

74 FLRA No. 87

UNITED STATES
DEPARTMENT OF HEALTH AND HUMAN
SERVICES
(Agency)

and

NATIONAL TREASURY
EMPLOYEES UNION
(Union)

0-AR-6103

DECISION

October 21, 2026

Before the Authority: Colleen Duffy Kiko, Chairman,
and Anne Wagner and Charles O. Arrington, Members¹

I. Statement of the Case

Arbitrator Michael J. Falvo issued an award finding that the Agency implemented a memorandum issued by President Donald J. Trump, entitled “Return to In-Person Work” (the memorandum),² in a way that violated the parties’ collective-bargaining agreement and constituted an unfair labor practice (ULP) under the

¹ Member Arrington has not participated in this decision.

² 90 Fed. Reg. 8251 (Jan. 20, 2025) (Presidential Memorandum).

³ 5 U.S.C. §§ 7101-7135.

⁴ Section A of Article 26.8 concerns telework and provides, in relevant part:

1. The Employer may terminate, suspend, or modify, an employee’s participation in the telework program for cause, such as:
 - a. Failure to meet or continue to meet the eligibility criteria for telework in this Article;
 - b. Failure to adhere to the provisions of the telework agreement . . . and/or of this Article;
 - c. Failure to accurately and truthfully report time worked;
 - d. Organizational exigencies that impact on the mission of the Employer, and require the employee to perform work at the official duty station;
 - e. For misconduct in connection with the employee’s obligations under the Workplace Flexibilities telework or remote[-]work programs as set forth in this Article/[telework agreement].

Federal Service Labor-Management Relations Statute (the Statute).³ The Agency filed exceptions challenging the award on nonfact, essence, and exceeded-authority grounds. For the reasons explained below, we find that the Agency does not demonstrate that the award is deficient on any of these grounds, and we deny the exceptions.

II. Background and Arbitrator’s Award

The parties executed their agreement in July 2023. Article 26 of the agreement (Article 26) concerns the Agency’s telework and remote-work program. Article 26, Section 8 (Article 26.8) establishes the process for terminating employees’ participation in the telework and remote-work programs “for cause” in accordance with a list of illustrative criteria.⁴ In January 2025, President Trump issued the memorandum, which states that executive-branch agencies “shall, as soon as practicable, take all necessary steps to terminate remote[-]work arrangements and require employees to return to work in-person at their respective duty stations on a full-time basis.”⁵ The memorandum further requires that its implementation be “consistent with applicable law.”⁶

On February 7, 2025, the Agency issued a directive, notifying employees that it had revised its telework and remote-work policy to implement the memorandum (the directive). The directive stated that the Agency would require all employees to work at an Agency facility “unless otherwise excepted consistent with applicable law.”⁷ The directive further stated that “only situational and ad hoc telework agreements would be

Exceptions, Attach. 2, National Collective-Bargaining Agreement (CBA) at 148. Section B of Article 26.8 concerns remote work and provides, in relevant part:

1. The Agency may terminate or modify an employee’s remote[-]work arrangement (unless the employee was hired as a remote worker) for cause, for the reasons described [in] Section 3H3 of this Article. When deciding to terminate a remote[-]work agreement, the Employer will document and be able to demonstrate the reasons for the termination. . . .
2. For[-]cause termination or modification will be based on one of the following:
 - a. the employee is no longer eligible for the reasons cited in subsections 3H3 above;
 - b. the employee does not comply with the terms of the written [agreement] for remote work (5 U.S.C. § 6502(b)(3)); or
 - c. circumstances in which work is no longer portable.

Id. at 149.

⁵ Award at 4 (quoting Presidential Memorandum, 90 Fed. Reg. at 8251).

⁶ *Id.*

⁷ *Id.* at 8 (quoting Agency summary of the directive); *see also* Opp’n, Ex. C, Directive at 1.

established going forward.”⁸ Consequently, bargaining-unit employees, including those who had been hired based on remote-job announcements, were required to report to an Agency facility by dates specified in the directive.

The Union filed a grievance alleging that the directive violated multiple sections of Article 26, as well as Article 4, Section 1 of the parties’ agreement (Article 4.1), which concerns the resolution of conflicts between provisions of the parties’ agreement and laws, government-wide regulations, or Agency regulations.⁹ The grievance also alleged that the Agency violated § 7114(a)(1) of the Statute¹⁰ by repudiating the parties’ agreement, and § 7116(a)(7) of the Statute¹¹ by enforcing a new government-wide regulation that conflicted with the parties’ preexisting agreement. The Agency denied the grievance, and the parties proceeded to arbitration.

Rather than framing the issues, the Arbitrator listed and responded to the issues submitted separately by each party. As relevant here, he considered whether the Agency’s implementation of the memorandum violated the Telework Enhancement Act of 2010 (the Telework Act);¹² Articles 4 and 26 of the parties’ agreement;¹³ and §§ 7114(a)(1) and 7116(a)(1), (5), (7), and (8) of the Statute.¹⁴

The Arbitrator first found that the Union could “not rely on the [Telework Act]” because it was not part of the grievance, and he denied the Union’s claim related to that statute.¹⁵

As for the contractual issues, the Arbitrator interpreted Article 4, Section 1B (Article 4.1B) as “prohibit[ing] the enforcement of any rule or regulation

published after the effective date of the [parties’] agreement that conflicts with the terms of the [a]greement.”¹⁶ He found that the memorandum was published after the effective date of the parties’ agreement. Notwithstanding Article 4.1B, he acknowledged that Article 4, Section 2B of the parties’ agreement (Article 4.2B)¹⁷ allows the Agency to immediately implement a “government-wide rule or regulation that the [Agency] is obligated by law to implement immediately upon issuance.”¹⁸ However, the Arbitrator found that Article 4.2B did not apply because the Agency was not legally obligated to immediately implement the memorandum.¹⁹ He concluded that the directive implementing the memorandum violated the parties’ agreement, including Article 26.8, because the Agency did not terminate remote-work and telework agreements “only ‘for cause’ and in accordance with the listed criteria.”²⁰

Addressing the alleged ULPs, the Arbitrator first restated the wording of the memorandum, including that it “shall be implemented consistent with applicable law.”²¹ He then explained that “§ 7116(a)(7) [of the Statute] makes it [a ULP] for an agency to ‘enforce any rule or regulation . . . which is in conflict with any applicable collective[-]bargaining agreement if the agreement was in effect before the rule or regulation was prescribed.’”²² The Arbitrator found that the memorandum is a “rule or regulation” within the meaning of § 7116(a)(7).²³ Because the agreement was in effect before the memorandum, and the Agency’s implementation of the memorandum conflicted with the agreement, the Arbitrator found that the Authority’s decisions in *U.S. Department of Veterans Affairs (VA)*²⁴ and *AFGE, National Citizenship and*

⁸ Award at 8.

⁹ CBA at 32.

¹⁰ 5 U.S.C. § 7114(a)(1).

¹¹ *Id.* § 7116(a)(7) (making it a ULP for an agency “to enforce any rule or regulation . . . 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 *Id.* §§ 6501-6105.

¹³ Award at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 51 n.11; *see also id.* at 2.

¹⁶ *Id.* at 52. Article 4.1B states, in relevant part, that “[a]ll government-wide regulations . . . in effect as of the effective date of this [a]greement, have full force and authority. To the extent they may be inconsistent with the provisions of this [a]greement; the government-wide regulations will supersede and govern.” CBA at 32 (emphasis added).

¹⁷ Article 4.2 states, in relevant part:

A. Any rule or regulation published after the effective date of this Agreement, over which the Employer is obligated to bargain to the extent required by law, will not be enforced for bargaining[-]unit employees . . . if it conflicts with the specific terms of the Agreement. . . .

B. . . . Section 2A above shall not apply to any government-wide rule or regulation that the Employer is obligated by law to implement immediately upon issuance of the regulation.

CBA at 32.

¹⁸ Award at 53 (emphasis added).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 51 (quoting Presidential Memorandum, 90 Fed. Reg. at 8251).

²² *Id.*

²³ *Id.* at 52.

²⁴ 72 FLRA 287 (2021).

*Immigration Services*²⁵ “compel[led] the conclusion” that the Agency “violated the Statute.”²⁶

The Arbitrator also found that the Agency violated §§ 7114(a)(1) and 7116(a)(1), (5), (7), and (8) of the Statute “by repudiating the parties’ [agreement] when it issued [the directive].”²⁷ Despite finding a violation of § 7116(a)(5), which concerns good-faith negotiations and consultation,²⁸ the Arbitrator did not specifically discuss the Agency’s bargaining obligations other than to say that the Agency had “timely” invited the Union “to engage in post-implementation bargaining.”²⁹

As remedies, the Arbitrator directed the Agency to rescind the directive, reinstate telework and remote-work agreements “terminated as a result of the [directive],” and post a notice stating that the Agency “violated the Statute by repudiating the [parties’] agreement.”³⁰

The Agency filed exceptions to the award on February 17, 2026, and the Union filed an opposition to the exceptions on March 19, 2026.³¹

III. Analysis and Conclusions

A. The Agency does not demonstrate that the award is based on nonfacts.

The Agency claims that the award is based on several nonfacts.³² To establish that an award is based on a nonfact, the excepting party must establish that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result.³³ Arbitrators’ interpretations of collective-bargaining agreements and legal conclusions cannot be challenged as nonfacts.³⁴ Additionally,

arguments based on a misunderstanding of an award do not demonstrate that the award is based on nonfacts.³⁵ Further, disagreement with an arbitrator’s evaluation of evidence, including the weight accorded such evidence, does not provide a basis for finding that an award is based on a nonfact.³⁶

First, the Agency argues that the Arbitrator found that “the Agency terminated all . . . telework and remote-work agreements,” and that this purported finding was erroneous because “evidence established that telework and remote work continued to be available, albeit in more limited circumstances.”³⁷ However, the Arbitrator did not find that the Agency terminated *all* telework and remote-work agreements. As such, the Agency’s argument misunderstands the award. Therefore, the argument does not demonstrate that the award is based on a nonfact.³⁸

Second, the Agency asserts that the Arbitrator “determined that the Agency violated 5 U.S.C. § 7116(a)(1), (5), (7), and (8) by implementing the [directive] without satisfying its statutory bargaining obligations,”³⁹ and that this purported finding is underpinned by “incorrect factual assumptions regarding notice and bargaining.”⁴⁰ The Agency does not identify the Arbitrator’s allegedly incorrect “assumptions,” but asserts that “[t]he record” supports its argument that a “finding of a bargaining violation is deficient where it ignores undisputed evidence of notice and an opportunity to bargain.”⁴¹ According to the Agency, the record “demonstrates” that: (1) the Agency complied with Articles 3 and 26 of the parties’ agreement by notifying the Union and employees of the impending telework changes and offering post-implementation bargaining; and (2) the Union did not “request a briefing or provide proposals in line with Article 2 of the parties’ agreement.”⁴²

²⁵ 73 FLRA 490 (2023).

²⁶ Award at 52.

²⁷ *Id.* at 2 (answering “yes” to the Union’s repudiation issue), 53 (directing Agency to post a notice “admitting that the Agency violated the Statute by repudiating the collective[-]bargaining agreement”); see also *id.* at 52 (finding that “the Agency breached the [parties’] agreement”).

²⁸ 5 U.S.C. § 7116(a)(5).

²⁹ Award at 51 n.11.

³⁰ *Id.* at 53.

³¹ On February 26, 2026, the Authority’s Office of Case Intake and Publication issued an order notifying the Agency that the exceptions were deficient because they did not include a copy of the award, as required by 5 C.F.R. § 2425.4(a)(5), and directing the Agency to correct the deficiency by filing a copy of the award by March 12. The Agency corrected the deficiency by filing a copy of the award on March 11.

³² Exceptions at 7-11.

³³ *U.S. DHS, U.S. CBP*, 74 FLRA 403, 408 (2026) (*CBP*) (citing *U.S. Dep’t of VA, John J. Pershing VA Med. Ctr., Poplar Bluff, Mo.*, 73 FLRA 498, 501 (2023)).

³⁴ *AFGE, Council 222*, 73 FLRA 54, 55 (2022) (*Council 222*) (citing *NAIL, Loc. 5*, 70 FLRA 550, 552 (2018)).

³⁵ *AFGE, Loc. 3601*, 73 FLRA 515, 517 (2023) (*Local 3601*) (citing *AFGE, Council of Prison Locs. #33, Loc. 0922*, 69 FLRA 351, 353 (2016) (Member Pizzella concurring)).

³⁶ *U.S. Dep’t of the Army, Fort Huachuca, Ariz.*, 74 FLRA 317, 320 (2025) (*Fort Huachuca*) (citing *NTEU, Chapter 46*, 73 FLRA 654, 655-56 (2023)).

³⁷ Exceptions at 7; see also *id.* at 9 (asserting that Arbitrator found that “all telework and remote[-]work agreements were terminated”).

³⁸ *Local 3601*, 73 FLRA at 517.

³⁹ Exceptions at 8.

⁴⁰ *Id.* at 9.

⁴¹ *Id.* at 8-9.

⁴² *Id.* at 8. Article 3 concerns midterm bargaining. CBA at 25-31. Article 2 – Contract Duration and Termination – does not mention briefing or proposals. See CBA at 23-24.

However, the Agency fails to provide record citations for any aspect of the proffered facts beyond an inapposite citation to testimony concerning the memorandum's legal effect.⁴³ Moreover, one of its supporting legal authorities has a fictitious citation⁴⁴ and the other three do not concern the legal impact of failing to request bargaining following notice of a change.⁴⁵

Under § 2425.6(b) of the Authority's Regulations, a party arguing that an award is deficient on the listed private-sector grounds, including nonfact, has an express duty to "explain how, under standards set forth in the decisional law of the Authority or [f]ederal courts," the award is deficient.⁴⁶ Section 2425.6(e)(1) of the Authority's Regulations provides that an exception "may be subject to . . . denial if . . . [t]he excepting party fails to . . . support a ground" listed in § 2425.6(a)-(c).⁴⁷ Because the Agency provides no relevant factual and legal support for its second nonfact assertion, we deny this nonfact argument as unsupported.⁴⁸

We note that, in addition to the errors discussed above,⁴⁹ nine more citations that the Agency provides are entirely fictitious,⁵⁰ eleven do not support the propositions for which they are cited,⁵¹ and ten have partially incorrect citations *and* do not support the propositions for which

⁴³ See Exceptions at 8 & n.24 (citing Exceptions, Attach. C, Hr'g Tr., at 236, lines 9-15, which concern the Agency's interpretation of the memorandum rather than the notice it provided the Union).

⁴⁴ See *id.* at 9 n.26. The Agency cites "*U.S. Dep't of the Air Force, 913th Air Wing*, 57 FLRA 469, 472 (2001)," which does not exist.

⁴⁵ See Exceptions at 9 nn.26-27 (citing *U.S. DHS, U.S. CBP*, 66 FLRA 335, 338 (2011) (concerning alleged nonfacts disputed at arbitration); *Dep't of the Treasury, IRS v. FLRA*, 707 F.2d 574, 580 (D.C. Cir. 1983) (concerning remand to Authority where bargaining proposal possibly affected internal security); *Dep't of HHS, SSA*, 24 FLRA 403, 407 (1986) (concerning which standard to use when identifying changes requiring bargaining)).

⁴⁶ 5 C.F.R. § 2425.6(b); *id.* § 2425.6(b)(2)(ii).

⁴⁷ *Id.* § 2425.6(e)(1).

⁴⁸ See, e.g., *AFGE, Loc. 2338*, 71 FLRA 1131, 1133 & n.30 (2020) (Member Abbott dissenting in part on other grounds) (denying nonfact exception that party "fail[ed] to support"); see also *NAIL, Loc. 5*, 65 FLRA 495, 499 n.4 (2011) (denying nonfact exception as unsupported where excepting party provided "no evidence to support its claim" and failed "to identify any nonfact"); *AFGE, Loc. 405*, 63 FLRA 149, 152 n.9 (2009) (rejecting nonfact arguments where party failed to "provide supporting evidence for its claims").

⁴⁹ See notes 43-45 above.

⁵⁰ Exceptions at 2 n.4 ("*U.S. Envtl. Prot. Agency*, 43 FLRA 852, 861-62 (1991)"), 4 n.8 ("*U.S. Dep't of the Treasury, IRS v. NTEU*, 68 FLRA 677, 680 (2015); *U.S. DOJ, INS v. AFGE*, 64 FLRA 300, 303 (2009)"), 4 n.14 ("*U.S. DHS, TSA v. AFGE*, 68 FLRA 243, 245 (2015)"), 5 n.16 ("*U.S. DOJ, Fed. BOP v. AFGE*, 69 FLRA 730, 733 (2016)"), 5 n.18 ("*U.S. DHS, CBP v. NTEU*, 70 FLRA 524, 528 (2018)"), 6 n.20 ("*Dep't of the Air Force, 375th Mission Support Squadron*, 67 FLRA 398, 400 (2014)"), 7 n.21 (citing same fictitious cases as *id.* at 5 nn.16, 18).

⁵¹ *Id.* at 2 n.4 (citing *SSA*, 47 FLRA 1004, 1016-17 (1993) to support argument "that agencies may immediately implement government-wide rules and regulations that do not conflict with lawful provisions of a collective[-]bargaining agreement, with any bargaining obligation arising only after implementation," but the case concerns whether there was no duty to engage in mid-term bargaining because the matter at issue was "covered by" the parties' agreement), 3 n.6 (citing two inapposite cases to support argument that Arbitrator lacked authority as discussed at note 116 below), 3 n.7 (citing *U.S. DOJ, Fed. BOP*, 70 FLRA 398, 400 (2018) to support recitation of essence standard, but the case concerns a previous management-rights test), 6 n.19 (same, regarding essence standard), 4 n.13 (citing *U.S. Dep't of the Treasury, IRS v. FLRA*, 996 F.2d 1246, 1250 (D.C. Cir. 1993) and *AFGE, Loc. 2004*, 55 FLRA 6, 9 (1998) to support argument that "arbitrators may not enforce collective[-]bargaining provisions that conflict with law or government-wide rules," but those cases concern, respectively, negotiability and whether arbitrator applied correct standard for environmental differential pay in interpreting contract provision that incorporated federal standard), 5 n.17 (citing *NTEU v. FLRA*, 848 F.2d 1273, 1276 (D.C. Cir. 1988) to support argument that "telework participation is not an employee entitlement," but that case concerns probationary employees), 8 n.25 (citing *U.S. Dep't of the Army, Letterkenny Army Depot, Chambersburg, Pa.*, 60 FLRA 456, 457 (2004) to support argument that the Union waived its bargaining rights, but that case concerns an agency's unilateral withdrawal from negotiations), 11 n.29 (citing *Dep't of the Navy, Marine Logistics Base, Albany, Ga.*, 692 F.2d 48, 59 (D.C. Cir. 1992) and *Dep't of HHS, SSA*, 47 FLRA 1206, 1212 (1993) to support its argument that it had no duty to bargain under the "covered-by doctrine," where those cases concern, respectively, an earlier version of the Authority's covered-by test and the Authority's abandonment of the "clear and unmistakable waiver" standard in good-faith-bargaining ULPs).

they are cited.⁵² Overall, twenty-two of the exceptions brief's twenty-nine footnotes – and thirty-five of the forty-two legal or record citations – are fictitious, erroneous, or irrelevant. Based on the nature and scope of these errors, it appears that the Agency may have used a generative artificial-intelligence (AI) tool in drafting its brief.⁵³ While nothing prohibits parties from using AI tools when preparing filings for submission to the Authority, we caution those who do so to be aware that AI continues to present significant risks of error.⁵⁴ Therefore, parties should take steps to verify the accuracy of any AI-generated material and ensure that their filings satisfy all regulatory requirements.⁵⁵

Next, the Agency challenges as nonfacts: (1) the Arbitrator's "assumption that Article 26 prohibited the Agency's actions";⁵⁶ and (2) the award's "premise that the

Agency had a bargaining obligation" notwithstanding Article 4.1, which "expressly provides that future government-wide rules prevail."⁵⁷ Relatedly, the Agency argues that the Arbitrator "ignor[ed] evidence that Article 26 expressly permits management to suspend or terminate telework and remote work" for "mission or operational needs"⁵⁸ – in effect, contending that the Arbitrator should have found that the memorandum established a mission or operational need within the meaning of Article 26. These arguments challenge the Arbitrator's contractual interpretations and, as such, do not provide a basis for finding the award is based on nonfacts.⁵⁹

The Agency also argues that the Arbitrator made "clearly erroneous factual assumptions regarding the enforceability of executive orders."⁶⁰ In particular, the

⁵² *Id.* at 3 n.5 (erroneous and inapposite citation as discussed at note 116 below), 3 n.7 (incorrect opposing party, reporter page, and pincite in "*U.S. DHS, CBP v. NTEU*, 70 FLRA 524, 528 (2018)," which is used to support recitation of essence standard, but concerns a previous management-rights test), 6 n.19 (same), 5 n.15 (incorrect pincite in "*U.S. Dep't of the Air Force, Robins AFB v. AFGE*, 56 FLRA 541, 544 (2000)," which is used to support recitation of essence standard, but concerns violation of the Back Pay Act), 5 n.17 (incorrect excepting party in "*U.S. Dep't of Com., PTO*, 66 FLRA 235, 240 (2011)," which is used to support the statement that "telework participation is not an employee entitlement," but concerns de minimis changes to conditions of employment), 6 n.20 (incorrect petitioner in "*U.S. DHS, Border Patrol v. FLRA*, 654 F.3d 91, 94-95 (D.C. Cir. 2011)," which is used to support discussion of the repudiation standard, but concerns the covered-by doctrine), 7 n.22 (incorrect opposing party in "*U.S. Dep't of the Air Force, Langley AFB v. AFGE*, 39 FLRA 966, 969 (1991)" and incorrect excepting party and reporter page in "*U.S. Dep't of VA, Med. Ctr., Richmond*, 63 FLRA 203, 205 (2009)," which are used to support the claim that "an award is based on a [nonfact] where an arbitrator's factual finding is directly contradicted by uncontroverted record evidence," but the first case concerns the refusal to arbitrate and the second denies, rather than grants, a nonfact exception), 8 n.23 (incorrect pincite in "*U.S. Dep't of the Treasury, IRS*, 64 FLRA 426, 430 (2010)," which is used to support the statement that "[the Authority] has recognized that an award is based on a [nonfact] where an arbitrator assumes facts inconsistent with the agreement and the record evidence," but the case denies, rather than grants, a nonfact exception), 9 n.28 (erroneous and inapposite citation as addressed in the discussion including note 71 below).

⁵³ See, e.g., *Am. Backflow & Fire Prevention, Inc.*, 375 NLRB No. 31, slip op. at 1 (2026) (*Backflow*) (noting possibility of AI drafting where brief contained "citations to the hearing transcript that [did] not exist" or did not support the party's positions, "decisions that [did] not stand for the propositions for which they [were] cited and, most egregiously, . . . two purported Board decisions that [did] not exist at all"); *Matter of: Raven Investigations & Sec. Consulting, LLC*, B-423447, 2025 CPD P 81, *3 (GAO May 7, 2025) (*Raven Investigations*) (in administrative appeal, noting that cases cited in AI-drafted document "did not appear to state the principles for which the [party] cited them" and did not "match[] the citation provided").

⁵⁴ See, e.g., *Raven Investigations*, 2025 CPD P 81 at *3 ("To the extent the [party] used AI tools to help draft its responses . . . without engaging in any review of the material for accuracy – resulting in the irregularities discussed above – that practice wastes the time of all parties and GAO, and is at odds with the [GAO's] statutory mandate"); Common Instructions for Applicants to Department of Education Discretionary Grant Programs, 89 Fed. Reg. 104528, 104259 (Dec. 23, 2024) ("[I]t should be noted that the use of AI may introduce significant risks (such as . . . inaccuracy, falsification, and plagiarism), and applicants and grantees are responsible for ensuring the integrity of application materials."); see also *Backflow*, 375 NLRB No. 31, slip op. at 2 (finding that "[g]host citations purporting to be Board decisions and citations that do not stand for the proposition asserted . . . invoke the authority of the Board for propositions that it did not endorse" and "can demonstrate a party representative's apparent disregard for the Board's processes").

⁵⁵ See, e.g., Guidance on Use of Artificial Intelligence-Based Tools in Practice Before the United States Patent and Trademark Office, 89 Fed. Reg. 25609, 25614-15 (Apr. 11, 2024) (providing guidance on how to follow filing rules when drafting documents using AI, including reviewing and correcting AI-generated text); *Backflow*, 375 NLRB No. 31, slip op. at 1 (finding that "it is a foundational duty of practitioners before the Board – regardless of whether the individual is an attorney or a non-attorney representative – to ensure that their submissions do not contain fabricated citations or inaccurate references[,] . . . whether or not the filer relies on [AI] tools").

⁵⁶ Exceptions at 8.

⁵⁷ *Id.* at 10-11.

⁵⁸ *Id.* at 8.

⁵⁹ See *CBP*, 74 FLRA at 409 (denying nonfact exception "primarily concerned with challenging the [arbitrator's] interpretation" of the parties' agreement); *Council 222*, 73 FLRA at 55 (same).

⁶⁰ Exceptions at 9-10.

Agency disputes the Arbitrator's finding that "executive orders were required to be treated as regulations for purposes of 5 U.S.C. [§] 7116(a)(7)," thus becoming enforceable only upon the expiration of the parties' agreement.⁶¹ The Agency also questions the Arbitrator's "unexplained reliance" on VA in reaching this conclusion.⁶² However, the Authority has explained that an arbitrator's interpretation of Authority precedent is a question of law, which cannot be challenged as a nonfact.⁶³ In addition, the Agency bases its argument on the Arbitrator's "reli[ance] on purported [Office of Personnel Management (OPM)] guidance"⁶⁴ and his alleged failure to "acknowledge or address Articles 2 and 4" of the parties' agreement.⁶⁵ These arguments challenge the Arbitrator's legal analysis and his interpretation of the parties' agreement, respectively. Therefore, they do not provide a basis for finding that the award is based on a nonfact.⁶⁶

Finally, according to the Agency, the Arbitrator based his award on "an [i]napplicable [c]ase,"⁶⁷ specifically *438th Air Base Group (MAC), McGuire Air Force Base, New Jersey*.⁶⁸ However, the Arbitrator's only mention of that decision was in setting out the Union's arguments; he did not rely on it in his findings.⁶⁹ Further, the Agency argues that the Authority has sustained nonfact exceptions "where arbitrators rely on inapposite precedent . . . resulting in erroneous factual conclusions"⁷⁰ – and cites, for support, the Authority's decision in *U.S. Department of the Navy, Naval Undersea Warfare Center, Newport, Rhode Island (Navy)*.⁷¹ In *Navy*, the Authority denied a nonfact exception challenging an arbitrator's legal analysis. Therefore, *Navy* does not support the Agency's argument.⁷² Because this portion of the exception misunderstands the award – and challenges a legal conclusion – it does not demonstrate that the award is based on a nonfact.⁷³

For the foregoing reasons, we deny the Agency's nonfact exception.

- B. The Agency does not demonstrate that the award fails to draw its essence from the parties' agreement.

The Agency argues that the award fails to draw its essence from the parties' agreement.⁷⁴ The Authority will find that an arbitration award fails to draw its essence from a collective-bargaining agreement when the appealing 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.⁷⁵ Mere disagreement with an arbitrator's interpretation and application of an agreement does not provide a basis for finding that an award fails to draw its essence from an agreement.⁷⁶ Nor do arguments that are based on a misunderstanding of an award.⁷⁷

The Arbitrator found that the Agency's immediate implementation of the memorandum violated Article 26, because both the Statute and Article 4 prohibit the enforcement of government-wide rules and regulations promulgated after the effective date of the parties' agreement if those rules and regulations conflict with the agreement.⁷⁸ The Agency argues that this finding nullifies Article 2, Section 4 of the parties' agreement (Article 2.4).⁷⁹ Article 2.4 states: "In the event that any provisions of the [parties'] agreement shall at any time be found, declared, or made invalid . . . by operation of any law, government-wide rule or regulation, or decree, or Executive Order, the entire [a]greement will not be

⁶¹ *Id.* at 9.

⁶² *Id.* at 10.

⁶³ *AFGE, Loc. 3652*, 68 FLRA 394, 398 (2015) (citing *GSA, Region 9, L.A., Cal.*, 56 FLRA 683, 685 (2000)); *see also Council 222*, 73 FLRA at 55; *AFGE, Loc. 3954*, 73 FLRA 39, 41 (2022) (*Local 3954*) (finding arbitrator's legal conclusion provided "no basis for finding the award deficient").

⁶⁴ *See Award at 52* (when discussing VA, stating that "the guidance from [OPM] at that time," i.e., 2021, was to treat the relevant executive order "as a regulation for purposes of [§] 7116(a)(7)").

⁶⁵ Exceptions at 9.

⁶⁶ *See Local 3954*, 73 FLRA at 41 (legal conclusion); *CBP*, 74 FLRA at 409 (contractual interpretation).

⁶⁷ Exceptions at 9.

⁶⁸ 28 FLRA 1112 (1987).

⁶⁹ Award at 33 (describing Union's position).

⁷⁰ Exceptions at 9.

⁷¹ 55 FLRA 687 (1999); *see Exceptions at 9 n.28* (erroneously citing "*U.S. Dep't of the Navy, Portsmouth Naval Shipyard*, 55 FLRA 687, 691 (1999)," which has an incorrectly identified excepting party and pincite, and denies, rather than grants, a nonfact exception).

⁷² *Navy*, 55 FLRA at 692.

⁷³ *See Local 3601*, 73 FLRA at 517-18 (denying nonfact exception that "misunderstands the award"); *Navy*, 55 FLRA at 692 (denying nonfact exception challenging arbitrator's legal conclusion).

⁷⁴ Exceptions at 3-7.

⁷⁵ *U.S. Dep't of Transp., FAA*, 74 FLRA 335, 338 (2026) (*FAA*) (citing *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Mendota, Cal.*, 73 FLRA 788, 789 (2024)).

⁷⁶ *Id.* at 338-39 (citing *AFGE, Loc. 2369*, 73 FLRA 772, 773 (2023)).

⁷⁷ *U.S. DOJ, Fed. BOP, U.S. Penitentiary McCreary, Pine Knot, Ky.*, 73 FLRA 865, 866 (2024) (*BOP Pine Knot*) (citing *SSA*, 73 FLRA 708, 713 (2023)).

⁷⁸ Award at 51-53.

⁷⁹ Exceptions at 4-5.

invalidated.”⁸⁰ Although the Arbitrator noted the Agency’s views on the immediate legal effect of the memorandum,⁸¹ he did not find that the memorandum invalidated Article 26, or any other part of the parties’ agreement. Further, the Agency provides no basis for concluding that the parties’ agreement compelled the Arbitrator to make such a finding.⁸² The Agency’s argument provides no basis for finding that the award is irrational, unfounded, implausible, or in manifest disregard of the parties’ agreement.⁸³

The Agency also argues that the award nullifies Article 4.2B. According to the Agency, Article 4.2B “expressly authorizes the [e]mployer to immediately implement a government-wide rule when required by law.”⁸⁴ However, the Arbitrator found that the memorandum states that it “shall be implemented consistent with applicable law”⁸⁵ and that § 7116(a)(7) was applicable law prohibiting the memorandum’s implementation because the memorandum conflicts with Article 26.⁸⁶ Therefore, he concluded that Article 4.2B did not apply because the memorandum does not, under the circumstances in this case, legally require “implement[ation] immediately upon issuance”⁸⁷ – a determination that the Agency does not challenge as contrary to law.⁸⁸ Thus, the Agency does not show that the award ignored or rendered meaningless Article 4.2B.⁸⁹ Further, although the Agency asserts that the Arbitrator failed to “meaningfully address” its arguments concerning Articles 2 and 4, the Arbitrator fully addressed those

arguments – and the Agency provides no basis for concluding that the Arbitrator failed to do so in a “meaningful[]” way.⁹⁰ Therefore, this assertion lacks merit.

Additionally, the Agency argues that the Arbitrator’s finding of an Article 26 violation⁹¹ “failed to give effect” to Article 26.8, Section A1(d), which allows the Agency to terminate an employee’s telework participation for “[o]rganizational exigencies,” in addition to other reasons listed in Article 26.8, Section A1.⁹² The Agency argues that such exigencies include the diminished performance and increased supervision and training difficulties that allegedly result from “unrestricted telework and remote work.”⁹³ The Arbitrator noted the Agency’s interpretation of Article 26.8,⁹⁴ but found that the Agency terminated telework and remote-work agreements because of the memorandum, not for the reasons cited by the Agency.⁹⁵ As such, he found the terminations were not “in accordance with the listed criteria” in Article 26.8.⁹⁶ The Agency provides no basis for concluding that the Arbitrator was required to find that the memorandum constituted an “organizational exigenc[y]” within the meaning of Article 26.⁹⁷ Thus, the Agency’s argument does not establish that the award is irrational, unfounded, implausible, or in manifest disregard of Article 26.⁹⁸

As part of its Article 26 arguments, the Agency asserts that “provisions . . . that conflict with management

⁸⁰ CBA at 24.

⁸¹ See Award at 21-23 (Agency witnesses’ testimony that the memorandum took precedence over Article 26); *id.* at 46 (Agency argument for relying on Article 2.4 to implement memorandum immediately).

⁸² See *NTEU, Chapter 105*, 74 FLRA 257, 259-60 (2025) (*Chapter 105*) (denying essence exception where party did “not cite any contract wording that required” its preferred contractual interpretation).

⁸³ See *USDA, Food & Nutrition Serv.*, 73 FLRA 822, 824 (2024) (denying exception that “merely disagree[d] with the [a]rbitrator’s interpretation”).

⁸⁴ Exceptions at 4-5.

⁸⁵ Award at 51.

⁸⁶ *Id.* at 51-52.

⁸⁷ *Id.* at 53.

⁸⁸ To the extent that the Agency argues the Arbitrator’s interpretation of Articles 26, 2.4, or 4.2B violated the memorandum and related OPM guidance, Exceptions at 4-5, the Agency also provides no basis for finding that either authority “invalid[ated]” any provision of the parties’ agreement or required immediate implementation of the memorandum without regard for the parties’ agreement. CBA at 24; see also *U.S. Dep’t of the Treasury, BEP*, 74 FLRA 530, 533 (2026) (Member Arrington dissenting on other grounds) (noting that the memorandum and OPM guidance state that they must be “implemented consistent with applicable law” and are subject to “any collective[-]bargaining obligations” and, thus, do not excuse parties from complying with their collective-bargaining

agreements (quoting Presidential Memorandum, 90 Fed. Reg. at 8251, and OPM, Guidance on Presidential Memorandum Return to In-Person Work 3 (2025) (OPM Guidance 2025), <https://www.opm.gov/chcoc/latest-memos/guidance-on-presidential-memorandum-return-to-in-person-work.pdf>) (on file with the Federal Labor Relations Authority (FLRA)).

⁸⁹ See *Fed. Educ. Ass’n, Stateside Region*, 73 FLRA 747, 750 (2023) (denying essence exception where party did “not argue that underlying legal conclusion [wa]s contrary to law”).

⁹⁰ Exceptions at 5.

⁹¹ Award at 52-53.

⁹² Exceptions at 3-4 (quoting CBA at 32).

⁹³ *Id.* at 4 (generally citing OPM, Guidance on Collective Bargaining Obligations in Connection with Return to In-Person Work (2025), <https://www.opm.gov/media/ckjioszr/guidance-on-collective-bargaining-obligations-in-connection-with-return-to-office-2-3-25-final-1.pdf> (on file with the FLRA)).

⁹⁴ See, e.g., Award at 47, 50 (noting the Agency’s arguments that the memorandum, “issued to improve efficiency, service delivery, and accountability across the federal workforce,” was an “organizational exigenc[y]”).

⁹⁵ See *id.* at 53.

⁹⁶ See *id.*

⁹⁷ See *Chapter 105*, 74 FLRA at 259-60.

⁹⁸ See *AFGE*, 63 FLRA 627, 629 (2009) (denying essence exception where “nothing . . . in the parties’ agreement or the record establishe[d] that the [a]rbitrator was required to find, as a matter of contractual interpretation,” that the party’s preferred interpretation was correct).

rights are unlawful and unenforceable.”⁹⁹ In this regard, the Agency states that “telework participation . . . remains subject to management discretion consistent with” § 7106(a) of the Statute.¹⁰⁰ However, the Agency does not identify the management right allegedly affected, or explain how the award affects it.¹⁰¹ Therefore, to the extent the Agency is raising a contrary-to-law exception, we reject it as unsupported.¹⁰²

In a related argument, the Agency asserts that the Arbitrator disregarded a provision of Article 26 that gives supervisors authority over telework participation, and that he thereby “imposed limitations on management rights that are neither stated nor implied in the agreement.”¹⁰³ However, the Arbitrator neither disregarded nor added requirements to Article 26; he merely found that the Agency could terminate telework and remote-work agreements “only ‘for cause’ and in accordance with the . . . criteria” listed in Article 26, which did not include implementation of the memorandum.¹⁰⁴ Therefore, the Agency’s argument lacks merit.¹⁰⁵

The Agency also argues that the award fails to draw its essence from the procedural requirements of Article 46 of the parties’ agreement¹⁰⁶ because the Arbitrator relied on the Telework Act, despite the Union’s failure to raise it in the grievance.¹⁰⁷ However, as noted above, the Arbitrator explicitly found that the Union could *not* rely on the Telework Act,¹⁰⁸ and he rejected the Union’s claim based on it.¹⁰⁹ Therefore, the Agency’s argument misunderstands the award, and we reject it on that basis.¹¹⁰

Finally, the Agency asserts that the Arbitrator’s “repudiation finding is legally deficient” because it is based on the Arbitrator’s disregard of Articles 2, 4, and 26.¹¹¹ As we have already rejected the Agency’s claims that the Arbitrator disregarded those articles, this Agency assertion provides no basis for finding the award deficient.¹¹²

In short, the Agency’s arguments do not demonstrate that the award is irrational, unfounded, implausible, or in manifest disregard of the parties’ agreement. Therefore, we deny the essence exception.¹¹³

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

The Agency argues that the Arbitrator exceeded his authority in two respects.¹¹⁴ Arbitrators exceed their authority when they fail to resolve an issue submitted to arbitration, resolve an issue not submitted to arbitration, disregard specific limitations on their authority, or award relief to persons who are not encompassed by the grievance.¹¹⁵

First, the Agency asserts that “[a]rbitrators lack authority to override or invalidate actions taken pursuant to the President’s constitutional responsibilities.”¹¹⁶ The Agency also argues that challenges to executive orders and presidential memoranda fall within “federal” jurisdiction, and therefore, arbitrators “exceed their authority when

⁹⁹ Exceptions at 4 (citing *U.S. DHS, U.S. ICE*, 70 FLRA 628, 630 (2018) (Member DuBester dissenting); OPM Guidance 2025).

¹⁰⁰ *Id.* at 5.

¹⁰¹ See *AFGE, Loc. 153*, 73 FLRA 792, 793 (2024) (denying contrary-to-law exception as unsupported where excepting party cited § 7106 but did not explain how the award conflicted with that provision); *Consumer Fin. Prot. Bureau*, 73 FLRA 670, 681 (2023) (setting forth the test for analyzing management-rights exceptions and explaining that an excepting party must first demonstrate that an award affects a management right).

¹⁰² We note that, as with many other cites, the cases offered in support of these arguments are either inapposite or fictitious. See Exceptions at 4-5 & nn.13, 17, 18; see also notes 50-52 above.

¹⁰³ See Exceptions at 5. The Agency erroneously cites to “Article 26, Subsection 1[E],” *id.*, which concerns using telework for dependent care. CBA at 136. The Union suggests that the Agency intended to reference Article 26, Section 3C, which states that supervisors retain “the authority to review, determine, and approve participation’ in the telework program.” Opp’n Br. at 23 n.4 (quoting CBA at 140).

¹⁰⁴ Award at 53.

¹⁰⁵ See *U.S. Dep’t of VA, John J. Pershing Veterans’ Admin. Ctr., Poplar Bluff, Mo.*, 73 FLRA 842, 843 (2024) (denying essence

exception where arbitrator “was interpreting, not adding to, the parties’ agreement”).

¹⁰⁶ CBA at 249 (“Issues not raised by the [p]arties during the grievance procedure may not be raised by either [p]arty or the [a]rbitrator during arbitration.”).

¹⁰⁷ Exceptions at 6.

¹⁰⁸ Award at 51 n.11.

¹⁰⁹ *Id.* at 2.

¹¹⁰ See *BOP Pine Knot*, 73 FLRA at 866 (denying exception based on misapplication of statutory deadline as misunderstanding where arbitrator did not apply that deadline).

¹¹¹ Exceptions at 5-6.

¹¹² See, e.g., *NTEU*, 63 FLRA 70, 74 (2009) (rejecting challenge to repudiation finding where essence arguments on which it was based were also rejected).

¹¹³ *Fort Huachuca*, 74 FLRA at 321.

¹¹⁴ Exceptions at 2-3, 10-11.

¹¹⁵ *U.S. DHS, U.S. CBP*, 74 FLRA 6, 8 (2024) (citing *AFGE, Loc. 2258*, 70 FLRA 210, 213 (2017)).

¹¹⁶ Exceptions at 3 & n.5 (erroneously citing “*AFGE, Local 2921*, 50 FLRA 184, 187-88 (1995) (arbitrators may not enforce contract provisions that conflict with law or higher-level authority),” which has an incorrect pincite and explanatory parenthetical, where the case ends on page 186 and concerns procedural arbitrability).

they purport to nullify, disregard, or limit application of presidential directives.”¹¹⁷

The Arbitrator noted that the President explicitly directed that the memorandum be “implemented consistent with applicable law.”¹¹⁸ The Arbitrator determined that one such law – § 7116(a)(7) of the Statute – requires that the Agency not “enforce any rule or regulation . . . which is in conflict with any applicable collective[-]bargaining agreement if the agreement was in effect before the rule or regulation was prescribed.”¹¹⁹ The Arbitrator concluded that, because the memorandum is a “rule or regulation” that conflicts with Article 26, the Agency should not have implemented it until the parties’ agreement expired.¹²⁰ The Agency does not explain how these findings disregarded the terms of the memorandum or any limitations that the memorandum placed on the Arbitrator.¹²¹ Moreover, as discussed previously, the Agency does not assert that the Arbitrator’s interpretation of the memorandum is contrary to law. Accordingly, the Agency’s arguments provide no basis for finding that the Arbitrator exceeded his authority.

Second, within the context of its nonfact exception, the Agency asserts that the “Arbitrator did not resolve the Agency’s covered-by argument”¹²² – specifically, its claim that it had no bargaining obligation concerning the memorandum’s implementation because Article 4.1 “expressly provides that future government-wide rules prevail” over conflicting contract language.¹²³ Although the Agency’s assertion is sufficient to raise an exceeded-authority argument,¹²⁴ we reject it. The Arbitrator did not frame any issues, but noted that the Agency submitted as issues whether its implementation of the memorandum violated the parties’ agreement or § 7116(a)(1), (5), (7), and (8) of the Statute. In resolving these issues, the Arbitrator rejected the Agency’s contract interpretation by finding that Article 4.1 “prohibits the

enforcement of any rule or regulation published after the effective date of the [parties’ agreement] that conflicts with the terms of the [a]greement.”¹²⁵ As discussed above, he further found that, because the memorandum conflicts with Article 26, § 7116(a)(7) prevented the Agency’s implementation of the memorandum.¹²⁶ Thus, the Arbitrator’s conclusion that the Agency could not lawfully implement the memorandum resolved the issues submitted to arbitration,¹²⁷ and obviated any need to specifically address the Agency’s argument that it had no duty to bargain over the memorandum’s implementation.¹²⁸ For these reasons, this argument provides no basis for finding that the Arbitrator exceeded his authority.¹²⁹

Therefore, we find that the Agency’s arguments do not demonstrate that the Arbitrator exceeded his authority, and we deny the exceeded-authority exception.

IV. Decision

We deny the Agency’s exceptions.

¹¹⁷ *Id.* at 3 & n.6 (erroneously citing *AFGE v. Trump*, 929 F.3d 748, 754-56 (D.C. Cir. 2019) and *NTEU v. FLRA*, 392 F.3d 498, 500-01 (D.C. Cir. 2004) concerning, respectively, district courts’ lack of jurisdiction under the Statute and the limitation period for filing a certain type of ULP charge).

¹¹⁸ Award at 51 (quoting Presidential Memorandum, 90 Fed. Reg. at 8251).

¹¹⁹ *Id.* (quoting 5 U.S.C. § 7116(a)(7)).

¹²⁰ *Id.* at 52-53.

¹²¹ See *FAA*, 74 FLRA at 342 (denying exceeded-authority exception where party did “not identify” any contractual or legal limitation on the arbitrator’s authority).

¹²² Exceptions at 10.

¹²³ *Id.* Based on context, we presume that the Agency’s reference to “Article 1” was intended to be Article 4.1. See *id.* at 9-10.

¹²⁴ See, e.g., *AFGE, Loc. 3627*, 65 FLRA 1049, 1050 (2011) (“In arguing that the [a]rbitrator failed to resolve the issues submitted to him in arbitration, the [party] has raised a ground recognized by the Authority – that the [a]rbitrator exceeded his authority.”).

¹²⁵ Award at 52 (emphasis added); see, e.g., *U.S. Dep’t of the Navy, Naval Undersea Warfare Ctr. Div., Keyport, Wash.*, 55 FLRA 884, 886 (1999) (Member Cabaniss dissenting in part on other grounds) (rejecting exceeded-authority exception based on differing contract interpretation (citing *AFGE, Loc. 1546*, 52 FLRA 94, 98 (1996))).

¹²⁶ Award at 52-53.

¹²⁷ See *NFFE, Loc. 1998*, 73 FLRA 143, 144-45 (2022) (finding award was not deficient where arbitrator resolved the issue submitted to arbitration).

¹²⁸ *AFGE, Council 236*, 58 FLRA 582, 583 (2003) (rejecting exceeded-authority exception where arbitrator’s resolution of submitted issue made it unnecessary to address another issue (citing *AFGE, Loc. 1749*, 58 FLRA 459, 461 (2003))); see also *Local 3601*, 73 FLRA at 517 (rejecting exceeded-authority argument that arbitrator “did not ‘sufficiently address’” the issues (citing *AFGE, Loc. 3911*, 64 FLRA 686, 687 (2010))).

¹²⁹ See *NTEU, Chapter 172*, 74 FLRA 80, 83-84 (2024) (denying exceeded-authority exception where arbitrator resolved all submitted issues).