

63 FLRA No. 161**UNITED STATES DEPARTMENT OF THE
TREASURY**

INTERNAL REVENUE SERVICE
AGENCY-WIDE SHARED SERVICES
FLORENCE, KENTUCKY
(Agency)

and

NATIONAL TREASURY EMPLOYEES UNION
CHAPTER 73
(Union)

0-AR-4036

—————
DECISION

July 30, 2009
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Before the Authority: Carol Waller Pope, Chairman
and Thomas M. Beck, Member

I. Statement of the Case

This case is before the Authority on exceptions to an award of Arbitrator Terry A. Bethel filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Union filed an opposition to the Agency's exceptions.

The Arbitrator first found that the grievance was procedurally arbitrable because it was filed in a timely manner and that the grievance was substantively arbitrable because it concerned higher-graded duties rather than a classification matter. On the merits, the Arbitrator sustained the grievance finding that the grievant performed higher-graded duties at the Grade 7 level.

For the reasons that follow, we deny the Agency's exceptions.

II. Background**A. Initial Award**

The grievant is a Supply Technician, GS-6-2005, assigned to the Agency-Wide Shared Services Facility in Florence, Kentucky. The Union filed a grievance claiming that, since August 29, 2000, the grievant has spent 25 per cent or more of his direct time performing duties from the Grade 7 position description (PD) in the same series and that, pursuant to Article 16 of the par-

ties' agreement (CBA), he is entitled to be compensated at the higher Grade 7 rate.¹ The matter was not resolved and was submitted to arbitration. The Arbitrator found that there were two arbitrability issues: one substantive, on the question of "whether the grievance is arbitrable because the substance of the Union's claim is that the [g]rievant's position was improperly classified at the GS-6 level"; and the second procedural, on the question of: "whether the grievance is arbitrable in that it was not filed within 15 days of the date that the [g]rievant became aware that he was working higher graded duties." Award at 1.

As to the merits, the parties agreed to the following issue:

Should the [A]rbitrator find this grievance arbitrable, the issue to be decided is: did the grievant perform higher graded duties for 25% or more of his direct time during the grievance period beginning August 29, 2000, as defined by SPD [Standard Position Description] No. 91784N, GS-2005-7, and if so, what is the appropriate remedy?

Id. The Arbitrator also noted that the parties had agreed to several stipulations.

The Arbitrator found that the grievant is assigned to a Grade 6 PD and a Grade 7 PD is the target PD. The Arbitrator found that the Union, through the grievant's testimony, identified duties in the Grade 7 PD that are not included in the Grade 6 PD. According to the Arbitrator, "[t]hese are the 'grade defining duties.'" *Id.* at 2. The Arbitrator set forth a comparison of the duties in the targeted and assigned PDs being compared. *Id.* 3-5. The Arbitrator also found that in addition to the duties themselves, "the Union also pointed to differing requirements in the classification factors." *Id.* at 5. However, the Arbitrator, found for the reasons below, that "[t]his is not a classification case[.]" *Id.* n.1.

In this regard, the Arbitrator addressed the substantive arbitrability issue. Before the Arbitrator, the Agency argued that the grievance was not arbitrable because it "requested a reclassification to the GS-7 level and, as a remedy, that [the grievant] be promoted to the GS-7 position." *Id.* at 8. The Agency further argued that "[a]lthough the grievance was amended at the third step, the Union continued to ask for a reclassification and . . . the grievance was not discussed as a higher graded duties case." *Id.* at 8. Additionally, the Agency argued that the duties claimed as higher-graded were

1. The pertinent text of Article 16 is set forth in the Appendix to this decision.

permanently assigned to the grievant and that the Union could not “stipulate[.]” as it sought to do at the arbitration hearing, the classification issue “away in arbitration.” *Id.* at 9. The Arbitrator stated that this assertion related to the Union’s assurance at arbitration that it was not pursuing a classification issue, but rather was seeking a temporary promotion for performing higher-graded duties. *Id.* The Union also argued, according to the Arbitrator, that the grievance was filed under Article 16 of the CBA--the temporary promotion section--and not Article 26, the classification section.

The Arbitrator found that the “grievance is grounded solely on Article 16.” *Id.* In this regard, the Arbitrator found that the grievance was unlike the grievance involved in *AFGE, Local 987*, 58 FLRA 453 (2003) (*AFGE, Local 987*), cited by the Agency, where the Authority denied exceptions challenging an arbitrator’s determination that the grievance concerned a classification matter because the Union here “does not even cite the classification article of the [CBA].” *Id.* Noting the Agency’s third step “answer” to the grievance, the Arbitrator found that the Agency’s response showed that the “parties *did* discuss the higher graded duties issue in the grievance procedure[.]” and that the response “focuse[d] solely on Article 16.” *Id.* at 10 (emphasis in original). The Arbitrator further found that there was no indication that the parties discussed classification issues. The Arbitrator thus found that the “Agency understood during the grievance procedure that the Union’s grievance was, in substance, a higher-graded duties case[.]” *Id.* As such, the Arbitrator concluded that he had jurisdiction over the issue. *Id.*

As to the procedural issue, the Arbitrator found that the Agency failed to establish that the grievance was filed untimely under Article 16 of the CBA.²

The Arbitrator next addressed the merits of the grievance. The Arbitrator found that the grievant “oversees stock maintenance” and “conducts physical inventories,” as required by paragraphs one and two of the Grade 7 PD, respectively. The Arbitrator also found that the grievant testified that he spends more than half of his time overseeing stock maintenance. Based on the grievant’s “credit[ed] testimony,” which was “not rebutted by the Agency,” the Arbitrator concluded that the grievant “spends at least 50% of his time doing work that is described in paragraph [one]” and “10% of his time conducting physical inventories,” as described in paragraph two of the Grade 7 PD. *Id.* at 15. The Arbi-

trator found that these activities were performed consistently by the grievant in these percentages since at least August 29, 2000 to the time of the hearing.

The Arbitrator noted that the “Agency suggested . . . that such continuous performance was interrupted by details to a [G]rade 7 position.” *Id.* However, the Arbitrator found that the Agency did not establish that the grievant would have been under the 25% requirement in that time period because of the details. Based on his findings, the Arbitrator concluded that the grievant performed his higher-graded duties for more than 25 % of his direct time. *See id.*

The Arbitrator then determined that the grievant was entitled to a monetary remedy, consistent with Article 16. However, the Arbitrator stated that following the hearing in this case, the Authority issued a decision in *United States Department of Veterans Affairs, Ralph H. Johnson Medical Center, Charleston, South Carolina*, 60 FLRA 46 (2004) (*VA*) (Chairman Cabaniss and Member Pope concurring) and that the parties disputed the effect of *VA* on the appropriate remedy. Therefore, in accordance with the parties’ request, the Arbitrator remanded this portion of the award to them for discussion of the appropriate remedy and retained jurisdiction to address any issues concerning the remedy.

The Arbitrator also found that the Union had “substantially prevailed” and, in accordance with Article 43 of the CBA, directed the Agency to pay 75% of his fees and expenses. *Id.* at 16.

B. Supplemental Award

According to the Arbitrator, the Agency asserted that if he was to find a violation of Article 16 warranting a remedy, then *VA* “limited any back pay . . . to a period of not more than 120 days,” even though grievant had worked in the higher graded position for a significantly longer period. Supplemental Award at 1. The Arbitrator noted that, pursuant to the remand, the parties unsuccessfully attempted to agree on a remedy and therefore presented the issue to him on briefs.

The Arbitrator further noted that during this time period the parties had an identical remedy dispute, which he arbitrated, in a case concerning the 8300 Form Penalty Group. *See United States Dep’t of the Treasury, Internal Revenue Serv., Small Business/Self Employed Business Div., Fraud/BSA, Detroit, Mich.*, 63 FLRA No. 160 (July 30, 2009) (*IRS I or Bethel Award I*). The Arbitrator found that the arguments advanced by the Union in this case were “virtually identical to those considered in the 8300 Penalty Group Remedy Opinion.” Supplemental Award at 2. The Arbitrator thus incorpo-

2. As there is no challenge to this procedural determination, it will not be addressed further in this decision.

rated his findings with respect to the remedy in that case into this award. In the Bethel Award I, the Arbitrator found that it was appropriate to read *VA* “so as not to preclude a series of 120 day assignments, each separated from the next one by a period of 12 months[;]” thus, he ordered the agency to “provide a make-whole remedy to the [subject] grievants for each of those 120[-]day assignments[.]” each separated by a 12 month period. *Id.* at 1. Consistent with this remedy, the Arbitrator found that the grievant is entitled to be made whole for multiple non-consecutive 120-day promotions, each separated by a 12-month period.

Because the Arbitrator was unsure of the calculations -- he could not determine the total amount due -- he remanded the matter to the parties for discussion of the total amount due and retained jurisdiction to resolve any disputes. The Arbitrator denied the Union’s request for a Special Act Award.

III. Positions of the Parties

A. Agency

The Agency asserts that the Arbitrator’s substantive arbitrability determination is contrary to § 7121(c)(5) of the Statute. In this regard, the Agency challenges the Arbitrator’s determination that, because the grievance claimed a violation of Article 16 of the CBA and because the Agency discussed the issue of whether the grievant performed higher-graded duties in its grievance response, the substance of the grievance did not entail a classification matter. Exceptions at 13-14. Referring to certain documents, the Agency asserts that, in so deciding, the Arbitrator “failed to understand that the dispositive element of [the g]rievant’s claim was that he continuously asserted throughout the grievance process that his duties were part of his permanent position, not what article the grievance was invoked under.” *Id.* at 14. Additionally, referring to the transcript, the Agency contends that the grievant’s testimony establishes that his claim was about having his position reclassified and not about a temporary promotion. *Id.* The Agency asserts that it is “clear from the [g]rievant’s testimony and . . . his assertions throughout the grievance process that he wanted his permanent position upgraded because he felt he had been working at the GS-7 grade level” *Id.* at 15. Thus, the Agency contends that the substance of the grievant’s claim is not that he was entitled to a temporary promotion, but that his position should have been classified at the GS-7 grade.

The Agency also contends that the Union sought to cure its defects by stipulating at the hearing that it was

not raising a classification issue. The Agency asserts that the Union was “precluded from amending its grievance to raise new issues after the second step of the grievance process.” *Id.* at 16-17 (referring to Article 41, Section 7(C) of the CBA and Tr. at 45 and 84).³ Also, relying on *AFGE, Local 987*, the Agency further asserts that the Union “may not stipulate away the Agency’s substantive arbitrability issue . . . by conceding that it no longer [wanted] the . . . permanent promotion as a remedy. *Id.* at 18. The Agency also contends that the award is based on a “nonfact” because evidence in the record, including the grievant’s testimony, and Agency arguments establish that the substance of the grievance was not within the Arbitrator’s jurisdiction because it concerned a classification matter. *Id.* at 21.

The Agency contends that the remedy is contrary to 5 C.F.R. § 335.103(c)(1)(i) and *VA* because it orders multiple, non-consecutive, temporary 120-day promotions and requires the Agency to grant a retroactive temporary promotion for more than 120 days without the use of competitive procedures.

The Agency further asserts that, even if the Authority finds the grievance is not a classification appeal, the Authority should find that the Union did not substantially prevail on the matter, as required by Article 43, Section 4A.1 of the CBA, and thus assess fees and costs of the arbitration equally by the parties.⁴

B. Union’s Opposition

The Union contends that the Arbitrator’s substantive arbitrability determination is not contrary to § 7121(c)(5). According to the Union, the Agency “is trying to fit its exceptions within the confines of *United States Department of Agriculture, Food and Consumer Service, Dallas, Texas*, 60 FLRA 978 (2005) (*FCS*),” where the Authority found that an award was deficient as contrary to § 7121(c)(5). Opposition at 7. The Union asserts that this case is unlike *FCS* because the grievant here never attempted a classification appeal nor did the grievant have a desk audit. Further, according to the Union, no attempts had ever been made to upgrade the grievant’s position. The Union asserts that “realizing that the PD assigned to him did not describe all the work he performed, the [g]rievant argued that the previously classified duties of a higher graded position . . . contained some of the duties he performed for purposes of

3. The pertinent text of Article 41, Section 7(C) is set forth in the Appendix to this decision.

4. The pertinent text of Article 43 is set forth in the Appendix to this decision.

determining whether he was entitled to a retroactive temporary promotion[] (not permanent)[.]” *Id.* The Union disputes the Agency’s claim that it was precluded from amending its grievance to raise new issues after the second step of the grievance process. The Union contends that the “record establishes that Article 16, ‘Details,’ was . . . grieved throughout the grievance” process, and the CBA “only prohibits . . . substantive issues.” *Id.* at 8 and 9. The Union refers to other record evidence and argues that such evidence demonstrates that this is a higher-graded duties case and not a classification matter. *Id.* at 9-10.

The Union further contends that the “original remedy requested may have been a promotion to a higher grade, but the remedy was amended to include back pay,” and further stated “any discussion of other remedies deemed appropriate by the proper authorities[,] which indicates [that] the [Union] was uncertain what the appropriate remedy was in a temporary promotion case[.]” *Id.* at 9. The Union asserts that nothing in the CBA prohibits the parties from amending a remedy request and further argues that the Union clarified the issue at the hearing by stipulating that classification was not at issue.

The Union next contends that the grievants are entitled to a retroactive temporary promotion for performing higher-graded duties. According to the Union, in *VA*, the Office of Personnel Management (OPM) “misinformed the Authority.” *Id.* at 11. The Union contends that “[a]n analysis of the history of the regulation at issue, [5 C.F.R. § 335.103(c)(1)(i)], exposes the flaws in the OPM opinion” *Id.* at 12. In support, the Union refers to 58 *Federal Register* 59345 (1993), and argues that OPM’s advisory opinion is “inconsistent with the language [found] in the *Federal Register*” as it concerns the authority of agencies to make time limited promotions. *Id.* at 13. The Union thus argues that the “deference provided to OPM by the Authority in [*VA*] was misplaced[,]” and requests that the Authority overturn its decision in *VA* and remand the case to the Arbitrator to fashion a remedy consistent with OPM’s guidance when it promulgated 5 C.F.R. § 335.⁵ *Id.*

5. To the extent that the Union requests the Authority to remand the case to the Arbitrator to fashion a remedy consistent with OPM’s guidance when it promulgated 5 C.F.R. § 335, such a request constitutes a cross-exception. As the cross-exception was not filed within 30 days of the award, it is untimely and, therefore, is dismissed. *See, e.g., United States Dep’t of Transp., Federal Aviation Admin., 55 FLRA 797, 797 n.1 (1999)* (“Exceptions within an opposition are considered only if filed within the time limit . . . for exceptions.”).

The Union further argues that, even if the Authority does not overturn *VA*, an earlier arbitrator’s award (Abrams Award) interpreted *VA* and was not challenged by the Agency. Therefore, the Agency is “collaterally estopped from raising the issue[.]” concerning the non-consecutive 120 days’ promotions awarded by the Arbitrator. *Id.* at 14.

IV. Analysis and Conclusions

A. The award is not contrary to § 7121(c)(5) of the Statute

The Agency contends that the Arbitrator’s substantive arbitrability determination -- that the award does not concern a classification matter -- is contrary to § 7121(c)(5).

The Authority reviews questions of law raised by exceptions to an arbitrator’s award *de novo*. *See NTEU, Chapter 24, 50 FLRA 330, 332 (1995)*. In applying a standard of *de novo* review, the Authority determines whether the award is consistent with the applicable standard of law. *See NFFE, Local 1437, 53 FLRA 1703, 1710 (1998)*. In making this determination, the Authority defers to an arbitrator’s underlying factual findings. *See id.* Specifically, where an arbitrator’s substantive arbitrability determination is based on law, the Authority reviews that determination *de novo*. *See NTEU, 61 FLRA 729, 732 (2006)*, and the cases cited therein.

Under § 7121(c)(5) of the Statute, a grievance concerning “the classification of any position which does not result in the reduction of grade or pay of an employee” is excluded from the scope of the negotiated grievance procedure. The Authority has construed the term “classification” in § 7121(c)(5) as involving “the analysis and identification of a position and placing it in a class under the position classification plan established by [the Office of Personnel Management] under chapter 51 of title 5, United States Code.” *United States Dep’t of Transp., Fed. Aviation Admin., Atlanta, Ga., 62 FLRA 519, 521 (2008)* (*FAA, Atlanta*) (quoting *Soc. Sec. Admin., Office of Hearings & Appeals, Mobile, Ala., 55 FLRA 778, 779 (1999)*).

The Authority has distinguished two situations to determine whether a grievance concerns the classification of a position. Where the substance of a grievance concerns the grade level of the duties permanently assigned to, and performed by, the grievant, the Authority finds that the grievance concerns classification within the meaning of § 7121(c)(5). *See id.* at 521. However, where the substance of the grievance concerns whether the grievant is entitled to a temporary promotion under a collective bargaining agreement by

reason of having performed the established duties of a higher-graded position, the Authority has long held that the grievance does not concern the classification of a position within the meaning of § 7121(c)(5). *See id.*

In this case, the agreed-upon issue was: “did the grievant perform higher-graded duties” for 25% or more of his direct time during the grievance period . . . as defined by” [the target GS-7 PD], and “if so, what is the appropriate remedy?” Award at 1. The Arbitrator’s factual findings also show that, at the hearing, the Union specifically stated that the grievant was only seeking a “temporary promotion for performing higher-graded duties.” *Id.* at 9. The Arbitrator’s factual findings further show that the grievance was “grounded solely on Article 16” -- the temporary promotion section -- of the CBA. *Id.* at 9. In this respect, the Arbitrator’s factual findings show that the Arbitrator found, based on the evidence presented, that: (1) the Union did not cite the classification article of the parties’ CBA; (2) in its third-step response to the grievance, the Agency focused “solely” on Article 16 and whether the grievant was performing higher-graded duties 25% of the time; and (3) the Agency did not “introduce any evidence that classification issues were discussed” during the grievance proceeding. *Id.* at 10. These findings support the Arbitrator’s determination that the issue before him concerned Article 16 and whether the grievant performed established duties of a higher-graded position.

Also, to the extent that the Agency disputes certain of the Arbitrator’s factual findings concerning the Union’s invocation of “Article 16” and the Agency’s “answer” discussing the grievant’s performance of higher-graded duties as support for his conclusion that the grievance concerned higher-graded duties, the Agency has not demonstrated that the Arbitrator erred in making these findings. Award at 10. As stated above, the Authority defers to the Arbitrator’s underlying factual findings. Although the Agency disputes these findings, such claim, as discussed below in Section IV.C, provides no basis for finding the award deficient. Also, the Agency’s reliance on *AFGE, Local 98*, to support its claim that the Union could not stipulate that it was not seeking a permanent promotion as a remedy, provides no basis for finding the award deficient as that case is distinguishable from the instant case. In this regard, in *AFGE, Local 98*, the Authority found, based on the circumstances in that case, that the substance of the underlying grievance involved a classification matter; while in the instant case, as the Arbitrator found, the circumstances of this case establish that the matter involved in the underlying grievance process concerned higher-graded duties. *See* Award at 10.

Accordingly, we find that the Arbitrator’s factual findings show that the substance of the grievance concerned whether the grievant was entitled to a temporary promotion (not permanent promotion) under a collective bargaining agreement by reason of having performed the established duties of a higher-graded position. As such, the grievance did not involve a classification matter within the meaning of § 7121(c)(5) of the Statute.

B. The award is not contrary to 5 C.F.R. § 335.103

The Agency contends that the remedy awarded by the Arbitrator is contrary to 5 C.F.R. § 335.103(c)(1)(i) and *VA* because it requires the Agency to grant a retroactive temporary promotion for more than 120 days without the use of competitive procedures.

The arguments raised by the Agency are similar to the arguments which we considered and rejected in *IRS I*. In *IRS I*, we found that the remedy directed by the Arbitrator was not inconsistent with 5 C.F.R. § 335.103(c)(1)(i) because it did not require the Agency to grant a retroactive temporary promotion for more than 120 days. Rather, the remedy required the Agency to grant multiple temporary promotions for 120 days, each separated by one year, as appropriate, for each grievant. As such, the award did not require the Agency to grant an employee a temporary promotion for more than 120 days. Additionally, we found that the Agency’s reliance on *VA* provided no basis for finding the award deficient because the type of remedy involved in that case -- 120-day promotions separated by 12 months periods -- was not awarded or otherwise addressed in *VA*. Accordingly, for the reasons stated more fully in *IRS I*, we conclude that the Arbitrator’s remedy requiring the Agency to grant the grievant multiple non-consecutive 120-day promotions, each separated by a 12 month period, is not contrary to law.

C. The award is not based on a nonfact

To establish that an award is based on a nonfact, the appealing party must show that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result. *United States Dep’t of the Air Force, Lowry Air Force Base, Denver, Colo.*, 48 FLRA 589, 593 (1993). The Authority will not find an award deficient on the basis of an arbitrator’s determination on any factual matter that the parties disputed at hearing. *Id.* at 594 (citing *Nat’l Post Office Mailhandlers v. United States Postal Serv.*, 751 F.2d 834, 843 (6th Cir. 1985)).

The Agency contends that the award is based on a nonfact because the evidence presented at arbitration

does not support the Arbitrator's conclusion that the substance of the grievance concerned whether the grievant performed higher-graded duties rather than whether the grievant's position was properly classified. The Arbitrator's determination that the substance of the grievance concerned whether the grievant performed higher-graded duties was based on his factual findings that the grievance was grounded solely in Article 16 of the parties' CBA and that the parties "understood" during the grievance process that the "grievance was, in substance, a higher-graded duties case[.]" Award at 10. The Agency's claim challenges the Arbitrator's finding that the substance of the grievance concerned higher-graded duties and not a classification matter. As the record establishes that the parties disputed before the Arbitrator whether the substance of the grievance concerned higher-graded duties, the Agency's exception provides no basis for finding the award deficient. *NFFE, Local 1984*, 56 FLRA 38, 41 (2000).

D. The Agency has not established that the award fails to draw its essence from the parties' CBA

In reviewing an arbitrator's interpretation of a collective bargaining agreement, the Authority applies the deferential standard that federal courts use in reviewing arbitration awards in the private sector. *See* 5 U.S.C. § 7122(a)(2); *AFGE, Council 220*, 54 FLRA 156, 159 (1998). Under this standard, the Authority will find that an arbitration award is deficient as failing to draw its essence from the 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 collective bargaining 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. *See United States Dep't of Labor (OSHA)*, 34 FLRA 573, 575 (1990). The Authority and the courts defer to arbitrators in this context "because it is the arbitrator's construction of the agreement for which the parties have bargained." *Id.* at 576.

In this case, the Agency asserts that, even if the Authority finds the grievance was not a classification appeal, the Authority should find that the Union did not substantially prevail on the matter, as required by Article 43, Section 4A.1 of the CBA, and thus assess fees and costs of the arbitration equally by the parties. We construe this contention as a claim that the award does not draw its essence from the parties' CBA.

Article 43, Section 4 A.1 provides that "[t]he parties will each pay one-half (1/2) of the regular fees and expenses . . . of the arbitrator . . . unless the grievant substantially prevails as determined by the arbitrator." Exceptions, Attachment M. Based on the record, the Arbitrator determined that the "Union has substantially prevailed" in the case and "in accordance with Article 43," ordered the Agency to "pay 75% of [his] fees and expenses." Award at 16. The Agency has not demonstrated that the award is unfounded, implausible, irrational, or in manifest disregard of Article 43, Section 4A.1. Accordingly, the Agency has not demonstrated that the award fails to draw its essence from Article 43, Section 4 A.1 and we deny this exception.

V. Decision

The Agency's exceptions are denied.

APPENDIX

Article 16

Details

Section 1

A.

For the purposes of this article, a detail is defined as the temporary assignment of an employee to a different position for a specified period with the employee returning to regular duties at the end of the detail. This includes positions at higher or lower grades.

B.

2. If an employee is not detailed to a position of higher grade, but who performs higher graded duties for 25% or more of his or her direct time during the preceding four (4) months, the Employer will temporarily promote the employee retroactive to the first full pay period if the employee meets the following criteria below:

....

(b) the employee meets minimum OPM qualifications for the promotion to the next higher grade; and

(c) the employee meets time-in-grade requirements for promotion to the next higher grade.

Exceptions, Attachment M.

Article 41

Employee Grievance Procedure

Section 7

C.

With the exception of subsections 2E and 7D below, new issues may not be raised by either party unless they have been raised at Step 2 of the grievance procedure, provided, however, that the parties may agree to join the new issues with a grievance in process.

Exceptions, Attachment M.

Article 43

Arbitration

Section 4

A.

The following procedures apply to all arbitrations.

1. The parties will each pay one-half (1/2) of the regular fees and expenses including travel expenses of the arbitrator hearing a case unless the grievant substantially prevails as determined by the arbitrator. In such cases, the Employer shall pay seventy-five (75%) of the regular fees and expenses including travel expenses of the arbitrator hearing the case.

Exceptions, Attachment M.