74 FLRA No. 79

UNITED STATES
DEPARTMENT OF THE TREASURY
BUREAU OF ENGRAVING AND PRINTING
(Agency)

and

NATIONAL TREASURY
EMPLOYEES UNION
(Union)

0-AR-6030

DECISION

September 15, 2026

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

I. Statement of the Case

Arbitrator Chuck Miller issued an award finding that the Agency violated the parties' collective-bargaining agreement and the Federal Service Labor-Management Relations Statute (the Statute) when it implemented an updated telework policy requiring employees to work on-site and in-person for at least 50% of their work hours each month. The Agency filed exceptions alleging that the award is moot, fails to draw its essence from the parties' agreement, is contrary to law, and is impossible to implement, and that the Arbitrator exceeded his authority. For the reasons discussed below, we partially dismiss and partially deny the Agency's exceptions.

II. Background and Arbitrator's Award

In 2020, during the COVID-19 pandemic, the Agency instructed all employees who were able to telework at 100% capacity to do so. In 2023, the Agency notified employees that as part of its return-to-office policy, they would have to return to pre-pandemic work schedules. Then, on February 15, 2024, the Department of the Treasury (Treasury) issued a memorandum to all bureau and departmental office heads – including the Agency – announcing that, beginning on May 5, 2024, Treasury would require all "teleworkers to complete at least 50[%] of their scheduled work hours at the traditional office location."[1] The memorandum (Treasury Memo) "provide[d] guidance for granting exceptions to this requirement and remind[ed] bureaus of the obligation to satisfy collective[-]bargaining obligations."[2] That same day, February 15, 2024, consistent with the Treasury Memo, the Agency issued a new policy, which mandated that "all [Agency] telework-eligible workers . . . will be required to work on-site and in-person for 50% of their work hours each month" (the new telework policy).[3] On March 1, 2024, the Agency provided the Union with notice of an opportunity to bargain the telework change with a deadline of March 25, 2024. The parties met on March 7, 2024, but were unable to reach an agreement. The Union had previously reopened the agreement for term negotiations in July 2023,[4] and the Union argued that any changes to telework could only be bargained as part of those negotiations.[5] The Agency unilaterally implemented the new telework policy.

The Union filed a grievance on April 15, 2024, alleging that the Agency violated Article 36 of the parties' agreement by unilaterally implementing the new telework policy. The Agency denied the grievance, and the matter went to arbitration.

The parties did not stipulate an issue. The Arbitrator summarized the issues based on the allegations included in the Union's grievance, which the Arbitrator characterized as stating:

> The [A]gency breached the contract and committed an [u]nfair [l]abor [p]ractice by instituting a new [t]elework policy, which does not comply with the parties' collective[-]bargaining agreement. Specifically, . . . the Agency implemented a mandatory 50[%] telework[] policy, and in doing so violated the telework portion of the

[1] Opp'n, Ex. 4, Department of the Treasury Memorandum at 1.
[2] *Id.*; *see also id.* at 2 ("Bureaus and Offices are responsible for satisfying collective[-]bargaining obligations under [the Statute] and applicable collective[-]bargaining agreements.").
[3] Award at 6; *see also* Opp'n, Ex. 5, New Work Environment Policy 2024 at 1.
[4] *See* Opp'n, Ex. 2, Tr. at 24; Exceptions Br. at 10 (July 2023 Union email opened negotiations); Opp'n, Ex. 8 (Grievance) at 2 ("the parties are currently negotiating over ground rules for term negotiations"); Opp'n, Ex.16 (Union's Post-Hr'g Br.) at 10 (July 2023 Union email "open[ed] the contract for term negotiations").
[5] Award at 8 ("The Union held the position . . . that negotiation of this proposed policy should be done only during term negotiations."); Opp'n, Ex. 13 (Grievance Appeal) at 2 ("If the Agency has a basis for restricting its employees to 50% [telework] it can certainly raise those concerns during term negotiations. Attempting, at this juncture, to bargain telework in the mid-term, is not required and would be piecemeal bargaining.").

> [parties' agreement] and engaged in piecemeal bargaining during a period of negotiations over an open contract.[6]

He further stated:

> [T]he issue calls for a twofold decision. First, was the 50% policy one that[] . . . requires negotiations prior to implementation, and second, if so, was that requirement satisfied by the [Agency's] offer to negotiate implementation of the policy?
>
> To go to the heart of this matter: Was the 50% in-office requirement saddled to telework a true new and different policy change as the Union maintains, or just a return to the pre-pandemic telework policy as the [Agency] maintains?[7]

Article 36, Section 1 (Section 1) states, in pertinent part, "the parties support the broadest possible use of telework without diminished employee performance or adverse impact on the [Agency] meeting its mission."[8] Article 36, Section 2(D) (Section 2(D)), states in pertinent part, "[n]othing in [Article 36] prohibits an authorized management official from approving participating employees to telework up to five . . . days per week as a remote worker, in situations deemed appropriate by management."[9] Article 37, Section 2 of the parties' agreement states that the agreement will be in effect for a period of four years and "will remain in effect for yearly periods thereafter, unless written notice is given by either party in the period between four months and two months prior to the expiration date, of its desire to terminate or modify [the] [a]greement."[10] Additionally, Article 37, Section 3 states:

> By mutual consent of the parties, the express terms of the [parties' agreement] may be amended at any time. In addition, each party may reopen not more than three existing articles and propose one new article by serving written notice and/or proposals on the other during the twenty-fourth month of this [a]greement.[11]

At arbitration, the Agency asserted that employees were returning to pre-pandemic work schedules and that nothing about the new telework policy prohibited employees without a valid telework agreement from requesting to telework pursuant to Article 36. According to the Agency, limiting telework to a maximum of 50% per month did not violate the parties' agreement because Section 2(D) had always provided management discretion over the scope of approved telework. The Agency claimed to have met its contractual and statutory obligations by providing the Union with notice and an opportunity to bargain the change in telework policy.

The Arbitrator noted that Section 1 explicitly states that "the parties support the broadest possible use of telework," and he found that "[l]imiting telework to a maximum of 50% of time during a pay period is the antithesis of the broadest use of telework."[12] The Arbitrator also found that prior to the pandemic, Section 2(D) permitted employees to request and be granted telework up to five days per week. However, the Arbitrator found that, under the new telework policy, "management's discretion [was] no longer broad enough to allow more than" 50% telework per month, and that this new limitation on "the parameters within which the discretion of management can be exercised" was "undeniably a change in the effect of the plain wording of [Section 2(D)]."[13]

The Arbitrator rejected the Agency's assertion that it complied with its contract obligations when it gave the Union notice of the change on March 1, 2024, and offered to bargain over the impact and implementation of the change. Because the agreement became effective on November 6, 2019, the Arbitrator found that, under the renegotiation-notice window in Article 37, Section 2, a party could provide notice of a desire to renegotiate only between July 6 and September 6.[14] Accordingly, the Arbitrator concluded the Agency's March 1 notice was untimely.[15] Further, the Arbitrator found that Article 37 does not contemplate modification outside of the term

[6] Award at 2.
[7] *Id.* at 11.
[8] Opp'n, Ex. 1, Collective-Bargaining Agreement (CBA) at 100.
[9] *Id.*
[10] *Id.* at 102.
[11] *Id.*
[12] Award at 12.
[13] *Id.* at 13; *see also id.* at 14 (finding it a "major change in policy" that no employee requesting telework would be approved for a more-than-50% teleworking agreement, which was inconsistent with Article 36).
[14] *Id.* at 3 (Art. 37, § 2 ("This [a]greement shall remain . . . in effect for yearly periods . . . , unless written notice is given by either party in the period between four months and two months prior to the expiration date.")), 15 ("[The parties' agreement] renewed annually . . . , starting on November 6, 2023, unless written notice of desire to modify [or terminate] the agreement is given between July 6 and September 6 of any year.").
[15] *Id.* at 3 (citing Art. 37, § 2).

period except by mutual agreement, and that the Union did not agree to changing the telework policy.

The Arbitrator held that the new telework policy – requiring employees to work in the office 50% of each month – violated Article 36. Further, he determined that the Agency's unilateral implementation of the change violated Article 37. Based on these findings, the Arbitrator concluded that the Agency repudiated Article 36 and engaged in piecemeal bargaining in violation of § 7116(a)(1) and (5) of the Statute. As remedies, the Arbitrator directed the Agency to: rescind – and cease and desist from implementing – the new telework policy; restore the pre-pandemic telework agreements of employees whose agreements provided for more than 50% telework; and comply with Article 36 and the contractual telework system "until and unless changed in compliance with Article[s] 36 and 37."[16]

The Agency filed exceptions to the award on May 8, 2025, and the Union filed an opposition to the Agency's exceptions on June 6, 2025.

III. Preliminary Matter: Sections 2425.4(c) and 2429.5 of the Authority's Regulations bar one of the Agency's arguments.

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.[17]

The Agency contends that telework is a permissive subject of bargaining that it was permitted to unilaterally change because (1) the Union failed to participate in impact-and-implementation bargaining over the new telework policy, and (2) on July 11, 2023, the Union notified the Agency that it intended to renegotiate the parties' agreement, thereby "opening negotiations."[18] The Union contends that the Authority should dismiss these arguments because the Agency failed to raise them before the Arbitrator.[19]

Both the Union's decision not to continue impact-and-implementation bargaining and its July 11, 2023, email reopening term negotiations predated the arbitration proceedings. Further, during arbitration, the Union stated that its email opened term negotiations,[20] any telework changes should be bargained during term negotiations,[21] and the Agency's attempt to bargain impact and implementation outside term negotiations was "piecemeal . . . bad[-]faith bargaining."[22] Therefore, the Agency should have known to raise its defense regarding unilateral changes to permissive subjects to the Arbitrator. But there is no evidence in the record that the Agency did so. Consequently, we dismiss these arguments under §§ 2425.4(c) and 2429.5 of the Authority's Regulations.[23]

Additionally, the Agency contends that the award is moot based on a Presidential Memorandum (Presidential Memo)[24] and Office of Personnel Management (OPM) guidance[25] directing agency heads to revise telework policies and require employees to return to in-person work.[26] The Union argues that, although the Presidential Memo and the OPM guidance both preceded the arbitration hearing, the Agency did not argue to the Arbitrator that either document "had any effect on this matter or [on] the Arbitrator's ability to order a remedy."[27] In fact, the Union contends that, at the arbitration hearing, the Arbitrator asked the parties about "the effect" of the OPM guidance "on the issue and on the decision . . . to be made," and the Agency declined to take a position because it did not "have any guidance" on the issue.[28] The Union further asserts that, even in its post-hearing brief, the Agency did not raise any argument regarding either

[16] *Id.* at 17.
[17] 5 C.F.R. §§ 2425.4(c), 2429.5; *see also U.S. Dep't of VA, James A. Haley VAMC, Tampa, Fla.*, 73 FLRA 47, 47-48 (2022).
[18] Exceptions Br. at 9-11 (citing *AFGE, Loc. 918*, 72 FLRA 421, 422 (2021) ("[O]nce an agreement has expired, agencies may elect to no longer be bound by provisions that concern a permissive subject of bargaining and . . . may reassert their right not to negotiate said permissive subjects.")); *see also id.* at 10 (characterizing Union's July 2023 email as "opening negotiations").
[19] Opp'n Br. at 15.
[20] Opp'n, Ex. 2, Tr. at 24.
[21] Union's Post-Hr'g Br. at 17 ("the parties should have addressed the substantive bargaining over telework at the term table"); *see also id.* at 15-16 (arguing telework is a mandatory subject of bargaining that would survive the expiration of the agreement); Grievance at 2 (stating the parties were currently in the midst of term negotiations and arguing the Agency could not change or modify the parties' negotiated telework article "via notice of a mid-term change").
[22] Union's Post-Hr'g Br. at 17.
[23] *NAGE*, 71 FLRA 775, 776 n.15 (2020) (dismissing essence claim where there was no indication in the record that the excepting party raised the relevant contractual argument at arbitration).
[24] 90 Fed. Reg. 8251 (Jan. 28, 2025).
[25] OPM, Guidance on Presidential Memorandum Return to In-Person Work (2025) (OPM Guidance), https://www.opm.gov/chcoc/latest-memos/guidance-on-presidential-memorandum-return-to-in-person-work.pdf.
[26] Exceptions Br. at 13-14.
[27] Opp'n Br. at 14.
[28] *Id.*

document.[29] Accordingly, the Union argues that the Authority should dismiss these arguments as well.[30]

The Authority has held that mootness may be raised at any stage of the Authority's proceedings.[31] We assume, arguendo, that the Agency's arguments regarding the Presidential Memo and the OPM guidance are properly before us. However, for the reasons discussed below, we find that those arguments lack merit.

IV. Analysis and Conclusions

A. The award is not moot.

As noted above, the Agency argues that the award is moot based on the Presidential Memo and the OPM guidance.[32] The Authority will set aside an arbitration award where the underlying dispute has become moot.[33] A dispute becomes moot when the parties no longer have a legally cognizable interest in the outcome.[34] The burden of demonstrating mootness "is a heavy one."[35] To establish that a matter is moot, a party must demonstrate that (1) there is no reasonable expectation that the alleged violation will recur; and (2) events have completely or irrevocably eradicated the effects of the alleged violation.[36]

The Agency fails to meet its heavy burden of demonstrating the award is moot. According to the Agency, as a result of the Presidential Memo and the OPM guidance, "telework is no longer a viable option as of January 2025," rendering this entire dispute about telework moot.[37] The Presidential Memo instructs agencies to terminate remote-work arrangements and require full-time, in-person work, but explicitly directs agencies to implement this instruction "consistent with applicable law," and permits agency-head "exemptions."[38] Likewise, OPM's guidance reiterates the return-to-office directive while acknowledging that implementation remains subject to "any collective[-]bargaining obligations."[39] The award requires the Agency to honor the parties' contractual telework provisions, and there is nothing in the Presidential Memo or OPM guidance to the contrary. Thus, these directives discouraging telework do not "completely or irrevocably eradicate[] the effects of the alleged [contractual and statutory] violation[s]."[40] Further, the Agency does not argue, let alone demonstrate, that there is no reasonable expectation that it will commit similar violations in the future. Accordingly, the Agency fails to demonstrate that the award is moot.[41]

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

The Agency contends that the Arbitrator exceeded his authority by finding that the Agency violated Article 37, which the Agency claims was not one of the articles "the parties had stipulated were at issue."[42] As

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[29] *Id.* at 15.
[30] *Id.* at 14.
[31] *Ass'n of Civilian Technicians, Show-Me Army Chapter*, 59 FLRA 378, 380 (2003) (*Civilian Technicians*). However, Member Wagner notes that the Authority *also* has held that "questions of mootness . . . are questions of arbitrability" that "must be submitted to an arbitrator for resolution, consistent with § 7121" of the Statute. *U.S. DHS, U.S. ICE, Wash., D.C.*, 69 FLRA 72, 74 (2015) (Member Pizzella concurring in part and dissenting in part on other grounds). *Cf. NFFE, Council of Consol. Locs.*, 52 FLRA 137, 140 (1996) (holding that "an arbitrator's determination regarding the mootness of a grievance or an issue is akin to an arbitrator's determination of procedural arbitrability under the parties' collective[-]bargaining agreement"). Member Wagner notes that the latter holding is consistent with private-sector court precedent. *See, e.g.*, *Bimbo Bakeries USA, Inc. v. Bakery, Confectionary, Tobacco Workers & Grain Millers Union, Twin Cities Loc. 22*, 826 F. Supp. 3d 1039, 1046 (D. Minn. 2026) (citing *Oil, Chem. & Atomic Workers Int'l Union Loc. 5-391 v. Conoco, Inc.*, 64 F. App'x 178, 184-85 (10th Cir. 2003); *Loc. Union No. 370 of the Int'l Union of Operating Eng'rs v. Morrison-Knudsen Co., Inc.*, 786 F.2d 1356, 1358 (9th Cir. 1986); *W. Automatic Mach. Screw Co., Div. of Standard Screw Co. v. Int'l Union, United Auto., Aircraft & Agric. Implement Workers of Am. (UAW-AFL-CIO)*, 335 F.2d 103, 106 (6th Cir. 1964)). Nevertheless, Member Wagner finds it unnecessary to resolve the apparent tension between these lines of Authority precedent here because, even assuming that the Agency's mootness arguments are properly before us, she agrees that they lack merit for the reasons discussed below.
[32] Exceptions Br. at 13-14.
[33] *U.S. DOD, Def. Logistics Agency*, 73 FLRA 331, 332 (2022) (*DLA*).
[34] *U.S. DHS, CBP, U.S. Border Patrol, Laredo Sector*, 70 FLRA 921, 922 (2018) (Member DuBester concurring) (citing *IAMAW Dist. Lodge 776*, 63 FLRA 93, 94 (2009)).
[35] *USDA, Food Safety & Inspection Serv.*, 73 FLRA 683, 686 (2023) (*USDA*) (citing *Civilian Technicians*, 59 FLRA at 380).
[36] *DLA*, 73 FLRA at 332.
[37] Exceptions Br. at 14.
[38] Presidential Memo at 1.
[39] OPM Guidance at 3.
[40] *DLA*, 73 FLRA at 332.
[41] *See USDA*, 73 FLRA at 686 (parties' agreement to future bargaining did not moot either the award's finding that the agency had already violated its duty to bargain or the awarded remedy requiring the agency to return to the status quo ante until bargaining was completed); *U.S. DHS, U.S. CBP, Laredo, Tex.*, 66 FLRA 626, 631 (2012) (rejecting argument that a status-quo-ante remedy was impossible to implement, and therefore moot, where the agency failed to show a conflict between the remedy and the cited directive).
[42] Exceptions Br. at 5-6.

relevant here, arbitrators exceed their authority when they resolve an issue not submitted to arbitration.[43] When parties do not stipulate to the issues, arbitrators have the discretion to frame them,[44] and the Authority accords the arbitrator's formulation substantial deference.[45] Where an arbitrator has framed the issues, the Authority examines only whether the award is directly responsive to the issues as framed by the arbitrator.[46] Moreover, arbitrators do not exceed their authority by addressing any issue that is necessary to decide a framed issue.[47]

The parties did not stipulate to the issues before the Arbitrator. The Arbitrator framed the issues based on the Union's grievance, which challenged the new telework policy as changing or amending the parties' agreement.[48] The Arbitrator's framed issue included the Union's allegation that the Agency had "engaged in piecemeal bargaining during a period of negotiations over an open contract."[49] In resolving the framed issues, the Arbitrator found that the new telework policy effectively amended the parties' agreement and concluded that the Agency violated both Article 36, which concerns telework, and Article 37, which concerns when and how the parties may amend or reopen existing contract articles.[50] In so finding, the Arbitrator relied upon Article 37 to reject the Agency's argument that its March 1, 2024, offer to negotiate the impending change had satisfied its bargaining obligations.[51] Thus, the Arbitrator's analysis of Article 37 was directly responsive to both the parties' arguments and the framed issues, and the Authority precedent cited by the Agency is inapposite.[52]

Accordingly, we find no basis to conclude that the Arbitrator exceeded his authority, and we deny the Agency's exception.[53]

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

The Agency argues the award fails to draw its essence from the parties' agreement in several respects.[54] 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.[55] Mere disagreement with an arbitrator's interpretation and application of an agreement does not provide a basis for finding an award deficient.[56]

According to the Agency, the Arbitrator's finding that the Agency violated Article 36 fails to draw its essence from Section 2(D).[57] As stated above, Section 2(D) provides that "[n]othing in [the telework article] prohibits an authorized management official from approving participating employees to telework up to five . . . days per week as a remote worker, in situations deemed appropriate by management."[58] The Arbitrator interpreted Section 2(D) as permitting employees to request, and managers to exercise the discretion to approve, telework up to five days a week.[59] According to the Arbitrator, the new telework policy *prohibits* managers from approving

[43] *U.S. DHS, U.S. CBP*, 74 FLRA 403, 409 (2026).
[44] *AFGE, Loc. 2338*, 73 FLRA 522, 523 (2023) (*Loc. 2338 I*); *Fraternal Ord. of Police, DC Lodge 1*, 73 FLRA 408, 411 (2023).
[45] *Loc. 2338 I*, 73 FLRA at 523.
[46] *Id.*
[47] *AFGE, Loc. 2338*, 74 FLRA 99, 102-03 (2024) (*Loc. 2338 II*).
[48] Award at 2.
[49] *Id.*; *see also* Grievance Appeal at 2 ("[A]s the CBA is currently up for bargaining, the Agency's attempt at piecemeal negotiations on this matter is improper."); *see generally T-Mobile USA, Inc.*, 365 NLRB 175, 186 n.4 (2017) ("in 'piecemeal bargaining' cases[,] the employer engages in bargaining but implements a proposal on a single issue before reaching overall impasse or agreement"), 186 ("permitting an employer to unilaterally choose which parts of the collective-bargaining relationship to honor would allow the employer to continue to . . . bargain with the . . . union only in those areas where the employer holds an advantage, whether legal or economic, thus reducing the possibility of compromise and the ability of the relationship to function effectively").
[50] Award at 15.
[51] *Id.* at 14-15; *see also* Exceptions, Attach., Agency's Closing Br. at 2 ("In accordance with the law and the [collective-bargaining agreement], [the Agency] exercised its discretion to open appropriate[-]arrangement negotiations in March 2024."), 4 (arguing that "[b]y offering [the Union] the opportunity to commence appropriate[-]arrangement bargaining, the Agency complied" with the parties' agreement).
[52] *See* Exceptions Br. at 5-6 (citing *U.S. Dep't of VA, John J. Pershing VA Med. Ctr.*, 72 FLRA 656, 657-58 (2022) (Member Abbott concurring; Chairman DuBester dissenting in part) (granting exceeded-authority exception where arbitrator resolved issue outside of the stipulated issue); *U.S. EPA, Region 2, N.Y., N.Y.*, 63 FLRA 476, 479 (2009) (same); *U.S. Dep't of the Navy, Naval Sea Logistics Ctr. Detachment Atl., Indian Head, Md.*, 57 FLRA 687, 688-89 (2002) (granting exceeded-authority exception where arbitrator found no violation concerning the issue he framed, but nevertheless awarded a remedy concerning an issue not submitted to arbitration)).
[53] *Loc. 2338 II*, 74 FLRA at 102-03.
[54] Exceptions Br. at 6-13.
[55] *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Victorville, Cal.*, 73 FLRA 624, 625-26 (2023).
[56] *AFGE, Loc. 2369*, 73 FLRA 772, 773 (2023) (citing *Consumer Fin. Prot. Bureau*, 73 FLRA 670, 671 (2023)).
[57] *See* Exceptions Br. at 7, 11-13.
[58] CBA at 100.
[59] Award at 12-13.

any employees from teleworking five days per week, thereby restricting "the parameters within which the discretion of management can be exercised."[60] In other words, by imposing a 50% in-office minimum, the new telework policy eliminates the ability of individual management officials to approve more than 50% telework where they deem it appropriate, thereby conflicting with Section 2(D)'s plain language and reserved managerial judgment. The Agency fails to explain how the Arbitrator's finding that the restrictions in the new telework policy conflict with the flexibility in Section 2(D) is irrational, unfounded, implausible, or in manifest disregard of Section 2(D).[61]

The Agency also asserts that Section 2(D) allows only "participating employees" to work with management to get approval for remote-work arrangements, and contends that most bargaining-unit employees were not affected by the new telework policy because they did not have telework agreements in place at the time of the change.[62] But the Agency does not claim that the parties' agreement defines "participating employees" or cite any contract wording requiring the Arbitrator to limit Section 2(D)'s application to employees who had executed telework agreements as of the time of the change. Thus, the Agency's arguments provide no basis for finding that the award fails to draw its essence from the parties' agreement.[63]

The Agency further argues that it did not violate Article 36 because the parties' agreement does not guarantee telework or require approval of telework requests.[64] However, the Arbitrator did not find that the Agency violated Article 36 by failing to *guarantee* telework; instead, he determined that a 50% ceiling on telework *eliminated the possibility* that employees could telework up to "five . . . days per week as a remote worker, in situations deemed appropriate by management."[65] The Agency has not identified any contractual wording in Article 36 that conflicts with the Arbitrator's interpretation;[66] it merely argues for its preferred interpretation, which does not demonstrate that the Arbitrator's interpretation is irrational, unfounded, implausible, or in manifest disregard of Article 36.[67] Thus, the Agency's argument does not establish the award fails to draw its essence from the parties' agreement.

The Agency also contends that it did not violate Article 37 because it provided notice and invoked impact-and-implementation bargaining, and the Union did not submit proposals.[68] However, when parties have already bargained over a matter, and included that matter in a collective-bargaining agreement, the parties are bound by that agreement during its term, unless the agreement provides exceptions.[69] As the Arbitrator noted, Article 37 provides the narrow circumstances under which the parties can amend or reopen the parties' agreement mid-term. In this regard, the Arbitrator found that Article 37 sets a specific window – July 6 through September 6 – for "giving written notice of a desire [to] change" the parties' agreement.[70] The Agency provided the Union notice on March 1, which the Arbitrator found fell outside that window.[71] Although the Agency claims it satisfied this requirement, it does not contest that it sent its notice in March, nor does it explain why notice in March was timely.[72]

The Agency also asserts that the Arbitrator's determination that the proper forum for bargaining telework changes was term negotiations – rather than mid-term bargaining – fails to draw its essence from Article 37.[73] The Agency emphasizes that Article 37 makes no mention of "term negotiations" and allows limited renegotiation during the term of the agreement.[74] However, the Arbitrator determined that the parties' agreement does not contemplate modification outside of the notice period discussed above except by mutual agreement, and that the Union did not agree to a modification.[75] Because the Agency does not demonstrate that it satisfied the midterm-bargaining requirements in Article 37, its arguments reflect mere disagreement with the Arbitrator's interpretation of Article 37, and thus do

[60] *Id.* at 13.
[61] *See Ass'n of Admin. L. Judges, IFPTE*, 74 FLRA 325, 332 (2026) (*IFPTE*) (Member Arrington concurring on other grounds).
[62] Exceptions Br. at 7-8.
[63] *IFPTE*, 74 FLRA at 332 (noting that excepting party did not identify any contractual wording that required the arbitrator to reach a different conclusion).
[64] Exceptions Br. at 11.
[65] Award at 12-13.
[66] *See NTEU*, 73 FLRA 315, 320-21 (2022) (Chairman DuBester concurring on other grounds) (rejecting essence exception where party "fail[ed] to identify any language" in negotiated agreement that "conflict[ed] with the [a]rbitrator's determination").
[67] *See USDA, Food & Nutrition Serv.*, 73 FLRA 822, 824 (2024) (rejecting arguments that "merely disagree[d] with" interpretation, where arbitrator "thoroughly discussed the agreement's terms and fully explained" his rationale (citing *Fed. Educ. Ass'n, Stateside Region*, 73 FLRA 747, 749 (2023))).
[68] Exceptions Br. at 7-8.
[69] *Cf. AFGE, Loc. 3972*, 74 FLRA 252, 254-55 (2025) (*Loc. 3972*) (where parties' agreement expressly governs procedures for changing telework agreements, parties do not have midterm duty to bargain further).
[70] Award at 15.
[71] *Id.*
[72] Exceptions Br. at 8 ("the Agency . . . properly invoked impact[-]and[-]implementation [bargaining] in March of 2024").
[73] *Id.*
[74] *Id.* at 8-9.
[75] Award at 15.

not establish that the award fails to draw its essence from the parties' agreement.[76]

Finally, the Agency argues that the Arbitrator "failed to consider the Agency's substantiated claims that the Union failed to challenge material changes to the [parties' agreement] both in 2020 and 2023."[77] The Agency does not explain how this renders the award irrational, implausible, unfounded, or in manifest disregard of the agreement. Accordingly, this argument does not demonstrate that the award fails to draw its essence from the parties' agreement.[78]

The dissent contends that the award fails to draw its essence from Section 2(D). Specifically, the dissent argues that: (1) Section 2(D) leaves telework matters to the Agency's complete discretion; (2) the Agency exercised that discretion and issued a new policy setting the amount of telework "deemed appropriate by management" at no more than 50%; (3) the Arbitrator improperly interpreted the terms "authorized management official" and "management" in Section 2(D) to have the same meaning; and (4) once the new telework policy was implemented, individual supervisors or managers did not have discretion to approve more than 50% telework.

However, as a threshold matter, we note that the Agency itself does not make these arguments,[79] therefore precluding us from entertaining them here.[80] Additionally, and perhaps more importantly, the Agency's stated position directly contradicts that espoused by the dissent. The Agency repeatedly relies on record evidence for the proposition that the new telework policy complied with Section 2(D) because managers and supervisors retained discretion over individual employees' work schedules under the policy,[81] including "the discretion to allow an employee to telework more . . . than 50%" of the time,[82] and even "up to five days of telework."[83] The Agency clearly and unequivocally states that "[t]his management discretion is in *compliance* with" Section 2(D).[84] In other words, the Agency reads Section 2(D) as *allowing* individual managers to approve more than 50% telework.

In sum, the contract interpretation advanced by the dissent is not properly before us, and, in fact appears to conflict with the Agency's arguments. The dissent erroneously contends that we are "requiring '*magic* words' for the Agency to adequately raise [an] argument."[85] On the contrary, we are simply saying that the Agency does not use *any* words that may reasonably be read as taking the position that the dissent takes. Accordingly, we decline to address the merits of the arguments that the dissent raises.[86]

For the above reasons, we find that the Agency has not demonstrated that the award fails to draw its essence from the parties' agreement. Accordingly, we deny the Agency's essence exceptions.

D. The Agency does not demonstrate the award is contrary to law.

The Agency cites the management rights to "take whatever actions may be necessary to carry out the agency mission during emergencies"[87] and to negotiate, at its

[76] *Loc. 3972*, 74 FLRA at 256 ("simply stating disagreement with the [a]rbitrator's interpretation does not demonstrate that the award is deficient" (citing *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Elkton, Ohio*, 74 FLRA 29, 31 (2024))).
[77] Exceptions Br. at 7.
[78] *U.S. Dep't of the Navy, Commander Navy Region Nw., Fire & Emergency Servs.*, 74 FLRA 286, 291 (2025) (*Navy*).
[79] Although the Agency argues generally that management "maintained discretion" over employees' telework schedules, Exceptions Br. at 12, it does not argue that the Arbitrator erred by interpreting "management" as synonymous with "management official," or that the new telework policy removed from individual supervisors their discretion to approve more than 50% telework.
[80] 5 C.F.R. § 2425.6 (providing that an excepting party has the burden to raise recognized grounds for reviewing an arbitration award and to provide supporting arguments).
[81] Exceptions Br. at 12-13.
[82] *Id.* at 12.
[83] *Id.* at 13.
[84] *Id.* (emphasis added).
[85] Dissent at 14 (emphasis added).
[86] Chairman Kiko shares the dissent's concern that collective-bargaining-agreement provisions reserving management discretion over telework-policy determinations must be enforced at arbitration. However, as she has previously noted, the Authority's review of arbitration awards is confined to the arguments raised by the parties. *AFGE, Loc. 2052, Council of Prison Locs. 33*, 73 FLRA 59, 62 n.48 (2022) (Chairman DuBester concurring) (then-Member Kiko, in an attributed footnote, acknowledging unfairness of arbitrator's actions, but noting that "because the [u]nion did not raise an unfair-hearing exception, the Authority may not consider it" (citing *U.S. Dep't of VA, Gulf Coast Veterans Health Care Sys.*, 69 FLRA 608, 610 (2016)); *U.S. Dep't of VA*, 71 FLRA 992, 994 n.23 (2020) (Member Abbott dissenting) (citing *Greenlaw v. United States*, 554 U.S. 237, 244 (2008) (noting the general rule that "our adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the . . . arguments entitling them to relief" (quoting *Castro v. United States*, 540 U.S. 375, 381-83 (2003) (Scalia, J., concurring in part and concurring in judgment))); *Burgess v. United States*, 874 F.3d 1292, 1300 (11th Cir. 2017) (when "a court engages in . . . raising claims or defenses on [a party's] behalf, the court may cease to appear as a neutral arbiter, and that could be damaging to our system of justice"))).
[87] Exceptions Br. at 7 (quoting 5 U.S.C. § 7106(a)(2)(D)).

election, permissive subjects of bargaining,[88] but it does not explain what aspect of the award conflicts with these rights or provide any supporting analysis. Section 2425.6(e)(1) of the Authority's Regulations provides that an exception "may be subject to dismissal or denial if . . . [t]he excepting party fails to raise and support a ground" listed in § 2425.6(a)-(c).[89] Consistent with § 2425.6(e)(1), when a party does not provide any arguments to support its exception, the Authority will deny the exception.[90] Accordingly, because the Agency fails to support its management-rights argument, we deny this exception.[91]

Further, the Agency alleges the award is contrary to law because "[i]t is no longer appropriate for employees to be in a telework status unless the telework status meets the requirements of the" Presidential Memo and the OPM guidance.[92] As discussed in the mootness analysis above, the award requires the Agency to honor the parties' contractual telework provisions, and there is nothing in the Presidential Memo or the OPM guidance to the contrary. As noted above, the Presidential Memo and OPM guidance state that they must be "implemented consistent with applicable law"[93] and are subject to "any collective[-]bargaining obligations."[94] Moreover, the award does not remove the Agency's discretion to determine that an individual telework request is *not* a "situation[] deemed appropriate by management."[95] Accordingly, the Agency has not established that the Presidential Memo or OPM guidance render the award unlawful, and we deny this contrary-to-law exception.

E. The Agency does not demonstrate that the award is incomplete, ambiguous, or contradictory so as to make implementation impossible.

The Agency argues that the award is incomplete, ambiguous, or contradictory, so as to make implementation of the award impossible.[96] According to the Agency, based on the Presidential Memo and the OPM guidance, the award "is impossible to implement given the current state of telework in the [f]ederal government."[97]

In order for the Authority to find an award deficient as incomplete, ambiguous, or contradictory, the appealing party must show that implementation of the award is impossible because the meaning and effect of the award are too unclear or uncertain.[98] However, the Agency's argument is premised on its claim that it is not lawfully permitted to comply with the award. As discussed above, we have rejected that claim. And the Agency does not otherwise explain how the award is impossible to implement. Accordingly, we deny this exception.

V. Decision

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

[88] *Id.* (citing 5 U.S.C. § 7106(a)(2)(D) but quoting wording found in 5 U.S.C. § 7106(b)(1)).
[89] 5 C.F.R. § 2425.6(e)(1).
[90] *U.S. Dep't of VA, Gulf Coast Med. Ctr., Biloxi, Miss.*, 70 FLRA 175, 176 (2017).
[91] *See id.* at 176-77 (denying management-rights argument under § 2425.6(e)(1) where excepting party failed to provide any supporting arguments).
[92] Exceptions Br. at 13-14.
[93] Presidential Memo at 1.
[94] OPM Guidance at 2-3.
[95] CBA at 100.
[96] Exceptions Form at 5.
[97] Exceptions Br. at 14.
[98] *Navy*, 74 FLRA at 290.

Member Arrington, dissenting:

Parties devote substantial time and taxpayer-funded resources crafting the terms of collective-bargaining agreements. All of that time and effort is wasted when an arbitrator, or another reviewing body, does not honor the plain language of negotiated provisions. It is because of this failure, on the Arbitrator and the majority here, that I dissent.

The Agency argues the award fails to draw its essence from parties' agreement because: (1) Article 36, Sections 1 and 2(D) do not contain any language that "require[s] an authorized management official to approve an employee to telework outside the scope of orders and/or guidance from the Administration, OPM, or the [Agency]"[1]; (2) the Agency "still maintained discretion over the telework schedule of the employee in compliance with Article 36(2)(D)"[2]; and (3) the Agency "did not violate [Section 2](D) with the proposed return to work initiative [because t]he modification allowed for management discretion."[3] Taking all of these together, it is clear to me, as it should be the majority, the Agency is arguing that the new telework policy is consistent with the discretion accorded management under the plain language of Section 2(D). Despite the majority's claim it is not requiring "magic words"[4] for the Agency to adequately raise this argument,[5] I believe that is exactly what is happening here. The majority claims "the Agency does not use *any* words that may reasonably be read as taking the position that the dissent takes."[6] However, the majority acknowledges that the Agency argues "the Arbitrator's finding that the Agency violated Article 36 fails to draw its essence from Section 2(D)."[7] Furthermore, the majority does not address the above-cited language. For these reasons, I believe the Agency has raised this argument.

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.[8] In this regard, federal circuit courts have found that an arbitrator's interpretation failed to draw its essence from the parties' agreement because it was inconsistent with the plain language of the agreement.[9] Further, the Authority has granted essence exceptions where the arbitrators' interpretations were implausible, unfounded, irrational, and in manifest disregard of the plain language of the

[1] Exceptions Br. at 11.

[2] *Id.* at 12.

[3] *Id.* at 13.

[4] *See NTEU v. FLRA*, 754 F.3d 1031, 1040 (D.C. Cir. 2014) ("A party is not required to invoke 'magic words' in order to adequately raise an argument before the Authority." (citing *U.S. Dep't of Com., Pat. & Trademark Off. v. FLRA*, 672 F.3d 1095, 1102 (D.C. Cir. 2012))).

[5] Majority at 11-12.

[6] *Id.* at 12.

[7] *Id.* at 9 (citing Exceptions Br. at 7, 11-13).

[8] *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Victorville, Cal.*, 73 FLRA 624, 625-26 (2023).

[9] *E.g.*, *Spero Elec. Corp. v. Int'l Bhd. of Elec. Workers, AFL-CIO, Loc. Union No. 1377*, 439 F.3d 324, 329-30 (6th Cir. 2006) (arbitrator's award failed to draw its essence from the parties' agreement where arbitrator's conclusion that parties modified agreement was *inconsistent* with the agreement's "method-of-modification" clause); *Beacon J. Publ'g Co. v. Akron Newspaper Guild, Loc. No. 7*, 114 F.3d 596, 601 (6th Cir. 1997) (arbitrator's award failed to draw its essence from parties' agreement where award was "incongruous" with clear terms of the collective-bargaining agreement); *Int'l Bhd. of Elec. Workers, Loc. 429 v. Toshiba Am., Inc.*, 879 F.2d 208, 210-11 (6th Cir. 1989) (where contract did not permit arbitrator to review disciplinary penalty, circuit court affirmed district court's vacatur of arbitrator's award because arbitrator's reinstatement remedy demonstrated a "total disregard of the [contract's] plain language"); *Monongahela Valley Hosp. Inc. v. United Steel Paper & Forestry Rubber Mfg. Allied Indus. & Serv. Workers Int'l Union AFL-CIO CLC*, 946 F.3d 195, 199-200 (3d Cir. 2019) (*Monongahela*) (vacating arbitrator's award because arbitrator "ignored [contract's] plain language" when interpreting contract terms that were "simply not susceptible to more than one reasonable interpretation" (quoting *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am., U.A.W. v. Skinner Engine Co.*, 188 F.3d 130, 146 (3d Cir. 1999))); *Citgo Asphalt Refin. Co. v. Paper, Allied-Indus., Chem., & Energy Workers Int'l Union, Loc. No. 2-991*, 385 F.3d 809, 820 (3rd Cir. 2004) (arbitrator's award failed to draw its essence from parties' agreement where arbitrator ignored provision of agreement expressly allowing employer to make and enforce safety rules); *Int'l Union, United Mine Workers of Am. v. Marrowbone Dev. Co.*, 232 F.3d 383, 389 (4th Cir. 2000) (arbitrator's award failed to draw its essence from parties' agreement where award "squarely conflict[ed] with the plain language of" the parties' negotiated grievance procedure); *Mountaineer Gas Co. v. Oil, Chem. & Atomic Workers Int'l Union*, 76 F.3d 606, 610 (4th Cir. 1996) (where arbitrator "ignored the unambiguous language" of employer's drug policy to modify penalty, arbitrator "created an award that failed to draw its essence from the CBA"); *Keebler Co. v. Milk Drivers & Dairy Emps. Union, Loc. No. 471*, 80 F.3d 284, 288-89 (8th Cir. 1996) (finding arbitrator's award did not draw its essence from parties' agreement where arbitrator erroneously relied on language not found in parties' agreement to impose new obligation on the parties); *Bruno's, Inc. v. United Food & Com. Workers Int'l Union, Loc. 1657*, 858 F.2d 1529, 1532 (11th Cir. 1988) (affirming district court's vacatur of arbitration award where arbitrator created new rule that conflicted with "the express terms of the collective[-]bargaining agreement").

collective-bargaining agreement.[10] Accordingly, an arbitrator's interpretation is implausible, unfounded, irrational, and evidences a manifest disregard of the parties' agreement when it is inconsistent with the plain language of the agreement.

Article 36, Section 2(D) (Section 2(D)), states in pertinent part, "[n]othing in [Article 36] prohibits an authorized management official from approving participating employees to telework up to five (5) days per week as a remote worker, in situations *deemed appropriate by management*."[11] It is clear that the plain language of Section 2(D) leaves telework to the complete discretion of the Agency. Here, the Agency exercised that discretion, consistent with Section 2(D), and issued a new policy setting the amount of telework *deemed appropriate by management* to no more than 50%.[12] Yet, the Arbitrator found the Agency's updated telework policy, allowing no more than 50% telework, violated Section 2(D). This finding is flawed because it nullifies the plain language of Section 2(D).

The Arbitrator disregarded the plain language of Section 2(D) by interpreting "as deemed appropriate by management" to mean the individual authority exercised by "an authorized management official." Such interpretation cannot be squared with the plain language of the provision: "[n]othing in [Article 36] prohibits an *authorized management official* from approving participating employees to telework up to five (5) days per week as a remote worker, in situations *deemed appropriate by management*."[13] The fact that the Arbitrator interpreted "authorized management official" and "management" to mean the same thing[14] is synonymous with the Authority's determination to find that "conditions of employment" and "working conditions" are interchangeable[15] – irrational. The irrationality of the Arbitrator's interpretation is further demonstrated by looking to the common use of the term "management." According to Merriam-Webster, "management" is defined as "the collective body of those who manage or direct an enterprise."[16] This plain language definition is supported by the fact that "management" is synonymous with "agency" in the federal-labor-relations community.[17] Therefore, "deemed appropriate by management" must mean "deemed appropriate by the agency." That is exactly what happened when the Agency set the new telework policy, *deeming appropriate* telework in amounts of 50% or less. For the Arbitrator's interpretation to be plausible, Section 2(D) would have to read "deemed appropriate by *the management official*." That is not the case, and the majority rubberstamps this irrational interpretation without addressing this key fault.[18]

Not only does the Arbitrator's interpretation ignore the plain language of the agreement, but the articulated rationale is at-ends with itself. First, the Arbitrator found that "[t]elework is still a management decision about what is best for the Agency and the employees," implying the Agency has discretion.[19] However, he subsequently found the Agency violated Section 2(D) because "the parameters within which the discretion of management can be exercised . . . has changed and this is undeniably a change in the effect of the plain wording of [Section 2(D)]."[20] Either Section 2(D) gives the Agency discretion to determine when telework is appropriate, or Section 2(D) sets parameters on what is appropriate – but it cannot be both. The absurdity of the

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[10] *E.g.*, *SSA, Off. of the Gen. Couns.*, 72 FLRA 554, 555 (2021) (*SSA OGC*) (setting aside award where there was "no dispute that the [u]nion's grievance did not comply with" parties' agreement, agency raised "procedural-arbitrability issue in a timely manner," and arbitrator's waiver finding was "not a plausible interpretation of the parties' agreement"); *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Coleman, Fla.*, 71 FLRA 1013, 1014 (2020) (*DOJ Coleman*) (Member DuBester concurring; Member Abbott concurring) (granting essence exception where arbitrator's finding that grievance complied with contractual filing deadline was "so unfounded in reason and fact and so unconnected with the wording and purpose of the parties' agreement as to manifest an infidelity to the obligation of the [a]rbitrator" (quoting *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Coleman, Fla.*, 71 FLRA 892, 893 (2020) (Member DuBester concurring in part))).

[11] Opp'n, Ex. 1, Collective-Bargaining Agreement (CBA) at 100 (emphasis added).

[12] Award at 6 ("[T]elework-eligible workers . . . will be required to work on-site and in-person for 50% of their work hours each month.").

[13] CBA at 100 (emphasis added).

[14] Award at 13.

[15] *See AFGE, Loc. 0906*, 74 FLRA 146, 151 (2024) (then-Member Kiko dissenting) (finding "there is no substantive difference between '*conditions of employment*' and 'working conditions' as those terms are practically applied" (internal quotation marks omitted)).

[16] *Management*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/management (on file with Federal Labor Relations Authority (FLRA)) (last visited Sept. 14, 2026).

[17] *See U.S. Dep't of Transp., FAA*, 74 FLRA 437, 438 (2026) ("[T]he [a]gency argues the award 'fails to preserve management's discretion to decide . . . .'"); *NTEU, Chapter 337*, 74 FLRA 412, 414 (2026) ("The [u]nion neither acknowledges, nor addresses, [the proposal's] limitations on the [a]gency's ability to recall an employee if management determines that in-person supervision has become warranted."). *But see U.S. DHS, U.S. CBP*, 74 FLRA 403, 404 (2026) (stating that "the [u]nion asserted to the [a]gency that the [u]nion needed the right to negotiate with *local management*" (emphasis added)).

[18] *See Monongahela*, 946 F.3d at 199 ("[D]eference [to arbitrators] is not unlimited. If it were, court review would be an oxymoron. Hence we will not 'rubber stamp' an arbitrator's decision."); *see also U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Aliceville, Ala.*, 72 FLRA 497, 498 (2021) (Chairman DuBester dissenting) (noting "the Authority is not obligated to blindly defer to the erroneous conclusions that are made by arbitrators").

[19] Award at 13.

[20] *Id.*

Arbitrator's statement is demonstrated by the fact that "discretion"[21] and "parameters"[22] are antonyms.[23] Therefore, unlike the majority,[24] I refuse to condone the Arbitrator's linguistic gymnastics to remove the discretion granted by the plain language of Section 2(D). Because the Arbitrator's interpretation is inconsistent with the plain language of Section 2(D), I would grant the Agency's essence exception.[25]

For these reasons, I cannot support the majority's failure to uphold the plain language of the parties' agreement. Accordingly, I dissent.

[21] *Discretion*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/discretion (on file with FLRA) (last visited Sept. 14, 2026) (defining as the "power to choose or decide freely").

[22] *Parameters*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/parameter (on file with FLRA) (last visited Sept. 14, 2026) (defining as "limit, boundary"); *see also Limit*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/limit (on file with FLRA) (last visited Sept. 14, 2026) (defining as "something that bounds, restrains, or confines").

[23] *Antonyms for Discretion*, Power Thesauraus.org, https://www.powerthesaurus.org/discretion/antonyms (on file with FLRA) (last visited Sept. 14, 2026) (listing limitation, prohibition, restriction, restraint, and constraint as antonyms of discretion).

[24] Majority at 9.

[25] *SSA OGC*, 72 FLRA at 555; *DOJ Coleman*, 71 FLRA at 1014.