, 72 FLRA 777, 778 n.7 (2022) (Chairman DuBester concurring; Member Abbott concurring) (assuming, without deciding, that possibly deficient filing was properly before the Authority because consideration of the filing "would not alter [the Authority's] ultimate decision" (citing *AFGE, Loc. 2663*, 70 FLRA 147, 148 (2016) (Member Pizzella concurring))); *Indep. Union of Pension Emps. for Democracy & Just.*, 68 FLRA 999, 1001 (2015) (assuming, without deciding, that supplemental submissions were properly before Authority where submissions did not "affect [the Authority's] conclusions" in the case).
[26] Mot. to Dismiss at 3.
[27] 5 C.F.R. § 2425.2(b); *see* 5 U.S.C. § 7122(b).

postmark date of the award.[28] When an award is served by mail, the excepting party receives an additional five days for filing its exceptions.[29] The Agency response demonstrates the Arbitrator served the awards by regular mail and the postmark date was April 12.[30] As the thirtieth day after service was Wednesday, May 12, adding five days for mail service results in a due date of Monday, May 17. As the Agency filed an exceptions form containing its arguments and several attachments that day, the documents filed that day are timely. However, the Authority's Regulations require exceptions be "self-contained" and include "any documents" referenced in support of a party's arguments.[31] We note that the Agency did not include its exceptions brief with the May 17 filing, and instead submitted it after that date. Therefore, we find the brief was not timely filed.[32]

The Union also asserts the Agency did not serve the Union all of the documents filed with the Authority. According to the Union, the Agency notified the Union of its intent to file exceptions with the Authority and emailed the Union a "brief that appeared to support its exceptions."[33] The Union asserts that the Agency did not serve it with the exceptions form that the Agency filed with the Authority, and it is unsure what documents were actually filed with the Authority, including whether the Agency filed the exceptions brief it had emailed the Union or a different brief.[34] The Union argues that the improper service and confusion as to what documents the Agency filed with the Authority "severely hindered the Union's ability to respond" to the exceptions.[35]

The Authority has declined to dismiss filings on the basis of minor deficiencies where the deficiencies did not harm the opposing party or impede its ability to respond.[36] Although the Union did not agree to email service, it does not demonstrate it was harmed by the Agency's service method.[37] As noted previously, the Agency timely filed an exceptions form containing supporting arguments, and other attachments, to which the Union could respond. Although the Union asserts it was not served with the Agency's exceptions form, it acknowledges that it received a copy from CIP, and does not claim that it received that copy after the time to file its opposition had elapsed.[38] Moreover, the Union filed a thorough opposition to the exceptions before the Agency cured the service deficiency.

Thus, we deny the motion to dismiss and consider the Agency's timely filed exceptions form and attachments.[39] Having found the Agency's exceptions brief untimely filed, we now address the Agency's request that we consider it as a supplemental submission.

B. We decline to consider the Agency's untimely exceptions brief as a supplemental submission.

As noted above, the Agency filed a motion for leave to submit its untimely exceptions brief.[40] As also noted previously, the Authority may grant a party leave to file "other documents" as it deems appropriate.[41] However, where a party seeks to raise issues that it could have addressed, or did address, in a previous submission, the Authority ordinarily denies requests to file supplemental submissions concerning those issues.[42]

The Agency asserts its failure to upload its exceptions brief in the eFiling system was due to "some sort of transmission error."[43] There is no allegation, or supporting evidence, that this technical error was due to the Authority's eFiling system.[44] Moreover, the Agency does not explain why it was unaware of, and did not attempt to rectify, the error until after it received the Union's motion to dismiss.[45] Because the Agency could have included the brief with its exceptions and its failure to do so was caused by its own error, we find the Agency

[28] 5 C.F.R. § 2425.2(c)(1).
[29] *Id.*; *see also id.* §§ 2429.21, 2429.22.
[30] Agency Resp. at 5 (providing scan of service envelope showing April 12 postmark): *see also* Exceptions Form at 3 (noting April 12 service date).
[31] 5 C.F.R. § 2425.4(a)(3).
[32] *See, e.g.*, *U.S. Dep't of the Air Force, Davis-Monthan Air Force Base*, 72 FLRA 716, 717 (2022) (Chairman DuBester concurring) (declining to consider portion of exceptions not included with timely filing). We note we would have independently reached this conclusion even if the Union had not filed the motion. Thus, as noted above, consideration of the motion does not alter our ultimate decision.
[33] Mot. to Dismiss at 2.
[34] *Id.*; *see also id.* at 2 n.2 (stating that the Union received a copy of the Agency's exceptions form upon request from CIP).
[35] *Id.* at 2.
[36] *AFGE, Loc. 2338*, 72 FLRA 743, 744 (2022) (*Local 2338*) (citing *AFGE, Loc. 12*, 70 FLRA 348, 349 (2017) (Member DuBester concurring)).
[37] *See* Mot. to Dismiss at 1-2.
[38] *Id.* at 2 n.2.
[39] *See Local 2338*, 72 FLRA at 744 (finding excepting party's service deficiency did not impede opposing party's ability to timely file opposition).
[40] Agency Mot. at 2-3.
[41] *Local 2516*, 72 FLRA at 568 (citing 5 C.F.R. § 2429.26; *IFPTE*, 70 FLRA at 21).
[42] *Id.*; *AFGE, Loc. 1667*, 70 FLRA 155, 156 (2016) (*Local 1667*).
[43] Agency Mot. at 2.
[44] *See id*. at 1-3.
[45] *Id.* at 2 (asserting error was discovered on June 2).

has not established extraordinary circumstances warranting consideration of its supplemental submission.[46]

We decline to consider the exceptions brief. Consequently, the Union response is moot, and we do not consider it.[47]

C. Sections 2425.4(c) and 2429.5 of the Authority's Regulations do not bar the Agency's exceptions.

In its opposition, the Union argues that the Agency did not raise its exceptions arguments to the Arbitrator.[48] Under §§ 2425.4(c) and 2429.5 of the Authority's Regulations, the Authority will not consider any evidence or arguments that could have been, but were not, presented to the arbitrator.[49]

First, regarding both the Agency's essence and contrary-to-law exceptions, the Union asserts the Agency did not argue "during the arbitration" that "its management rights would be impeded" under the MOA interpretation the Union advanced,[50] and "the [A]gency devoted no time to advocating that its management right to assign work was impacted."[51] However, in its post-hearing brief, the Agency argued the right to assign work includes the right to make overtime determinations.[52] The Agency also explicitly stated the "MOA cannot be interpreted in a manner that would interfere with management's determination of overtime assignments"[53] and the "Union's interpretation would be a limit on management rights and excessively interferes with the right to assign employees unscheduled overtime."[54] As such, the record reflects that, at arbitration, the Agency adequately raised the management-rights arguments underlying its essence and contrary-to-law exceptions.

Second, the Union argues the Agency did not properly raise its exceeded-authority exception to the award's remedy, which requires the Agency to compensate employees for their off-duty time *before* their overtime assignments, because the Agency "did not provide a suggested alternative remedy."[55] The Union presents no support for the argument that the Agency was required to provide an alternative remedy at arbitration in order to object to the awarded remedy in its exceptions.[56] Moreover, the Agency's exceeded-authority exception is based on the interpretation of the MOA that it advanced at arbitration – namely, that the MOA requires the Agency to provide nine off-duty hours only *after* an employee's overtime assignment.[57] Thus, the record reflects that, at arbitration, the Agency adequately raised the arguments underlying its exceeded-authority exception.

As the record reflects that the Agency presented the challenged arguments to the Arbitrator, we consider them.[58]

IV. Analysis and Conclusions

A. The awards draw their essence from the MOA.

The Agency argues the awards do not draw their essence from the MOA.[59] The Authority will find an arbitration award fails to draw its essence from a collective-bargaining agreement when the appealing 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.[60] Mere disagreement with an arbitrator's interpretation and

[46] *See Local 2516*, 72 FLRA at 568 (declining to consider document that was not attached to exceptions form due to party's "technical difficulties" with the Authority's eFiling system); *see also Local 1667*, 70 FLRA at 156 (declining to consider documents filed "outside the time limit for submitting its exceptions" that were available to be included with the timely exceptions).

[47] *See AFGE, Loc. 3652*, 68 FLRA 394, 396-97 (2015) ("Where the Authority declines to consider a document, the Authority also declines to consider a subsequent response to that document because the response is moot.").

[48] Opp'n at 13, 18, 19.

[49] 5 C.F.R. §§ 2425.4(c), 2429.5; *NTEU, Chapter 149*, 73 FLRA 133, 134 (2022) (*Chapter 149*).

[50] Opp'n at 18.

[51] *Id.* at 13.

[52] *See* Exceptions Form, Attach. 5, Agency Post-Hr'g Br. (Agency Br.) at 9-15 (making arguments concerning scheduled and unscheduled overtime and asserting that the Union's arguments to the Arbitrator would "support a decision" that would excessively interfere with management's right to assign work).

[53] *Id.* at 10.

[54] *Id.* at 12.

[55] Opp'n at 19.

[56] *See id.*

[57] Agency Br. at 15-16 (arguing that Agency complied with MOA by guaranteeing grievants nine off-duty hours after overtime assignments).

[58] *See Chapter 149*, 73 FLRA at 134-35 (considering exceptions where record established party raised arguments to arbitrator).

[59] Exceptions Form at 6-7.

[60] *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Mendota, Cal.*, 73 FLRA 788, 789 (2024) (citing *SSA*, 73 FLRA 708, 713 (2023)).

application of an agreement does not provide a basis for finding an award deficient.[61]

According to the Agency, the Arbitrator interpreted the MOA to conclude that "the Agency may not assign unscheduled overtime work," and "that the MOA trumps the Agency's right to assign work for a period of nine hours after an employee finishes her/his regular work schedule for a day."[62] The Agency argues that the parties did not "intend" for the MOA to "strip" the Agency's management's rights in such a manner.[63] Specifically, the Agency asserts that the MOA does not "prevent the Agency from assigning unscheduled overtime work,"[64] and that under the Arbitrator's interpretation, the Agency "will not be able to assign work to fix unexpected technical problems . . . for nine consecutive hours."[65] Thus, the Agency contends, the Arbitrator's interpretation of the MOA is irrational because it results in the Agency "not being able to use its management rights under . . . § 7106 [of the Federal Service Labor-Management Relations Statute (the Statute)[66]] to assign unscheduled overtime work to perform its mission of ensuring that the U.S. National Airspace . . . is safe and operational."[67]

The Union counters that the awards do "not prohibit the assignment of overtime but acknowledge[] that the [A]gency had agreed to provide a rest period in between work activities as a component of the overtime[-]assignment process."[68] The Union further argues that the Arbitrator did not define, nor did the Agency provide a consistent interpretation of, the phrase "unscheduled overtime" – but that, in negotiating the MOA, the parties intended it to mean "an overtime assignment that cannot be scheduled in advance as it represents an unexpected and not planned event."[69] The Union asserts that the Arbitrator's interpretation would not apply to the future, hypothetical circumstances described by the Agency, which could involve an "unexpected" emergency, "not planned event," or unanticipated necessity where a recalled employee "is the only employee with the requisite skill and knowledge to perform the work."[70] Moreover, the Union asserts that the grievances did not implicate the Agency's concerns over "unscheduled overtime," because both concerned "overtime assignments [that] were known in advance."[71] Accordingly, the Union contends that the awards – which did not consider the unscheduled-overtime scenarios described by the Agency in its exceptions – do not "impact the [Agency's] ability to respond to" unanticipated "technical problems or unexpected shutdowns of the air traffic control system."[72]

When an opposing party agrees to interpret an award so as to avoid a deficiency alleged by an excepting party, the Authority has recognized the agreed-to interpretation of the award as binding, and has dismissed, as moot, any objections to the award based on a different interpretation.[73] The Agency's arguments are all based on an interpretation of the awards that pertains to "unscheduled overtime."[74] However, based on the Union's assertions, we find that the Union interprets the awards as only pertaining to the two grievants' specific completed overtime assignments, which the Union maintains concerned "scheduled overtime" under Section 4.[75] As noted above, the Union does not interpret the awards as applying to circumstances which involve an "unexpected" emergency, "not planned event," or unanticipated necessity where a recalled employee "is the only employee with the requisite skill and knowledge to perform the work."[76] In other words, the Union agrees to interpret the awards so as to avoid the deficiencies that the Agency alleges. Therefore, we dismiss the Agency's

[61] *AFGE, Loc. 2369*, 73 FLRA 772, 773 (2023) (citing *CFPB*, 73 FLRA at 671).
[62] Exceptions Form at 5.
[63] *Id.* at 6.
[64] *Id.* at 7.
[65] *Id.* at 5. The Agency further asserts, without citation, that the record demonstrates that the Union "admitted" the accuracy of the Agency's interpretation of the MOA – that the "nine-hour requirement may not be applied to unscheduled overtime after the end of a regular shift." Exceptions Form at 7. Because the Agency does not provide any citation to the record, we reject this argument as unsupported. *See, e.g.*, *AFGE, Loc. 2338*, 73 FLRA 510, 513 (2023) (rejecting argument based on unsupported allegation); *Bremerton Metal Trades Council, Int'l Bhd. of Boilermakers, Loc. 290*, 71 FLRA 1033, 1035 n.31 (2020) (noting unsupported allegation did not demonstrate award failed to draw its essence from the parties' collective-bargaining agreement).
[66] 5 U.S.C. § 7106.
[67] Exceptions Form at 7.
[68] Opp'n at 4.
[69] *Id.* at 4-5.
[70] *Id.* at 5; *see also id.* at 6-7.
[71] *Id.* at 6.
[72] *Id.*
[73] *U.S. Dep't of VA, John J. Pershing VA Med. Ctr., Poplar Bluff, Mo.*, 73 FLRA 498, 500 (*Poplar Bluff*).
[74] Exceptions Form at 4-5 (management-rights arguments), 6-7 (essence arguments).
[75] Opp'n at 5-6.
[76] *Id.* at 5.

essence exception – which is based on an interpretation of the awards that differs from the Union's – as moot.[77]

B. The awards are not contrary to law.

The Agency argues that the awards are contrary to management's right to assign work[78] under § 7106(a)(2)(B) of the Statute.[79] In resolving a contrary-to-law exception, the Authority reviews any question of law raised by the exception and the award de novo.[80] In applying a de novo standard of review, the Authority assesses whether the arbitrator's legal conclusions are consistent with the applicable standard of law.[81] In making that assessment, the Authority defers to the arbitrator's underlying factual findings unless the excepting party establishes that they are nonfacts.[82]

When determining whether an arbitrator's interpretation and application of a collective-bargaining agreement is contrary to a management right, the Authority applies the test set forth in *CFPB*.[83] Applying that test here, the first question is whether the Agency demonstrates the Arbitrator's interpretation and application of the MOA and/or the awarded remedy affects the management right the Agency raises.[84]

The Agency argues the award affects its management right to assign work because it limits the circumstances under which the Agency can assign overtime work.[85] The Authority has held that management's right to assign work under § 7106(a)(2)(B) of the Statute includes the rights to assign overtime and to determine when employees will perform overtime.[86] In particular, the Authority has found that a requirement to provide employees a specific number of off-duty hours between shifts affects management's right to assign work.[87] Because the Arbitrator determined the MOA requires nine off-duty hours between shifts,[88] we find the Arbitrator's interpretation and application of the MOA affects management's right to assign work. Therefore, we conclude the answer to the first *CFPB* question is yes.

We turn next to the second question of the test, which asks whether the arbitrator correctly found, or whether the opposing party has demonstrated, that the agreement – as interpreted and applied by the arbitrator – is enforceable under § 7106(b).[89]

The Arbitrator – who issued the award before the Authority issued *CFPB* – did not make any findings, or otherwise discuss, the MOA's relation to § 7106(b) of the Statute. Neither party argues there is any need to remand the case for further development of the record. Absent any arbitral analysis of § 7106(b), the opposing party – the Union, in this instance – "ha[s] the burden to demonstrate" that the MOA, as interpreted and applied by the Arbitrator, is enforceable under § 7106(b).[90]

In its opposition, the Union argues Section 4, as interpreted and applied by the Arbitrator, is an appropriate arrangement under § 7106(b)(3) of the Statute.[91] Under

[77] *See Poplar Bluff*, 73 FLRA at 500 (dismissing exceptions mooted by opposing party's interpretation of the awarded remedies). We note that arbitration awards are not precedential and, therefore, that arbitrators are not required to follow prior awards interpreting the same contractual provision. *See, e.g.*, *AFGE, Loc. 2338*, 73 FLRA 510, 512 (2023) ("[T]he Authority has long held that arbitration awards are not precedential" and arbitrators are not required to follow prior awards interpreting the same contractual provision (citing *AFGE, Council of Prison Locs. C-33, Loc. 720*, 67 FLRA 157, 159 (2013))). Consequently, any interpretations of the MOA by the Arbitrator – as to either scheduled or unscheduled overtime – would not be binding in future arbitrations.

[78] Exceptions Form at 4-5.

[79] 5 U.S.C § 7106(a)(2)(B).

[80] *USDA, Food & Nutrition Serv.*, 73 FLRA 822, 825 (2024) (citing *U.S. Dep't of the Navy, Naval Med. Ctr. Camp Lejeune, Jack., N.C.*, 73 FLRA 137, 140 (2022)).

[81] *Id*.

[82] *Id.*

[83] *CFPB*, 73 FLRA at 681.

[84] *Id.*

[85] Exceptions Form at 3.

[86] *AFGE, Council 215*, 60 FLRA 461, 464 (2004) (citing *AFGE, Loc. 1302, Council of Prison Locs. C-33*, 55 FLRA 1078, 1079 (1999) (Member Wasserman concurring); *SSA, S.E. Program Serv. Ctr., Birmingham, Ala*., 55 FLRA 320, 321 (1999)).

[87] *AFGE, Loc. 3157*, 44 FLRA 1570, 1596-97 (1992) (*Local 3157*) (finding proposal preventing management from assigning overtime for more than three consecutive days affected management's right to assign work); *see also AFGE, AFL-CIO, Loc. 2354*, 30 FLRA 1130, 1139 (1988) (finding proposal requiring five-hour rest period affected management's right to assign work); *Int'l Ass'n of Firefighters, AFL-CIO, Loc. F-116*, 9 FLRA 700, 701-02 (1982) (finding proposal requiring mandatory four-hour rest period for firefighters affected management's right to assign work).

[88] Award A at 23; Award B at 23.

[89] *CFPB*, 73 FLRA at 680.

[90] *U.S. DHS, U.S. CBP, U.S. Border Patrol, Rio Grande Valley Sector, Edinburg, Tex.*, 73 FLRA 784, 786 (2024) (alteration in original) (quoting *CFPB*, 73 FLRA at 679) (internal quotation mark omitted); *see also Consumer Fin. Prot. Bureau*, 73 FLRA 781, 783 (2024) (*CFPB II*) (placing burden on union to address second *CFPB* question).

[91] Opp'n at 9-12.

CFPB, the Authority applies a modified version of the test set out in *NAGE, Local R14-87* (*KANG*)[92] to determine whether the MOA – as interpreted and applied by the Arbitrator – is enforceable as an appropriate arrangement for employees, such as the grievants, adversely affected by the Agency's exercise of its right to assign work.[93]

Under *KANG*, the Authority first determines whether the provision at issue is intended to be an arrangement for the employees adversely affected by the exercise of a management right.[94] According to the Union, Section 4 "protect[s] employees from the dire consequences that could result from fatigue in the workplace."[95] The Authority has found proposals that mitigate employee fatigue – including those that limit agencies' ability to assign overtime – are arrangements.[96] As noted in *CFPB*, we presume that this arrangement meets *KANG's* "tailoring" requirement, but that presumption is rebuttable.[97] The Agency does not attempt to rebut this presumption.[98] Therefore, we find the Union has established Section 4 of the MOA, as interpreted and applied by the Arbitrator, is an arrangement for employees assigned overtime shifts.

Next, we consider whether this arrangement, as interpreted and applied by the Arbitrator, is appropriate because it does not excessively interfere with the Agency's right to assign work.[99] Under the excessive-interference standard, the Authority weighs the benefits that an arrangement affords employees against the arrangement's burdens on management's rights.[100]

The Union asserts the grievants' work "require[s] heightened alertness" because fatigue-driven "error could be catastrophic."[101] Thus, the Union argues the Arbitrator's interpretation and application of the MOA provides grievants important "safety benefits" by limiting "the detrimental impacts of fatigue that could be life threatening and disastrous for the air traffic control system."[102]

In contrast, the Agency contends the Arbitrator's interpretation and application of the MOA burdens management's right to assign work.[103] Specifically, the Agency asserts the Arbitrator's interpretation and application of the MOA "hinder[s]" the Agency by preventing it from assigning unscheduled overtime "to fix unexpected technical problems" related to the national-airspace system, including shutdowns of that system, "for nine consecutive hours" after employees complete their regular shifts.[104] The Agency further asserts that "during those nine consecutive hours pilots are flying aircraft dependent on air traffic controllers that cannot effectively see their radars and effectively communicate with the pilots to guide them due to the breakdown," and if the Agency cannot assign unscheduled overtime to fix the problems, then it will be prevented from "from achieving its mission of providing a safe and operational U.S. National Airspace System."[105]

As discussed in Section IV.A, above, the Union interprets the awards as only applying to the two grievants' *scheduled* overtime assignments under Section 4. Under the Union's interpretation, the awards – which concerned "overtime assignments [that] were known in advance" – do not "impact the [Agency's] ability to respond to" unanticipated "technical problems or unexpected shutdowns of the air traffic control system."[106] And, as noted above, when an opposing party agrees to interpret an award so as to avoid a deficiency alleged by an excepting party, the Authority has recognized the agreed-to interpretation as binding in resolving exceptions.[107] Under these circumstances, we conclude the awards do not preclude the Agency from assigning overtime to address an "unexpected" emergency, "not planned event," or unanticipated necessity where a recalled employee "is the only employee with the requisite skill and knowledge to

[92] 21 FLRA 24 (1986).
[93] *See CFPB*, 73 FLRA at 674 (citing *KANG*, 21 FLRA at 31).
[94] *KANG*, 21 FLRA at 31.
[95] Opp'n at 9.
[96] *Local 3157*, 44 FLRA at 1596-97 (finding proposal that "provid[ed] relief from the fatigue that would result when employees work more than [three] straight days of overtime and from the risk of injury caused by that fatigue" was an arrangement); *see also AFGE, Loc. 1367*, 64 FLRA 869, 871 (2010) (Member Beck dissenting in part) (noting proposals seeking "to mitigate employee fatigue and work-related injury that results from such fatigue constituted an arrangement" (citing *Local 3157*, 44 FLRA at 1596-97)).
[97] *CFPB*, 73 FLRA at 680 (explaining that, in the context of the *CFPB* test, the Authority applies a rebuttable presumption that *KANG*'s "tailoring" requirement is met).
[98] *See* Exceptions Form at 4-5 (management-rights argument).
[99] *See CFPB*, 73 FLRA at 674-75.
[100] *See id.* at 675 (citing *KANG*, 21 FLRA at 33).
[101] Opp'n at 10; *see also* Award A at 5 (quoting grievant A's statement that he was "forced to work the night overtime fatigued and unable to fully concentrate on the required tasks").
[102] Opp'n at 12.
[103] Exceptions Form at 4-5.
[104] *Id.* at 5.
[105] *Id.*
[106] Opp'n at 6.
[107] *See U.S. Dep't of the Air Force, Scott Air Force Base, Ill.*, 72 FLRA 526, 528-29 (2021) (Chairman DuBester concurring) (recognizing opposing party's interpretation of the award as binding and resolving exception "in accordance with [this] adopted interpretation of the award"); *U.S. Food & Drug Admin., Detroit Dist.*, 59 FLRA 679, 683 (2004) (*FDA*) (concluding – based on union's concession – that the award did not preclude the agency from exercising its management right in the manner alleged in its exception).

perform the work."[108] Thus, the awards do not restrict the Agency's right to assign work in the manner alleged in its exceptions.[109]

Based on the foregoing, we find the significant health and safety benefits of Section 4, as interpreted and applied by the Arbitrator in the circumstances of this case, outweigh the alleged burdens on the Agency.[110] Therefore, we find that Section 4 of the MOA, as interpreted and applied by the Arbitrator, is enforceable as an appropriate arrangement under § 7106(b)(3), and the answer to *CFPB*'s second question is yes.

Because we answer the second *CFPB* question in the affirmative, we reach the third *CFPB* question: Does the excepting party challenge the remedy on management-rights grounds, separate and apart from the arbitrator's application and interpretation of the relevant provision?[111] If the excepting party does not do so, then the Authority will end the *CFPB* inquiry at step three and deny the management-rights exception.[112] Here, the Agency does not argue that the remedies, separate and apart from the Arbitrator's findings of MOA violations, violate a management right.[113] Therefore, we end the *CFPB* analysis at step three and deny the contrary-to-law exception.

C. The Arbitrator did not exceed her authority.

The Agency argues that the Arbitrator exceeded her authority by directing remedies covering the period *before* the overtime assignments.[114] As relevant here, arbitrators exceed their authority when they disregard specific limitations on their authority.[115] Further, arbitrators have broad discretion to fashion remedies they consider appropriate.[116] The Agency does not identify any provision in the MOA, or other limitation on the Arbitrator's authority, that prohibits the awarded remedies.[117] Therefore, the Agency does not establish that the Arbitrator disregarded any specific limitations on her authority or abused her discretion to fashion appropriate remedies.[118] Accordingly, we deny the Agency's exceeded-authority exception.

V. Decision

We partially dismiss and partially deny the Agency's exceptions.

[108] Opp'n at 5; *see also id.* at 6-7.
[109] *See FDA*, 59 FLRA at 683.
[110] *Local 3157*, 44 FLRA at 1597 (finding benefits of proposal outweighed burden based on union's attestation that proposal did not preclude management from assigning overtime work to qualified employees other than an employee who has already worked three straight days of overtime, and did not preclude assignment of a fourth day of overtime when no other qualified employees are available); *see NAGE, SEIU, AFL-CIO*, 40 FLRA 657, 672-74 (1991) (finding benefits of overtime proposal for employees performing physically strenuous work outweighed burdens on management right to assign work where agency did not adequately establish burdens).
[111] *CFPB*, 73 FLRA at 680-81.
[112] *Id.* at 681.
[113] *See* Exceptions Form at 4-5.
[114] *Id.* at 8-9.
[115] *U.S. Dep't of VA, John J. Pershing Veterans' Admin. Ctr., Poplar Bluff, Mo.*, 73 FLRA 842, 843 (2024).
[116] *NTEU*, 73 FLRA 431, 433 (2023) (*NTEU*).
[117] *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Victorville, Cal.*, 73 FLRA 835, 837-38 (2024) (denying exceeded-authority exception where, among other things, excepting party did not cite any limitations on arbitrator's authority); *SSA, Off. of Hr'gs Operations*, 71 FLRA 589, 590 (2020) (Member DuBester dissenting in part on other grounds) (denying exceeded-authority exception where excepting party failed to identify contractual limit on arbitrator's authority).
[118] *NTEU*, 73 FLRA at 433 (holding arbitrator had broad discretion to fashion remedies to cure found violations).