

74 FLRA No. 84

UNITED STATES
DEPARTMENT OF LABOR
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
NATIONAL COUNCIL
OF FIELD LABOR LOCALS
(Union)

0-AR-6074

DECISION

September 29, 2026

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

I. Statement of the Case

The Union filed a grievance alleging that the Agency violated the parties' 2012 collective-bargaining agreement¹ by processing the revocation of an employee's union-dues assignment outside the pertinent contractual window. As relevant here, Arbitrator Jeffrey W. Jacobs issued an award sustaining the grievance on the merits.² The Agency filed an exception arguing that the award fails to draw its essence from the agreement. Because we find

the award conflicts with the express provisions of the agreement, we grant the essence exception and set aside the award.

II. Background and Arbitrator's Award

The Authority's interpretation of § 7115(a) of the Federal Service Labor-Management Relations Statute (the Statute) has changed since its 1981 decision in *U.S. Army, U.S. Army Materiel Development & Readiness Command, Warren, Michigan (Army)*.³ In *Army*, the Authority considered the proper interpretation of the portion of § 7115(a) that says an employee's dues assignment "may not be revoked for a period of [one] year."⁴ The Authority held in *Army* that such wording "must be interpreted to mean that authorized dues [assignments] may be revoked only at intervals of [one] year."⁵ In addition, parties could lawfully negotiate the procedures for implementing § 7115(a), including agreements that established a limited window each year during which employees could revoke previously authorized union-dues assignments. Revocations outside that window could be rejected – requiring employees to continue paying dues until the next revocation window.

That interpretation controlled until 2020, when the Authority found that *Army*'s holding was inconsistent with § 7115(a)'s plain wording. Contrary to *Army*, the Authority concluded that the "most reasonable way to interpret the phrase 'any such assignment may not be revoked for a period of [one] year' is that the phrase governs only the first year of an assignment," and "nothing in the text of § 7115(a) expressly addresses the revocation of dues assignments after the first year."⁶ Accordingly, the Federal Labor Relations Authority (FLRA) promulgated a

¹ The parties entered into a new agreement in 2024. The grievance in this case concerns only the 2012 agreement. This decision uses the present tense to discuss the 2012 agreement's provisions.

² The Arbitrator also issued a preliminary award on the grievance's timeliness, but for the reasons discussed in note 73, we need not address that award, or the Agency's exception to it. Citations to an award in this decision refer to the Arbitrator's award on the merits.

³ 7 FLRA 194 (1981). Section 7115(a) states:

If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under [§ 7115(b)], any such assignment may not be revoked for a period of [one] year.

⁴ 5 U.S.C. § 7115(a).

⁵ 7 FLRA at 196 (quoting 5 U.S.C. § 7115(a)).

⁶ *Id.* at 199 (emphasis added).

⁷ *OPM*, 71 FLRA 571, 572 (2020) (Member Abbott concurring; Member DuBester dissenting) (quoting 5 U.S.C. § 7115(a)).

new regulation after notice and comment⁷ – § 2429.19 of the Authority’s Regulations – that states, in pertinent part, “[A]fter the expiration of the one-year period during which [a dues] assignment may not be revoked under 5 U.S.C. [§] 7115(a), an employee may initiate the revocation of a previously authorized assignment at any time that the employee chooses.”⁸

When promulgating this regulation, the Authority explained that it would apply “to the revocation of assignments that were authorized . . . on or after August 10, 2020.”⁹ The Authority also stated that, “[l]ike all government[-]wide regulations,” § 2429.19 is subject to the constraints of § 7116(a)(7) of the Statute,¹⁰ which makes it an unfair labor practice for agencies to enforce most regulations that conflict with a collective-bargaining agreement if the agreement was in effect before the regulations were prescribed.¹¹ Consequently, the Authority explained, “currently effective agreements will not be destabilized if they contain negotiated provisions that conflict with [§ 2429.19].”¹²

Here, the parties negotiated their agreement while *Army* was still governing law. Article 10, Section 4 of the agreement (Article 10) addresses the revocation of a previously authorized union-dues assignment (dues revocation). Article 10 states that employees may revoke their authorization by submitting written notice to a specified Agency office. Consistent with *Army*, but not § 2429.19 of the Authority’s Regulations, Article 10 further states that “[r]evocations will not become effective until the beginning of the first pay period which starts after January 11, provided that the revocation has been received in the [specified office] by that date.”¹³

After § 2429.19 took effect in August 2020, the Agency notified the Union that it planned to implement the regulation. The parties did not negotiate any changes to their agreement at that time.

An employee notified the Agency that she wanted to revoke her dues assignment that she authorized in September 2021. The Agency informed her that it could not process her dues revocation until September 2022 – one year after her initial dues-assignment authorization. Accordingly, the employee submitted a dues-revocation form in September 2022. The Agency accepted her form and provided a copy to the Union. The Union responded

to the Agency, acknowledging the form and expressing its “understanding that [the form would] be effective [beginning with] the first pay period after January 11, 2023.”¹⁴ The Agency replied, contending that the employee could revoke her assignment as of September 2022 because § 2429.19 allowed her to “initiate the revocation . . . at any time that the employee chooses” after the initial one-year period expires.¹⁵

By November 2022, the Agency stopped withholding dues from the employee’s compensation. The Union emailed the Agency requesting reinstatement of the employee’s dues assignment, and the Agency declined. The Union filed the grievance, and the matter proceeded to arbitration. On the merits, the Arbitrator framed the issues as whether “the Agency violate[d] the [parties’ agreement] on these facts and circumstances” and, if so, “what shall the remedy be?”¹⁶

The Union asserted that, because Article 10 was already in effect when the FLRA promulgated § 2429.19, the Agency violated Article 10 by enforcing the conflicting regulation before the 2012 agreement expired. The Arbitrator found that Article 10’s language “could not be clearer” that dues revocations “will not become effective until the beginning of the first pay period which starts after January 11.”¹⁷ Thus, the Arbitrator determined that the relevant question before him was whether § 2429.19 “somehow overrode [Article 10’s] language.”¹⁸

The Agency argued that the parties had negotiated a provision – Article 2, Section 1 of the agreement (Section 1) – allowing government-wide regulations issued *after* the agreement’s effective date to apply to the parties *immediately*. Section 1 states,

In the administration of all matters covered by this [a]greement, officials and employees are governed by existing or future laws and regulations of appropriate authorities; by published Department and/or Agency policies and regulations in existence at the time this [a]greement was approved; and by subsequently published Department and/or Agency policies and regulations

⁷ Miscellaneous & General Requirements, 85 Fed. Reg. 41169, 41169 (July 9, 2020) (Final Rule).

⁸ 5 C.F.R. § 2429.19.

⁹ Final Rule, 85 Fed. Reg. at 41169.

¹⁰ *Id.* at 41170.

¹¹ 5 U.S.C. § 7116(a)(7) (stating that it is an unfair labor practice for an agency “to enforce any rule or regulation (other than a rule or regulation implementing [5 U.S.C. § 2302]) which is in conflict with any applicable collective[-]bargaining agreement if

the agreement was in effect before the date the rule or regulation was prescribed”).

¹² Final Rule, 85 Fed. Reg. at 41170.

¹³ Award at 4.

¹⁴ *Id.* at 18.

¹⁵ *Id.* at 19.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 20.

¹⁸ *Id.*

required by law or by the regulations of appropriate authorities.¹⁹

Citing Authority precedent, the Agency argued that provisions permitting the immediate application of future government-wide regulations are not contrary to § 7116(a)(7) of the Statute. However, the Arbitrator rejected the Agency's argument that Section 1 permitted § 2429.19 to apply to the parties immediately. Instead, he found that "the parties did not agree to allow subsequently issued regulations" – like § 2429.19 – "to override pre-existing [contract] provisions."²⁰ Reinforcing this finding, he stated that "no . . . provision in the 2012 [agreement] . . . explicitly allows a legislation to override an existing [contract] provision."²¹

"[P]erhaps most importantly," according to the Arbitrator, "the Agency ignore[d] the clear language" in Section 1 providing that a "future regulation" governs the parties' actions only if it was "in existence at the time" the agreement was approved in 2012.²² He opined that "it was unclear how a future regulation" could be in existence at the time the agreement was approved, but found he did not need to resolve that "seeming logical incongruity."²³

The Arbitrator also noted that the final rule adopting § 2429.19 stated that it is "subject to the constraints of [§] 7116(a)(7) of the Statute," such that it would not "destabilize[]" "currently effective agreements."²⁴ The Arbitrator determined that § 2429.19 did not "destabilize or abrogate" the "specific provision[s] regarding revocation of dues deduction" in Article 10 because the agreement was in effect first.²⁵ Additionally, the Arbitrator cited Article 2, Section 3 of the agreement (Section 3), which concerns conflicts between Agency regulations and the agreement. The Arbitrator found that "the specific provisions of . . . Section 3 clearly provide that[,] where there is any conflict between an Agency regulation and the [agreement], the provisions of the [agreement] govern."²⁶

On these bases, the Arbitrator concluded that § 2429.19 "did not alter the existing provision[s]" of the

agreement, and the Agency violated Article 10 by failing to follow the "prescribed procedure" for dues revocation.²⁷ As remedies, the Arbitrator directed the Agency to reimburse the Union for lost dues and to audit the Agency's practices regarding dues revocations.

On September 22, 2025, the Agency filed an essence exception to the award, and, on October 22, 2025, the Union filed an opposition to the Agency's exception.

III. Analysis and Conclusion: The award conflicts with express provisions of the agreement and, thus, fails to draw its essence from the agreement.

The Agency argues the Arbitrator's finding that § 2429.19 "did not alter the existing provision" for dues revocation under Article 10²⁸ fails to draw its essence from Article 2, Sections 1 and 3.²⁹ According to the Agency, the Arbitrator ignored the "plain text" of these provisions by treating § 2429.19 as an Agency regulation and finding that it governs only if it was "in existence" when the parties' agreement was approved.³⁰ The Authority will find an award fails to draw its essence from a collective-bargaining agreement when the excepting party establishes that the award: (1) cannot in any rational way be derived from the agreement; (2) is so unfounded in reason and fact and so unconnected with the wording and purposes of the agreement as to manifest an infidelity to the obligation of the arbitrator; (3) does not represent a plausible interpretation of the agreement; or (4) evidences a manifest disregard of the agreement.³¹ An interpretation of an agreement that conflicts with the agreement's express provisions fails to draw its essence from that agreement.³²

In applying the essence standard, federal courts have repeatedly held that an award is deficient if it conflicts with the express provisions of a

¹⁹ *Id.* at 3.

²⁰ *Id.* at 20.

²¹ *Id.*

²² *Id.* at 21.

²³ *Id.*

²⁴ *Id.* at 20 (quoting Final Rule, 85 Fed. Reg. at 41170).

²⁵ *Id.*; see also *id.* at 21 (noting that the "regulation at issue" was not in existence until 2020).

²⁶ *Id.* at 21.

²⁷ *Id.* at 22.

²⁸ *Id.*

²⁹ Exceptions Br. at 9; see generally *id.* at 8-13.

³⁰ *Id.* at 10 (quoting Award at 21); see also *id.* at 11.

³¹ *U.S. Dep't of the Army, Fort Huachuca, Ariz.*, 74 FLRA 317, 321 (2025) (citing *NLRB Union*, 74 FLRA 230, 234 (2025)).

³² See, e.g., *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Mia., Fla.*, 73 FLRA 154, 157 (2022) ("[A]n award fails to draw its essence from a collective-bargaining agreement where the award conflicts with the agreement's plain wording."); *SSA, Off. of the Gen. Counsel*, 72 FLRA 554, 555 (2021) (*SSA*) (setting aside award where arbitrator's finding "conflict[ed] with the plain wording of the parties' agreement"); *U.S. Dep't of the Air Force, U.S. Air Force Acad., Colo. Springs, Colo.*, 59 FLRA 540, 541 (2003) (*Air Force*) ("[A]n award requiring an agency to pay all the costs and expenses of an arbitration proceeding fail[s] to draw its essence from a contractual provision that require[s] the arbitrator's fees and expenses to be borne equally by the parties." (citing *U.S. SBA*, 55 FLRA 179, 182 (1999))).

collective-bargaining agreement.³³ Negotiated agreements would “cease to have meaning” if an arbitrator could “cast aside clear and unambiguous contractual language . . . merely by invoking the magic words ‘contract interpretation.’”³⁴ Consequently, an arbitrator may not shield a deficient award from essence review “simply by making the . . . noises of contract interpretation.”³⁵ And although arbitrators have discretion to interpret an agreement’s provisions, an unambiguous provision “require[s] no interpretation.”³⁶ As such, a disputed award that conflicts with an agreement’s plain wording must be set aside as failing to draw its essence from the agreement.³⁷ Authority precedent is consistent with these federal court pronouncements.³⁸

The Agency argues that the Arbitrator’s contradictory conclusion – that the parties are governed by only those “future” regulations “in existence at the time the [2012 agreement was] approved”³⁹ – reflects a manifest disregard for the plain wording of Sections 1 and 3.⁴⁰ Section 1 states that the parties will be “governed by existing or future . . . regulations of appropriate

authorities,”⁴¹ and there is no dispute that the phrase “regulations of appropriate authorities” includes government-wide regulations.⁴² In a separate clause, Section 1 states that the parties will likewise be governed by those “*Department and/or Agency . . . regulations in existence at the time this [a]greement was approved.*”⁴³ Agency regulations also appear in Section 3, which provides, “Where existing provisions of *Department and/or Agency regulations* are in conflict with this [a]greement, the provisions of this [a]greement shall govern.”⁴⁴ Here, the Agency asserts § 2429.19 “constituted a government-wide regulation – not a ‘Department and/or Agency’ . . . regulation – and therefore fell under [Section 1’s] ‘future . . . regulations’ clause.”⁴⁵ In this regard, the Agency argues that the Arbitrator mistakenly treated § 2429.19 as an Agency regulation.⁴⁶

As the Agency notes,⁴⁷ the plain wording of Section 1 states that the parties “are governed by . . . future . . . regulations of appropriate authorities,”⁴⁸ such as government-wide regulations. Yet the Arbitrator paradoxically found that the parties are governed by only

³³ E.g., *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, 200 (3d Cir. 2019); *United Steelworkers of Am., AFL-CIO-CLC v. USX Corp.*, 966 F.2d 1394, 1403 (11th Cir. 1992) (*USX Corp.*) (“[W]e will not enforce an award that ‘directly contradicts the express language of the collective[-]bargaining agreement.’” (quoting *Bruno’s, Inc. v. United Food & Com. Workers Int’l Union, Loc. 1657*, 858 F.2d 1529, 1531 (11th Cir. 1988))); *Georgia-Pac. Corp. v. Loc. 27, United Paperworkers Int’l Union*, 864 F.2d 940, 945 (1st Cir. 1988) (“[An arbitrator] may not impose a remedy which directly contradicts the express language of the collective[-]bargaining agreement.” (quoting *Bruno’s*, 858 F.2d at 1531)); *Syufy Enters. v. N. Cal. State Ass’n of IATSE Locs.*, 631 F.2d 124, 126 (9th Cir. 1980) (“We do not hold that an arbitrator may rely upon negotiating history to contradict express provisions of a collective[-]bargaining agreement.”).

³⁴ *Anheuser-Busch, Inc. v. Beer, Soft Drink, Water, Fruit Juice, Carbonic Gas, Liquor Sales Drivers, Helpers, Inside Workers, Bottlers, Warehousemen, Sch., Sightseeing, Charter Bus Drivers, Gen. Promotions Emps., & Emps. of Affiliated Indus., Maltster, Laborers, Syrup, Yeast, Food, Vinegar, Brewery, Recycling & Miscellaneous Workers of Chi. & Vicinity, Ill., Loc. Union No. 744*, 280 F.3d 1133, 1144 (7th Cir. 2002) (emphasis omitted).

³⁵ *Leed Architectural Prods., Inc. v. United Steelworkers of Am., Loc. 6674*, 916 F.2d 63, 65 (2d Cir. 1990) (quoting *In re Marine Pollution Serv., Inc.*, 857 F.2d 91, 94 (2d Cir. 1988)); see also *Anheuser-Busch*, 280 F.3d at 1138 (noting that an arbitrator cannot shield a deficient award from review by merely “making the noises of contract interpretation” (quoting *Ethyl Corp. v. United Steelworkers of Am., AFL-CIO-CLC*, 768 F.2d 180, 187 (7th Cir. 1985))).

³⁶ *Anheuser-Busch*, 280 F.3d at 1140.

³⁷ *Monongahela Valley Hosp.*, 946 F.3d at 200 (“[W]e cannot affirm [an] award that manifestly disregards the plain language of [a collective-bargaining agreement].”); *Int’l Union,*

United Mine Workers of Am. v. Marrowbone Dev. Co., 232 F.3d 383, 389 (4th Cir. 2000) (holding an award that “squarely conflicts with the plain language of [an] [a]greement” does not draw its essence from that agreement, and the court must refuse to enforce the award); *USX Corp.*, 966 F.2d at 1403 (vacating district court injunction enforcing award that “‘directly contradicts’ th[e] express language” of a collective-bargaining agreement); *Delta Queen Steamboat Co. v. Dist. 2 Marine Eng’rs Beneficial Ass’n*, 889 F.2d 599, 604 (5th Cir. 1989) (“[A]rbitral action contrary to express contractual provisions will not be respected.”); *Georgia-Pac. Corp.*, 864 F.2d at 946 (directing district court to vacate award that “ignore[d] the explicit language of” the agreement); *Bruno’s*, 858 F.2d at 1532 (holding that portion of award “in direct conflict with the express terms of the collective[-]bargaining agreement was properly vacated”). Notwithstanding the dissent’s claim, all of these decisions stand for the purportedly “broad proposition” for which we cite them, Dissent at 14, as shown by the quotations of the decisions themselves.

³⁸ See, e.g., *SSA*, 72 FLRA at 555; *Air Force*, 59 FLRA at 541. The Union argues in its opposition that the Authority should overrule any essence precedent that is inconsistent with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *National Weather Service Employees Organization v. FLRA*, 966 F.3d 875 (D.C. Cir. 2020). Opp’n Br. at 6. We deny that request for the reasons stated in *SSA*, 74 FLRA 555, 558-61 (2026) (Member Wagner dissenting).

³⁹ Award at 21.

⁴⁰ Exceptions Br. at 9-11.

⁴¹ Award at 3 (emphasis added) (quoting Art. 2, § 1).

⁴² *Id.* (quoting Art. 2, § 1).

⁴³ *Id.* (emphasis added) (quoting Art. 2, § 1).

⁴⁴ *Id.* (emphasis added) (quoting Art. 2, § 3).

⁴⁵ Exceptions Br. at 10.

⁴⁶ See *id.* at 10-11.

⁴⁷ *Id.* at 10.

⁴⁸ Award at 3 (emphasis added) (quoting Art. 2, § 1).

those *future regulations in existence at the time the agreement was approved*.⁴⁹ The Arbitrator himself recognized that it would be impossible for “future” regulations to have existed at the time the agreement was approved.⁵⁰ Critically, this contradiction existed only because the Arbitrator conflated Section 1’s clause about “future . . . regulations of appropriate authorities” with a different clause regarding “*Department and/or Agency* . . . regulations in existence at the time th[e a]greement was approved.”⁵¹ Section 2429.19 of the Authority’s Regulations is not a Department and/or Agency regulation. It is a “regulation[] of [an] appropriate authorit[y]”⁵² – specifically, the FLRA.⁵³ For the same reason, the Arbitrator could not rely on Section 3, which concerns “*Department and/or Agency* regulations . . . in conflict with th[e a]greement,”⁵⁴ to find that Article 10 governs the parties, rather than § 2429.19.⁵⁵ To reiterate, § 2429.19 applies government-wide, and the Agency did not promulgate it. Thus, under the plain wording of Section 1, this “future . . . regulation[] of [an] appropriate authorit[y]” governs.⁵⁶

In reaching a directly contradictory conclusion, the Arbitrator’s statement that “the parties did not agree to allow subsequently issued regulations to override pre-existing [contract] provisions”⁵⁷ manifestly disregards the express wording of Section 1. By enforcing Article 10, rather than § 2429.19, the Arbitrator held that the parties are *not* governed by that particular future regulation. Perhaps the Arbitrator’s manifest disregard for the agreement’s plain wording stemmed from his confusion about the status of § 2429.19: At times he treated it as an

Agency regulation,⁵⁸ and at other times, he referred to it as “a legislation.”⁵⁹ It is neither. Regardless of the precise cause, the award makes only the “noises of contract interpretation”⁶⁰ concerning unambiguous wording that “required no interpretation.”⁶¹

Section 7116(a)(7) of the Statute does not change the essence analysis here. As previously mentioned, § 7116(a)(7) makes it an unfair labor practice for an agency “to enforce any rule or regulation (other than a rule or regulation implementing [5 U.S.C. § 2302]) which is in conflict with any applicable collective[-]bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed” (the default legal rule).⁶² However, the Authority has held that “nothing precludes” parties from supplanting the default legal rule by “agreeing to allow subsequently issued regulations to override a pre[-]existing collective[-]bargaining agreement.”⁶³ In sum, provisions of a collective-bargaining agreement presumptively control over subsequently issued conflicting government-wide regulations (other than those implementing 5 U.S.C. § 2302),⁶⁴ *unless* the parties have agreed otherwise.

When the Authority wrote that § 2429.19 would be “subject to the constraints of [§ 7116(a)(7) of the Statute],” such that “currently effective agreements [would] not be destabilized if they contain[ed] negotiated provisions that conflict[ed] with” the regulation,⁶⁵ the Authority was describing the default legal rule and its

⁴⁹ See *id.* at 21.

⁵⁰ *Id.* (describing it as “unclear” how a future regulation could have existed in 2012, but stating he was not responsible for resolving that “logical incongruity”).

⁵¹ *Id.* at 3 (emphasis added) (quoting Art. 2, § 1).

⁵² *Id.* (quoting Art. 2, § 1 (“[O]fficials and employees are governed by existing or future laws and regulations of appropriate authorities . . . ”)).

⁵³ See Final Rule, 85 Fed. Reg. at 41170 (explaining that § 2429.19 is a “government[-]wide regulation[]”).

⁵⁴ Award at 3 (emphasis added) (quoting Art. 2, § 3).

⁵⁵ See *id.* at 21 (“Section 3 clearly provide[s] that where there is any conflict between an Agency regulation and the [agreement], the provisions of the [agreement] govern”). The dissent asserts that the phrase “Agency regulations” is ambiguous. Dissent at 15-16. But we disagree, particularly in the context of Sections 1 and 3, which refer to “*Department and/or Agency*” regulations. Award at 3 (emphasis added) (quoting Art. 2, §§ 1, 3). The FLRA, which promulgated § 2419.19, does not belong to any department. See 5 U.S.C. § 101 (listing the executive departments of the federal government). Moreover, the dissent’s counterintuitive view that “Agency regulations” could include government-wide regulations would render some provisions of the agreement – such as Section 3 – unlawful. See Award at 3 (“Where existing provisions of Department and/or Agency regulations are in conflict with this [a]greement, the provisions of this [a]greement shall govern.”

(quoting Art. 2, § 3)); *AFGE, Loc. 1815*, 53 FLRA 606, 619 (1997) (“Under [§ 7117(a)(1) of the Statute], a negotiated provision cannot be inconsistent with any [g]overnment-wide regulation.”).

⁵⁶ Award at 3 (emphasis added) (quoting Art. 2, § 1).

⁵⁷ *Id.* at 20.

⁵⁸ *Id.* at 21 (relying on Section 3, which applies only to Agency regulations, and quoting wording from Section 1 that applies only to Agency regulations).

⁵⁹ *Id.* at 20.

⁶⁰ *Leed Architectural Prods.*, 916 F.2d at 65 (quoting *Marine Pollution Serv.*, 857 F.2d at 94).

⁶¹ *Anheuser-Busch*, 280 F.3d at 1140.

⁶² 5 U.S.C. § 7116(a)(7); see, e.g., *AFGE, Nat’l Citizenship & Immigr. Servs., Council 119*, 73 FLRA 490, 492 (2023) (finding agency could not enforce an executive order prescribed during the term of the parties’ collective-bargaining agreement while the agreement remained in effect).

⁶³ *U.S. DOD, Def. Mapping Agency, Hydrographic/Topographic Ctr., Wash., D.C.*, 37 FLRA 1066, 1069 (1990) (remanding award to determine whether parties agreed to displace the default legal rule), *deciding exception to award on remand*, 42 FLRA 674, 678-79 (1991).

⁶⁴ Section 2429.19 of the Authority’s Regulations does not implement 5 U.S.C. § 2302, which concerns prohibited personnel practices.

⁶⁵ Final Rule, 85 Fed. Reg. at 41170.

consequences.⁶⁶ However, neither § 7116(a)(7), nor § 2429.19 of the Authority's Regulations, prohibited parties from agreeing to allow subsequently issued regulations to override pre-existing contract provisions. And giving effect to all of Section 1's clauses does not destabilize the parties' agreement.⁶⁷ Here, the parties negotiated an agreement to allow subsequently issued regulations to override pre-existing contract provisions when they decided to be governed by "future . . . regulations of appropriate authorities."⁶⁸ The Arbitrator determined otherwise when he stated that "the parties did not agree to allow subsequently issued regulations to override pre-existing [contract] provisions,"⁶⁹ but as explained above, that determination conflicts with the plain wording of the agreement. Again, if the Arbitrator were correct that the parties agreed to be bound by only those regulations that existed when the agreement was approved, then the parties' contractual decision to be governed by "future . . . regulations of appropriate authorities" would have no effect.⁷⁰ And nullifying a contract provision in that manner manifestly disregards the agreement.⁷¹

For the forgoing reasons, the award conflicts with the express provisions of the agreement and, consequently, fails to draw its essence from the agreement.⁷² Accordingly, we set aside the award.⁷³

IV. Decision

We grant the Agency's essence exception and set aside the award.

⁶⁶ The dissent states that "the Arbitrator effectively read the [Final Rule's] limitation on § 2429.19's applicability as *part of* § 2429.19." Dissent at 17. Contrary to the dissent's analysis, *id.* (deferring to the way the Arbitrator "effectively read" § 2429.19), the Authority does not defer to an arbitrator's interpretation of a government-wide regulation like § 2429.19. See, e.g., *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Englewood, Colo.*, 73 FLRA 762, 763 (2023) (applying *de novo* standard of review to interpret government-wide regulations).

⁶⁷ *Contra* Dissent at 17. See *Gardiner v. Sea-Land Serv., Inc.*, 786 F.2d 943, 947 (9th Cir. 1986) ("[E]nforcing a collective[-]bargaining agreement . . . promote[s] stability in labor-management relations.").

⁶⁸ Award at 3 (quoting Art. 2, § 1).

⁶⁹ *Id.* at 20.

⁷⁰ *Id.* at 3 (emphasis added) (quoting Art. 2, § 1). The dissent's view of the award suffers from this same defect, which the dissent fails to address. See Dissent at 15-18.

⁷¹ See *Delta Queen Steamboat Co.*, 889 F.2d at 604 ("[A]rbitral action contrary to express contractual provisions will not be respected.").

⁷² See, e.g., *Monongahela Valley Hosp.*, 946 F.3d at 200; *Anheuser-Busch*, 280 F.3d at 1144-45; *United Mine Workers of Am.*, 232 F.3d at 389; *Leed Architectural Prods.*, 916 F.2d at 65-67; *USX Corp.*, 966 F.2d at 1403, 1405; *Delta Queen Steamboat Co.*, 889 F.2d at 604; *Georgia-Pac. Corp.*, 864 F.2d at 944-46; *Bruno's*, 858 F.2d at 1532; *SSA*, 72 FLRA at 555; *Air Force*, 59 FLRA at 541.

⁷³ Because of this disposition, we need not address the Agency's other essence arguments, including its challenge to the preliminary award on timeliness. See Exceptions Br. at 11-13 (essence argument based on Article 2, Section 4 of the agreement), 13-14 (essence challenge to preliminary award); *AFGE, Loc. 1822*, 72 FLRA 595, 598 & n.37 (2021) (Chairman DuBester concurring) (after setting aside award for failing to draw its essence from a settlement agreement and negotiated policy, Authority did not address excepting party's other essence argument).

Member Wagner, dissenting:

As I stated in my dissent in *SSA*,¹ the standards that federal courts apply in reviewing arbitration awards in the private sector also apply to the Authority's review of arbitrators' awards resolving contractual disputes in the federal sector.² Under those standards, in assessing whether an award draws its essence from a collective-bargaining agreement (CBA), the Authority must ask "whether the [a]rbitrator was 'even arguably construing or applying'" the CBA.³ As I also stated in *SSA*, I believe that the Authority's current "essence" tests – at least when properly applied – are consistent with that inquiry.⁴ Under those tests, to demonstrate that an award fails to draw its essence from a CBA, the excepting party must establish that the award: (1) cannot in any rational way be derived from the CBA; (2) is so unfounded in reason and fact and so unconnected with the wording and purposes of the CBA as to manifest an infidelity to the obligation of the arbitrator; (3) does not represent a plausible interpretation of the CBA; or (4) evidences a manifest disregard of the agreement.⁵

In this case, the Arbitrator resolved a dispute regarding whether the Agency violated the parties' CBA by ceasing the withholding of union dues from employees' paychecks after they withdrew their written authorizations for such withholdings. Although the dispute was contractual in nature, there is a statutory and regulatory backdrop to this case that provides some important context for the merits award.

Section 7116(a)(7) of the Federal Service Labor-Management Relations Statute (the Statute) makes it an unfair labor practice for an agency "to enforce any rule or regulation (other than a rule or regulation implementing [5 U.S.C. §] 2302 . . .) which is in conflict with any applicable [CBA] if the [CBA] was in effect before the date the rule or regulation was prescribed" (the default legal rule).⁶ However, the Authority has held that "nothing precludes" parties from supplanting the default legal rule by "agreeing to allow subsequently issued regulations to override a preexisting [CBA]."⁷ In other words, CBA provisions presumptively control over a

subsequently issued, conflicting government-wide regulation (other than one implementing 5 U.S.C. § 2302), unless the parties have negotiated otherwise.

In 2020, the Authority promulgated a regulation, 5 U.S.C. § 2429.19 (§ 2429.19), which states:

Consistent with the exceptions in 5 U.S.C. [§] 7115(b), after the expiration of the one-year period during which [a dues] assignment may not be revoked under 5 U.S.C. [§] 7115(a), an employee may initiate the revocation of a previously authorized assignment at any time that the employee chooses. After the expiration of the one-year period of irrevocability under 5 U.S.C. [§] 7115(a), upon receiving an employee's request to revoke a previously authorized dues assignment, an agency must process the revocation request as soon as administratively feasible.⁸

When promulgating this regulation, the Authority explained that it would apply "to the revocation of assignments that were authorized . . . on or after August 10, 2020."⁹ The Authority also stated that, "[l]ike all government[-]wide regulations," § 2429.19 is subject to the constraints of § 7116(a)(7) of the Statute.¹⁰ Consequently, the Authority explained, "currently effective [CBAs] will not be destabilized if they contain negotiated provisions that conflict with" § 2429.19.¹¹

Article 10, Section 4 of the parties' CBA (Article 10) addresses the revocation of previously authorized union-dues withholding (dues revocation). Specifically, Article 10 provides that employees may revoke their authorizations by submitting written notice to

¹ 74 FLRA 555, 567-91 (2026) (Dissenting Opinion of Member Wagner); see also *U.S. Dep't of HUD*, 74 FLRA 592, 599-603 (2026) (*HUD*) (Dissenting Opinion of Member Wagner).

² *SSA*, 74 FLRA at 581-83; *HUD*, 74 FLRA at 600.

³ *Nat'l Weather Serv. Emps. Org. v. FLRA*, 966 F.3d 875, 881 (D.C. Cir. 2020) (quoting *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 38 (1987) (*Misco*)).

⁴ *SSA*, 74 FLRA at 584-86; see also *HUD*, 74 FLRA at 600.

⁵ *U.S. DOL (OSHA)*, 34 FLRA 573, 575 (1990). However, in *SSA*, I also noted that I would be open to reconsidering the "plausible interpretation" test in a future, appropriate case. 74 FLRA at 586; see also *HUD*, 74 FLRA at 600 n.14.

⁶ 5 U.S.C. § 7116(a)(7); see, e.g., *AFGE, Nat'l Citizenship & Immigr. Servs., Council 119*, 73 FLRA 490, 492 (2023) (finding the agency could not enforce an executive order prescribed during the term of the parties' CBA while the CBA remained in effect).

⁷ *U.S. DOD, Def. Mapping Agency, Hydrographic/Topographic Ctr., Wash., D.C.*, 37 FLRA 1066, 1069 (1990).

⁸ 5 C.F.R. § 2429.19.

⁹ Merits Award at 6 (quoting Dues-Revocation Notice, 85 Fed. Reg. 41169, 41169 (July 9, 2020) (FR Notice)).

¹⁰ *Id.* at 7 (quoting FR Notice, 85 Fed. Reg. at 41170).

¹¹ *Id.* (quoting FR Notice, 85 Fed. Reg. at 41170).

a specified Agency office, and that “[r]evocations will not become effective until the beginning of the first pay period which starts after January 11, provided that the revocation has been received in the [specified office] by that date.”¹²

The parties’ CBA was in effect when the Authority promulgated § 2429.19. Therefore, under the default legal rule, the CBA – including Article 10 – governs over § 2429.19, unless the parties have agreed otherwise. The Agency argued to the Arbitrator,¹³ and argues to us,¹⁴ that the parties have altered the default legal rule by agreeing to Article 2, Section 1 of the CBA (Section 1). Section 1 states:

In the administration of all matters covered by this [a]greement, officials and employees are governed by existing or future laws and regulations of appropriate authorities; by published Department and/or Agency policies and regulations in existence at the time this [a]greement was approved; and by subsequently published Department and/or Agency policies and regulations required by law or by the regulations of appropriate authorities.¹⁵

In the merits award, the Arbitrator determined that the relevant question before him was whether § 2429.19, which he characterized as “the [r]ule implemented on August 10, 2020,” “somehow overrode [Article 10’s] language.”¹⁶ The Arbitrator found that “the parties did not agree to allow subsequently issued regulations to override pre-existing CBA provisions.”¹⁷ On this point, the Arbitrator interpreted Section 1 to mean that a conflicting regulation governs the parties’ actions only if it was “in existence at the time” the parties’ CBA was approved in 2012.¹⁸

He also found that, “as the Agency acknowledged,” § 2429.19 itself is “subject to the constraints of [§] 7116(a)(7) of the Statute” such that it will not “destabilize[]” “currently effective agreements.”¹⁹ The Arbitrator determined that § 2429.19 did not “destabilize or abrogate” the “specific provision[s] regarding revocation of dues deduction” in Article 10, because the CBA was in effect first.²⁰ Relatedly, the Arbitrator found that “the specific provisions of Article 2, Section 3” of the CBA (Section 3) “clearly provide that where there is any conflict between an Agency regulation and the CBA, the provisions of the CBA govern.”²¹ Finally, he stated that the Agency’s position “ignore[d] the clear language” in Section 1 that governing regulations needed to be “in existence at the time of” the CBA.²² He opined that “it was unclear how a future regulation,” as referenced in Section 1, could be in existence at the time the CBA was approved, but found he did not need to resolve that “seeming logical incongruity.”²³

On these bases, the Arbitrator concluded that the “overall evidence” demonstrated that § 2429.19 “did not alter the existing provision[s]” of the CBA.²⁴ And he found that the Agency violated Article 10 by failing to follow the “prescribed procedure” for dues revocation.²⁵

The majority finds that the merits award fails to draw its essence from the CBA. In this connection, the majority – citing various private-sector court opinions – states that, “[i]n applying the essence standard, federal courts have repeatedly held that an award is deficient if it conflicts with the express provisions of a [CBA].”²⁶ However, as I stated in *SSA*, most of the cited decisions that the majority cited there – and cites again here – “do not stand for the broad proposition that arbitration awards are deficient solely because they appear to conflict with a CBA’s plain wording.”²⁷

¹² Arbitrability Award at 3.

¹³ Merits Award at 12.

¹⁴ Exceptions at 9-10.

¹⁵ Merits Award at 3.

¹⁶ *Id.* at 20.

¹⁷ *Id.* (also stating that “no . . . provision in the [parties’ agreement] . . . explicitly allows a legislation to override an existing [contract] provision”).

¹⁸ *Id.* at 21.

¹⁹ *Id.* at 20.

²⁰ *Id.*; see also *id.* at 21 (noting that the “regulation at issue” was not in existence until 2020).

²¹ *Id.* at 21.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 22.

²⁵ *Id.*

²⁶ Majority at 6.

²⁷ See *SSA*, 74 FLRA at 579-81 (discussing *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, 200 (3d Cir. 2019); *Anheuser-Busch, Inc. v. Beer, Soft Drink, Water, Fruit Juice, Carbonic Gas, Liquor Sales Drivers, Helpers, Inside Workers, Bottlers, Warehousemen, Sch., Sightseeing, Charter Bus Drivers, Gen. Promotions Emps., & Emps. of Affiliated Indus., Maltster, Laborers, Syrup, Yeast, Food, Vinegar, Brewery, Recycling & Miscellaneous Workers of Chi. & Vicinity, Ill., Loc. Union No. 744*, 280 F.3d 1133, 1144 (7th Cir. 2002); *Int’l Union, United Mine Workers of Am. v. Marrowbone Dev. Co.*, 232 F.3d 383, 389 (4th Cir. 2000); *Leed Architectural Prods., Inc. v. United Steelworkers of Am., Loc. 6674*, 916 F.2d 63, 65 (2d Cir. 1990); *Delta Queen Steamboat Co. v. Dist. 2 Marine Eng’rs Beneficial Ass’n*, 889 F.2d 599, 604 (5th Cir. 1989); *Bruno’s, Inc. v. United Food & Com. Workers Int’l Union, Loc. 1657*, 858 F.2d 1529, 1532 (11th Cir. 1988)).

Nor do most of the court opinions that the majority adds to its *SSA* list of citations here. For example, in *In re Marine Pollution Service, Inc. v. Local 282, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America*,²⁸ the arbitrator's award was deficient because it "was drawn not from the contract," but from "his notions of equity."²⁹ In *Georgia-Pacific Corp. v. Local 27, United Paperworkers International Union*,³⁰ the arbitrator found that an employee met the CBA's requirements for an immediate discharge, but the arbitrator set aside the employee's discharge based on his "normal authority" – based on nothing in the CBA – to mitigate the discharge.³¹ Therefore, he "exceeded the authority granted to him by the parties,"³² "ignore[d]" the CBA, and substituted "his own brand of industrial justice" for the CBA's terms.³³ And *United Steelworkers of America, AFL-CIO-CLC v. USX Corp.*³⁴ involved an arbitration award that – "as interpreted, and enforced, by the district court"³⁵ – allowed the parties to completely bypass arbitration over a class of grievances over which the CBA expressly gave both parties the right to demand, and to obtain, arbitration.³⁶ There was no indication that the problematic aspect of the award in that case was based on the arbitrator's interpretation of some provision in the CBA.

In any event, to the extent that any of the cited court opinions could be read to support the majority's standard of review, I would not apply those decisions. As I stated in *SSA*, "while some . . . courts may be less deferential in scrutinizing arbitral awards," the court opinions that have shown the greatest deference to arbitrators "are demonstrably more consistent with the relevant longstanding Supreme Court jurisprudence concerning the proper judicial posture in reviewing arbitrators' decisions."³⁷

Moreover, even if I agreed that the majority's standard of review were the appropriate one – which I do not – I disagree with the majority's finding that the award clearly conflicts with the CBA's express provisions. In effect, the majority finds that: (1) the phrase "regulations of appropriate authorities" in Section 1 *necessarily* means government-wide regulations, including those promulgated by the Authority;³⁸ and (2) the phrase "Agency regulations" in Section 3 *necessarily* means regulations of the Department of Labor, and *not* Authority

regulations.³⁹ But the CBA does not define those terms – a factor that federal courts and the Authority frequently

²⁸ 857 F.2d 91 (2d Cir. 1988).

²⁹ *Id.* at 95; *see also id.* at 96 (noting that the arbitrator "did not purport to base his award on any express or implied term in the [CBA]").

³⁰ 864 F.2d 940 (1st Cir. 1988).

³¹ *Id.* at 945.

³² *Id.* at 941.

³³ *Id.* at 946.

³⁴ 966 F.2d 1394 (11th Cir. 1992) (*USX*).

³⁵ *Id.* at 1403.

³⁶ *Id.*; *see also Sullivan, Long & Hagerty, Inc. v. Loc. 559, Laborers' Int'l Union of N. Am.*, 980 F.2d 1424, 1430 n.6 (11th Cir. 1993) (noting that, in *USX*, the circuit court had reversed a district-court injunction that "allowed the union to avoid arbitrating claims from the employer's contracting out certain work despite the fact that the contract clearly required such disputes to be submitted to arbitration").

³⁷ *SSA*, 74 FLRA at 577.

³⁸ Majority at 7.

³⁹ *Id.*

have relied on to deny essence exceptions.⁴⁰ Nor are those terms so free of ambiguity that the Arbitrator's interpretations of them necessarily conflict with them. The majority's interpretations of those terms may be better than the Arbitrator's, but that is not the question before us when assessing whether an award draws its essence from

a CBA.⁴¹ Whether or not we agree with the Arbitrator's interpretation, it was his interpretation for which the parties bargained.⁴² As such, his interpretation "holds, however good, bad, or ugly."⁴³

⁴⁰ See, e.g., *Ball Metal Beverage Container Corp. v. Loc. 129, United Auto., Aerospace, & Agric. Implement Workers of Am.*, No. 21-10755, 2022 WL 340573, at *5 (5th Cir. Feb. 4, 2022) (*Ball Metal*) ("We have determined that explicating broad CBA terms like 'cause,' when left undefined by contract, is the arbitrator's charge."); *Delek Ref., Ltd. v. United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO*, No. 6:15-CV-00491-RWS-KNM, 2017 WL 4479615, at *10 (E.D. Tex. Feb. 7, 2017), *report and recommendation adopted sub nom. Delek Ref., Ltd. v. United Steel*, No. 6:15-CV-00491-RWS-KNM, 2017 WL 4510591 (E.D. Tex. Mar. 27, 2017), *aff'd sub nom. Delek Ref., Ltd. v. Loc. 202, United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO*, 891 F.3d 566 (5th Cir. 2018) (finding that "the CBA does not define any of the [relevant] exceptions[,] leaving those terms ambiguous and subject to interpretation"); *Mercy Med. Ctr. v. Or. Nurses Ass'n*, No. 3:15-CV-00699-PK, 2015 WL 12966314, at *5 (D. Or. Dec. 29, 2015), *report and recommendation adopted*, No. 3:15-CV-00699-PK, 2016 WL 2946272 (D. Or. Apr. 22, 2016), *aff'd*, 726 F. App'x 591 (9th Cir. 2018) (holding that "[b]ecause the CBA did not define just cause, [the arbitrator] was permitted to reference the industrial common law in resolving the issue"); *Campbell v. Nev. Prop. 1 LLC*, No. 2:10-CV-02169-APG-PAL, 2013 WL 6118622, at *3 (D. Nev. Nov. 20, 2013), *aff'd*, 672 F. App'x 698 (9th Cir. 2016) (holding that, "[a]bsent a definition" of a particular term in an agreement, "arbitrators have the authority to interpret" that term); *Crozer-Chester Med. Ctr. v. Crozer-Chester Nurses Ass'n*, No. 11-7300, 2012 WL 2500930, at *6 (E.D. Pa. June 29, 2012) (*Crozer-Chester*) ("It is within the province of an arbitrator to interpret ambiguous, undefined phrases where such contractual ambiguities exist.") (citing *Exxon Shipping Co. v. Exxon Seamen's Union*, 73 F.3d 1287, 1296 (3d Cir. 1996) (citing *United Transp. Union Loc. 1589 v. Suburban Transit Corp.*, 51 F.3d 376, 380-81 (3d Cir. 1995) (*Suburban Transit*)); *Consolidation Coal Co. v. United Mine Workers of Am.*, No. 1:09CV61, 2010 WL 4628537, at *4 (N.D. W.Va. Nov. 8, 2010) ("This Court has no warrant to overturn the arbitrator because he consulted an outside source to define a term without a specific definition in the CBA."); *Loc. Union No. 1 Bakery, Confectionary, Tobacco Workers & Grain Millers Int'l Union, AFL-CIO-CLC v. Alpha Baking Co.*, No. 07 C 4166, 2008 WL 4067105, at *2 (N.D. Ill. Aug. 28, 2008) ("When a term is left undefined in a [CBA], an arbitrator may bring to bear his own knowledge and experience to interpret its meaning."); see also *Meridian Med. Techs., Inc. v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am., Loc. Union No. 688*, 158 F.4th 924, 929 (8th Cir. 2025) (citing *Bhd. of Maint. Way Emps. v. Terminal R.R. Ass'n of St. Louis*, 307 F.3d 737, 739 (8th Cir. 2002)); *Marine Club Manager, Inc. v. RB Com. Mortg. LLC*, No. 23-1841, 2024 WL 3617552, at *5 (4th Cir. 2024); *Bimbo Bakeries USA, Inc. v. Bakery, Confectionery, Tobacco Workers & Grain Millers, Loc. 53*, No. 24-9153 (ES) (MAH), 2025 WL 2731068, at *10 (D. N.J. Sept. 25, 2025); *Nat'l Nurses Org. Comm. v. MH Hosp. Manager, LLC*,

No. 1:23-cv-00321 MR-WCM, 2024 WL 1292362, at *4 (W.D. N.C. March 26, 2024); *Comcast of N.J. LLC v. IBEW Loc. Union No. 827*, No. 22-3239, 2024 WL 340692, at *3 (3d Cir. Jan. 30, 2024); *Dayton Heidelberg Distrib. Co. v. Loc. Union No. 957, Int'l Bhd. of Teamsters*, No. 3:18-cv-294, 2019 WL 3082406, at *5 (S.D. Ohio July 12, 2019); *SEIU, Loc. 32BJ v. Dayton Beach Park No. 1 Corp.*, No. 18 Civ. 3887 (LGS), 2019 WL 120998, at *2 (S.D.N.Y. Jan. 4, 2019) (citing *Niagara Blower Co. v. Shopmen's Loc. Union 576 of the Int'l Ass'n of Bridge, Structural, Ornamental, & Reinforcing Iron Workers*, No. 16-CV-262, 2018 WL 4382371, at *6 (W.D.N.Y. Sept. 14, 2018)); *Comprehensive Healthcare Mgmt. Servs., LLC v. SEIU Healthcare Pa., CTW, CLC*, No. 16-358, 2016 WL 6946849, at *4 (W.D. Pa. Nov. 10, 2016), *report and recommendation adopted*, 2016 WL 7243622 (W.D. Pa. Dec. 14, 2016); *Chevron Oronite Co., LLC v. United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied-Indus. & Serv. Workers Int'l Union, Loc. 13-447*, No. 11-0560, 2012 WL 3683539, at *4 (E.D. La. Aug. 27, 2012); *NYSARC-Rockland Cnty. Chapter v. Loc. 253, Dist. Council 1707, AFSCME, ex rel. Palefsky*, No. 10-CV-7955 (CS), 2011 WL 13557549, at *6 (S.D.N.Y. Sept. 30, 2011); *United Steel, Paper & Forestry, Rubber Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union v. Sec. DBS*, No. H-06-2062, 2007 WL 9822668, at *4 (S.D. Tex. June 14, 2007); *Chamberlain Mfg. Co. v. Loc. Lodge No. 847*, 474 F. Supp. 2d 682, 688 (M.D. Pa. 2007); *Tampa Elec. Co. v. Int'l Bhd. of Elec. Workers of Am., Loc. 108*, No. 8:05-CV-497-T-17TBM, 2006 WL 8440045, at *6 (M.D. Fla. Sept. 13, 2006); *U.S. Dep't of the Navy, Naval Med. Ctr., Camp Lejeune, Jack., N.C.*, 73 FLRA 137, 139-40 (2022).

⁴¹ *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 599 (1960) ("It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his."); *Browning-Ferris Indus. of Ohio, Inc. v. Int'l Bhd. of Teamsters, Loc. Union No. 20*, No. 20-4073, 2022 WL 684579, at *6 (6th Cir. March 8, 2022) ("This may be the better reading of the contractual language. . . . But the best reading is not the only reading available."); *Ball Metal*, 2022 WL 340573, at *6 ("We hold only that [the arbitrator's] interpretation is an 'arguable reading' of the CBA, not that it is the best or even a good one. The correctness of the arbitrator's interpretation is irrelevant so long as it was an interpretation." (footnote omitted) (internal quotation marks omitted)); *Alcan Packaging Co. v. Graphic Commc'n Conf., Int'l Bhd. of Teamsters & Loc. Union No. 77-P*, 729 F.3d 839, 843 (8th Cir. 2013) ("Erroneous textual analysis . . . does not justify disregarding the decision of the arbitrator agreed upon by the parties to resolve their dispute . . ."); *Crozer-Chester*, 2012 WL 2500930, at *6 (finding that the employer's "contention that its own interpretation of 'just cause' is more reasonable than the result decided by the [a]rbitrator is not the relevant test") (citing *Suburban Transit*, 51 F.3d at 380-81).

⁴² *Mich. Fam. Res., Inc. v. SEIU, Loc. 517M*, 475 F.3d 746, 756 (6th Cir. 2007).

⁴³ *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 573 (2013).

Further, even assuming that § 2429.19 is a “regulation[] of [an] appropriate authorit[y]” within the meaning of Section 1,⁴⁴ the award does not directly conflict with Section 1. In this regard, as noted above, the Arbitrator emphasized the Agency’s acknowledgment that § 2429.19 itself does not “destabilize[]” “currently effective agreements”⁴⁵ – an acknowledgment that was consistent with the Authority’s own pronouncements in promulgating § 2429.19.⁴⁶ In other words, the Arbitrator effectively read the Authority’s own limitation on § 2429.19’s applicability as *part* of § 2429.19 – the alleged “regulation[] of [an] appropriate authorit[y]”⁴⁷ – and found that *the regulation itself* provided that it did not govern over the CBA. Nothing compelled the Arbitrator to interpret Section 1’s reference to the Agency being governed by “future . . . regulations of appropriate authorities” as including regulations that, themselves, said that they would not destabilize existing CBAs.⁴⁸

In short, the Arbitrator took into account the default legal rule; set forth, reviewed, and interpreted the CBA’s wording, including provisions containing undefined terms; looked to whether the parties, in the CBA, supplanted that default legal rule with a different rule; concluded that they had not, relying, in part, on the Agency’s acknowledgment that § 2429.19 itself does not supplant existing CBAs; and applied his interpretation of the agreement to the facts before him. He clearly – far more than “arguably” – construed and applied the CBA.⁴⁹ And there is no evidence that he based the merits award “wholly on considerations external to the CBA.”⁵⁰ As a consequence, his award is not irrational, unfounded, implausible, or in manifest disregard of the parties’ agreement.⁵¹

For the above reasons, I would deny the essence exception that the majority grants, and I would resolve the remaining exceptions. Accordingly, I dissent.

⁴⁴ Merits Award at 3.

⁴⁵ *Id.* at 20.

⁴⁶ FR Notice, 85 Fed. Reg. at 41170 (emphasizing that “currently effective agreements will not be destabilized if they contain negotiated provisions that conflict with the rule”).

⁴⁷ Merits Award at 3.

⁴⁸ *Id.* Contrary to the majority’s implication, I am not “defer[ring] to an arbitrator’s interpretation of a government-wide regulation.” Majority at 9 n.66. I am merely saying that, even if § 2429.19 could be considered a “regulation[] of [an] appropriate authorit[y]” under Section 1, nothing precluded the Arbitrator from considering the Authority’s statements regarding § 2429.19 as part of that regulation *for purposes of interpreting Section 1*.

⁴⁹ *Misco*, 484 U.S. at 38.

⁵⁰ *SSA*, 74 FLRA at 578 (emphasis omitted).

⁵¹ *See, e.g., Ass’n of Admin. L. Judges, IFPTE*, 74 FLRA 325, 332-33 (2026) (Member Arrington concurring) (rejecting essence argument where excepting party did not demonstrate that award was irrational, unfounded, implausible, or in manifest disregard of the agreement).