65 FLRA No. 72

FEDERAL DEPOSIT
INSURANCE CORPORATION
DIVISION OF SUPERVISION AND
CONSUMER PROTECTION
DALLAS REGIONAL OFFICE
(Agency)

and

NATIONAL TREASURY
EMPLOYEES UNION
CHAPTER 275
(Union)

0-AR-4106

DECISION

December 17, 2010

Before the Authority: Carol Waller Pope, Chairman, and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This matter is before the Authority on exceptions to a supplemental award of Arbitrator Sandra Smith Gangle 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.

In her initial award, the Arbitrator found that the Agency violated the parties' agreements when it failed to fairly and equitably process the grievant's nomination for a Corporate Success Award (CSA), and she directed the Agency to reconsider the grievant's nomination. In the supplemental award, the Arbitrator reviewed the Agency's reconsideration of the nomination and again found that the Agency had failed to evaluate the grievant fairly and equitably. As a remedy, the Arbitrator directed the Agency to award the grievant a CSA with backpay, interest, and attorney fees. For the reasons that follow, we deny the Agency's exceptions.

II. Background and Arbitrator's Awards

The parties agreed through a Collective Bargaining Agreement (CBA), a Compensation Agreement, a Memorandum of Understanding (MOU), and an Agency Circular (Circular 2420.1), that the Agency would award a CSA to "top contributors" in the Agency and that such awards would be distributed in a "fair and equitable manner." *See* Initial Award at 4-8.[1] The parties agreed under the terms of the Compensation Agreement that the Agency's Chairman has "sole discretion to set the percentage of . . . employees who will be recognized as top contributors[,]" but that "the percentage of . . . employees to receive the CSA shall be no less than 33 1/3 percent." *Id.* at 6. Pursuant to that agreement, the Agency's Chairman determined that CSAs would be given to 33 1/3 percent of eligible employees. *Id.* at 12.

The grievant's supervisor nominated him to receive a CSA, and the grievant was ranked fifteenth on the list of nineteen nominees submitted to the Assistant Regional Director (ARD) of the Agency's Dallas Territory.[2] *Id.* at 13. The ARD Panel, which consists of ARDs and the Agency's Deputy Regional Director, evaluated the CSA candidates and made its recommendations to the Agency's Regional Director (RD), who subsequently made recommendations to the Agency's Division Director (Director). *See id.* at 11, 13-14. When the grievant was not selected to receive a CSA, he filed a grievance, which was unresolved and submitted to arbitration.

In her initial award, the Arbitrator found that the parties had agreed in the CBA, MOU, and Circular 2420.1 that the Agency would distribute CSAs in a "fair[,]" "objective[,]" and "equitable" manner. *Id.* at 17. According to the Arbitrator, the parties "intended that [the Agency] would maintain some objective evidence that the CSA criteria had been applied consistently and that employees had been treated fairly and equitably[,]" but the Agency had "used no organized rating system for comparing the

1. The relevant provisions of the CBA, Compensation Agreement, MOU, and Circular 2420.1 are set forth in the attached appendix.

2. The grievant is an employee of the Dallas Field Office. The Dallas Territory comprises the Dallas, Shreveport, and Austin Field Offices. The employees of the Dallas and Memphis Territories, along with the Regional Office Management Information Group (ROMIG), are considered together for purposes of calculating CSA distribution rates as required under the MOU. *See* Supplemental Award at 2; Initial Award at 9.

various contributions" of CSA nominees, and merely had compared nominees' contributions in a "verbal discussion" using "'personal knowledge.'" *Id.* at 18-19 (quoting an ARD's testimony).

Additionally, the Arbitrator found that the Agency did not comply with the "data-keeping requirement" of the MOU. *Id.* at 21. Specifically, the Arbitrator found that the MOU requires the Agency to maintain data about CSA distribution, including the division and office of each CSA recipient. *See id.* at 18. According to the Arbitrator, if the data indicated a rate of CSA distribution for a division or office that is less than 80% of the distribution rate for the division or office with the highest rate of CSAs awarded within the region, then the MOU requires that the Agency be prepared to show that the results can be justified by a legitimate business reason, or explained by the relative sizes of the groups. *See id.* In this regard, the Arbitrator observed that only about 13% of Dallas Field Office employees received CSAs, whereas 80% of ROMIG employees received CSAs. *See id.* at 20-21. The Arbitrator further found that the ARD Panel did not explain the "extraordinary divergence in the numbers" among the groups whose CSA nominations were submitted to the RD. *Id.* at 21.

Finally, the Arbitrator noted that the ARD Panel's decision to discount the grievant's service on additional assignments and on his two details was "not in keeping" with the CSA criteria identified in Circular 2420.1. *Id.*

For the foregoing reasons, the Arbitrator concluded that the Agency "failed to follow the contractual requirements," and sustained the grievance because the Agency "violated the contract." *Id.* at 21-22. As a remedy, the Arbitrator remanded the matter to the Agency in order for the ARD Panel to reconsider the grievant's nomination in comparison with the nominations of other employees, in a manner consistent with the CBA and the Arbitrator's decision. *Id.* at 23. The Arbitrator retained jurisdiction to resolve disputes regarding the implementation of the remedy. *Id.*

On reconsideration of the grievant's nomination, the Agency again denied the grievant a CSA. Supplemental Award at 3. The ARD Panel acknowledged that the variance in the distribution of CSAs among the groups of employees was greater than the percentage rate contemplated in the MOU, but asserted as a legitimate business reason that each of the previously selected CSA recipients "'demonstrated contributions that were *more deserving of the CSA* than the contributions of [the grievant.]'" *Id.* at 13 (quoting ARD affidavit) (emphasis added by Arbitrator). Thereafter, the Union requested that the Arbitrator review the Agency's decision on reconsideration to deny the grievant's CSA. In the supplemental award, the Arbitrator stated the issue as follows:

> Did the Agency violate the parties' [CBA] or [Circular 2420.1] or [the MOU], or any law, rule, or regulation or the [A]rbitrator's Award, when it failed to award the [g]rievant a [CSA], based on his contributions during [the performance year] following the Agency's recalculation and reconsideration process? If so, what is the appropriate remedy?

Id. at 3.

The Arbitrator found that the number of nominees recommended by the ARD panel was "significantly outside the [eighty] percent 'rule of thumb' that the parties had established as fair and equitable distribution[.]" *Id.* at 6. The Arbitrator also found that the reason provided by the Agency to justify the variance in CSA distribution rate in the grievant's Dallas Field Office, as compared with the other groups in the territory, was a "bald statement that begs the question" and did not constitute a legitimate business reason as required by the MOU. *See id.* at 13. In this regard, the Arbitrator found that permitting the Agency to explain a significant distribution variance by articulating such a "bald conclusion" as its "legitimate business reason" would "essentially eliminate[] the contractual requirement of . . . giving a compelling reason for the deviation" and would render the data-keeping requirements of the MOU and Circular 2420.1 "superfluous[.]" *See id.* at 13-15.

In addition, the Arbitrator found that the ARD Panel failed to meet its obligation to grant CSAs "'in a fair and objective manner'" because it did not appear to have developed any "measurable norms or standards" for assessing and comparing the various contributions of the nominees. *Id.* at 16 (quoting CBA). Because the ARD Panel reached its decision by using "verbal discussion" that was "by its very nature *subjective*," the Arbitrator concluded that the Agency did not apply "fair and objective" criteria as contractually required. *Id.* at 16-17. Similarly, the Arbitrator found that the RD and Director denied the grievant the CSA upon reconsideration using "a standard of subjectivity and discretion, rather than the standard of fair and equitable treatment, supported by

objective evidence, that the parties' CBA required." *Id.* at 18. For the foregoing reasons, the Arbitrator concluded that the grievant was deprived, for a second time, of a reasonable opportunity to compete for a CSA. *See id.* at 17.

With regard to the appropriate remedy, the Arbitrator found that Article 48, Section 4.B. of the CBA authorized her to "make an aggrieved employee whole[.]" *Id.* at 18. Therefore, considering that the Agency twice failed to conduct a fair and equitable comparison of the grievant's contributions, that two years had passed since the issuance of the CSAs, and that it would be difficult to reconvene the ARD Panel, the Arbitrator fashioned a remedy. *Id.* at 18-19. In particular, the Arbitrator concluded that "[b]ut for the Agency's violation of the contractual requirements for fairly and equitably rating and comparing [CSA nominees], . . . the [g]rievant very likely would have received a CSA[.]" *Id.* at 19. In this regard, the Arbitrator stated that "[b]ut for the Agency's unjustified and unwarranted personnel action . . . in failing to follow the contractual requirements . . . the [g]rievant was deprived of . . . a CSA[.]" *Id.* at 20. Accordingly, the Arbitrator awarded the grievant a retroactive CSA, with interest and attorney fees. *Id.*

III. Positions of the Parties

A. Agency's Exceptions

The Agency argues both that the award fails to draw its essence from the parties' agreements and that the Arbitrator exceeded her authority because the Arbitrator: (1) improperly imposed her "own brand of objectivity" by finding that administration of the CSA process in the manner required by the CBA mandated the use of measurable "norms or standards[;]" Exceptions at 26; (2) erroneously required the Agency to demonstrate that the RD and Director had performed an objective review of the ARD panel's recommendations; *id.* at 28-29; and (3) awarded the grievant a CSA without rescinding one previously awarded and thereby exceeded the award limit imposed by the Agency's Chairman and agreed to by the parties. *See id.* at 30-32, 37.

In addition, the Agency contends that the award fails to draw its essence from the parties' agreements because the Arbitrator incorrectly found that the CSA selection process required the Agency to: (1) gather and share data about the CSA distribution rate among various employee groupings identified in the MOU during the CSA selection process rather than after it had awarded CSAs; *id.* at 21; (2) adjust the proposed CSA recipient list during the selection process if the rate of distribution did not meet an "'[eighty] percent standard[;]'" *id.* at 21-23 (quoting Supplemental Award at 15); and (3) demonstrate to the Union that any distribution variance was justified by a "legitimate business purpose" prior to the issuance of the awards. *Id.* at 25.

Further, the Agency asserts that the Arbitrator's remedy affects management's rights to direct employees and assign work under § 7106(a)(2)(A) and (B) of the Statute. *Id.* at 32. Citing *United States Department of the Treasury, Bureau of Engraving and Printing, Washington, D.C.*, 53 FLRA 146 (1997) (*BEP*), the Agency contends that the remedy "does not constitute a proper reconstruction of what the Agency would have done" if it had not violated the parties' agreements. Exceptions at 34. In this regard, the Agency argues that the Arbitrator "summarily concluded" only that, but for the Agency's violation of the contractual requirements, "'the [g]rievant *very likely* would have received a CSA[,]'" but did not find that the grievant's contributions placed him in the top one-third of bargaining unit employees. *Id.* at 36 (quoting Supplemental Award at 19) (emphasis added by Agency).

B. Union's Opposition

The Union argues that the Arbitrator did not exceed her authority and that the supplemental award is consistent with the CBA. In this regard, the Union argues that the Arbitrator's finding that the Agency failed to provide any objective evidence that it had used during the reconsideration process is consistent with her finding that the Agency failed to administer the CSA reconsideration process in the manner dictated by the parties' agreements. Opp'n at 3-4, 6-7. The Union further argues that the Arbitrator's remedy does not violate the parties' agreements because the agreements do not require the Arbitrator to rescind a CSA from one employee in order to award one to the grievant. *See id.* at 10. In addition, the Union contends that the award does not fail to draw its essence from the agreements because the Arbitrator required the Agency to provide distribution data and a "legitimate business reason" to explain the distribution variance after, not before, the Agency had completed its CSA reconsideration process. *See id.* at 3-6.

In addition, the Union asserts that the remedy reconstructs what management would have done absent the contractual violation. *See id.* at 11-12. According to the Union, the grievant is entitled to a

CSA because the top one-third of performers at the Agency are entitled to a CSA and the Arbitrator found that the grievant's nomination was "within the top one-third of the employees in [the Dallas/Shreveport] territory." Opp'n at 11-12 (quoting Supplemental Award at 19). In this regard, the Union further asserts that the Arbitrator found that "'[b]ut for the Agency's unjustified and unwarranted personnel action,'" the grievant would have received a CSA. *Id.* at 12 (quoting Supplemental Award at 20).

IV. Analysis and Conclusions

A. The award does not fail to draw its essence from the parties' agreements.

In reviewing an arbitrator's interpretation of a collective bargaining agreement, the Authority applies the deferential standard of review that federal courts use in reviewing arbitration awards in the private sector. *See* 5 U.S.C. § 7122(a)(2). 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 U.S. Dep't of Labor (OSHA)*, 34 FLRA 573, 575 (1990) (*OSHA*). 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.

The Agency's essence exceptions challenge the Arbitrator's findings concerning both the CSA reconsideration process and the appropriate remedy for the alleged contractual violation. In regard to the reconsideration process, the parties' CBA provides that the Agency "will grant incentive awards in a fair and objective manner[.]" Initial Award at 4. Further, the parties' MOU requires that "CSAs will be distributed to employees in a fair and equitable manner and in accordance with the terms of this MOU and . . . Circular 2420.1." *Id.* at 6. Circular 2420.1 provides, in pertinent part, that CSAs "shall be distributed to employees in a fair and equitable manner[,]" and that "[r]eviewing [o]fficials . . . will ensure the consistent application of [CSA] criteria and the fair and equitable treatment of employees." *Id.* at 7-8.

Applying these provisions, in her initial award, the Arbitrator found that the Agency had obligated itself to grant awards in a "fair and objective manner," and should be able to demonstrate that it "had treated employees fairly and equitably when it identified the top contributors and issued [CSAs]." *See* Supplemental Award at 5. According to the Arbitrator, this obligation included the responsibility to evaluate employees using objective criteria rather than "subjective personal knowledge[.]" *Id.* at 6. Because the Agency reconsidered the grievant's nomination without making the modifications to its selection process that the Arbitrator found were contractually required, the Arbitrator determined that the Agency did not treat the grievant fairly and equitably as required by the parties' agreements. *See id.* at 13-18. Specifically, the Arbitrator found that the Agency had not produced any evidence to show that the contributions of the grievant and his fellow employees "had been reconsidered objectively, fairly and equitably[,]" *id.* at 17, and she also found that the ARD panel and the reviewing officials "used a standard of subjectivity and discretion, rather than the [contractually required] standard of fair and equitable treatment, supported by objective evidence[.]" *Id.* at 18. The Agency has not established that these findings are irrational, unfounded, implausible, or in manifest disregard of the parties' agreements. *See OSHA*, 34 FLRA at 575.

In regard to the significant distribution variance that occurred in the initial CSA selection process and was unchanged by the Agency's reconsideration, the Arbitrator found that the Agency's proffered "legitimate business reason" – that each of the CSA recipients "were more deserving of the CSA" than the grievant – did not meet the contractual requirement that such a divergence be explained in a manner that established that employees were compared "through an objective and fair rating process[.]" Supplemental Award at 13-15. In this connection, the Arbitrator reasoned that accepting such a "bald conclusion that a particular employee's contributions 'did not merit' an award" would "essentially eliminate[] the contractual requirement of . . . giving a compelling reason for the deviation[,]" and would render the data-keeping requirements of the MOU and Circular 2420.1 "superfluous[.]" *Id.* The Agency has also not established that these findings are irrational, unfounded, implausible, or in manifest disregard of the parties' agreements. *See OSHA*, 34 FLRA at 575.

In regard to the Agency's argument that the remedy fails to draw its essence from the parties' agreements, the Compensation Agreement provides that "[t]he Chairman has sole discretion to set the percentage of bargaining unit employees who will be recognized as top contributors under the CSA program[,]" so long as that percentage is "no less than 33 1/3 percent." Initial Award at 6. As the Authority has previously held, the 33 1/3 percent figure sets a minimum threshold, and not a maximum cap on the potential number of CSA recipients, as argued by the Agency. *See FDIC*, 62 FLRA 356, 359 (2008) (holding that the Compensation Agreement's 33 1/3 percent figure "is a minimum, not a maximum"). Thus, although the Compensation Agreement does not obligate the Agency to award CSAs to employees who are not in the top one-third of contributors, it also does not cap the number of bargaining-unit employees eligible to receive CSAs. *See FDIC, Div. of Supervision & Consumer Prot., S.F. Region*, 65 FLRA 102, 108 (2010) (*FDIC, SF Region*) (Chairman Pope concurring). Further, the Arbitrator specifically found that "[b]ut for" the Agency's violation of the parties' agreements, the grievant was deprived of a CSA. Supplemental Award at 20. Because the parties' agreements mandate "fair and equitable" treatment for CSA candidates, Initial Award at 7, the Agency has not established that the arbitrator's conclusion – that the grievant should receive a CSA as a remedy for repeated contractual violations – is not a plausible interpretation of the parties' agreements taken as a whole. *See FDIC, SF Region*, 65 FLRA at 108.

For the foregoing reasons, the Agency has not demonstrated that the supplemental award fails to draw its essence from the parties' agreements. Therefore, we deny the Agency's essence exceptions.[3]

3. The Agency also argues that the Arbitrator "exceeded her authority" by: (1) imposing her "own brand of objectivity[;]" (2) requiring the Agency to demonstrate that the reviewing officials objectively reviewed the ARD panel's recommendations; and (3) awarding the grievant a CSA without rescinding one from another CSA recipient. *See* Exceptions at 26, 29, 37. As these contentions are restatements of some of the Agency's essence claims, we do not address them separately. *See SSA Balt., Md.*, 57 FLRA 690, 693 n.6 (2002) (as agency's claim that arbitrator exceeded his authority did nothing more than restate its essence claim, Authority did not address claims separately). *See also AFGE, Local 3627*, 64 FLRA 547, 550 n.3 (2010).

B. The award is not contrary to law, rule, or regulation.

When an exception involves an award's consistency with law, the Authority reviews any question of law *de novo*. *See NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *U.S. Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)). In applying *de novo* review, the Authority assesses whether the arbitrator's legal conclusions are consistent with the applicable standard of law. *See, e.g.*, *NFFE, Local 1437*, 53 FLRA 1703, 1710 (1998). In making that assessment, the Authority defers to the arbitrator's underlying factual findings. *See id.*

The Authority recently revised the analysis that it will apply when reviewing management-rights exceptions to arbitration awards. *See U.S. EPA*, 65 FLRA 113, 115 (2010) (Member Beck concurring) (*EPA*); *FDIC, SF Region*, 65 FLRA at 106-07. Under the revised analysis, the Authority will first assess whether the award affects the exercise of the asserted management right. *EPA,* 65 FLRA at 115. If so, then the Authority examines whether the award provides a remedy for a violation of either an applicable law, within the meaning of § 7106(a)(2) of the Statute, or a contract provision that was negotiated pursuant to § 7106(b) of the Statute. *Id.* In setting forth its revised analysis, the Authority specifically rejected the continued application of the requirement, set forth in *BEP*, that an arbitrator's remedy "reconstruct" what management would have done but for the violation at issue. *FDIC, SF Region*, 65 FLRA at 106-07. The Authority further held in this regard that

> [a]s in other types of arbitration cases, such awards must still withstand challenges raised in exceptions that the award does not satisfy the standards Congress established in the Statute for the Authority's review of arbitrators' awards. Where such a challenge establishes that an award imposes a constraint on management rights that was not agreed to by the parties . . . the award will be set aside.

Id. at 107.

Applying this analysis, we reject the Agency's argument that the remedy is contrary to law. This exception is based entirely on the assertion that the remedy does not reflect a reconstruction of what the Agency would have done if it had not violated the

agreed-upon CSA selection process.[4] As discussed above, such "reconstruction" is no longer applicable. *See id.* Accordingly, we conclude that the award does not impermissibly affect management rights by failing to reconstruct what the Agency would have done if it had not violated the contract, and we deny the Agency's contrary-to-law exception.[5] *See, e.g.*, *id.* at 107.

V. Decision

The Agency's exceptions are denied.

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4. We note that the Agency concedes that the award enforces a properly negotiated contract provision. *See* Exceptions at 34 n.39. Accordingly, we do not address that issue further.

5. For the reasons set forth in her concurring opinion in *FDIC, SF Region*, 65 FLRA at 112, Chairman Pope agrees that the award is not deficient because the remedy is reasonably related to the negotiated provisions and the harm being remedied.

APPENDIX

Compensation Agreement Between FDIC and NTEU for the Years 2003-2005

II. ANNUAL PAY

. . . .

Year 2003

Effective 2003, the [Agency] will provide an increase in basic pay of 3.2 percent for all employees who received a rating of "meets expectations" during the prior year's rating period. In addition, 2004 shall be a transition year for the Corporate Success Award . . . .

Years 2004 and 2005

. . . .

A Corporate Success Award (CSA) will be established which provides that an additional 3.0 percent increase be made in basic pay for those employees recognized as top contributors. The Chairman has sole discretion to set the percentage of bargaining unit employees who will be recognized as top contributors under the CSA program. However, the percentage of bargaining unit employees to receive the CSA shall be no less than 33 1/3 percent. These awards shall be made on an annual basis.

. . . .

Initial Award at 5-6.

FDIC DIRECTIVE SYSTEM Circular 2420.1 (July 21, 2003) REWARDS AND RECOGNITION PROGRAM

Chapter 11
Corporate Success Awards

11-1. Definition

. . . .

[CSAs] shall be distributed to employees in a fair and equitable manner.

. . . .

11-4. Criteria: Nominations will be evaluated based on one or more of the following criteria. These are the only criteria permitted under the Corporate Success Award program. Nominations will provide specific statements of the contributions by the employee that meet the identified criteria. . . . .

A. Business Results: Consistently displays a high level of initiative, creativity, and innovation to produce results that reflect important contributions to the Corporation and/or its organizational components.

B. Competency: Demonstrates an exceptional degree of competency within his/her position, and is frequently relied upon by others for advice, assistance, and/or judgment that reflect important contributions to the Corporation and/or its organizational components.

C. Working Relationships: Builds extremely productive working relationships with co-workers, other Divisions/Offices, or other public or private sector agencies based on mutual respect that reflect important contributions to the Corporation and/or its organizational components.

D. Learning and Development: Takes an active part in developing personal skills and competencies and applies newly acquired skills and competencies that reflect important contributions to the Corporation and/or its organizational components.

11-5. Procedures

. . . .

B. Supervisors shall nominate their top contributors by preparing the [designated form]. Forms must be submitted to the designated reviewing official within 15 calendar days after the end of the consideration cycle. . . .

C. Reviewing Officials, as designated in the Division/Office delegations of authority, will ensure the consistent application of Corporate Success Award criteria and the fair and equitable treatment of employees. The Reviewing Official shall sign the nomination form and forward it to the Division/Office Director within 30 calendar days . . . .

. . . .

F. The Chairman has the sole discretion to set the percentage of bargaining unit and non-bargaining

employees who will be recognized as top contributors under the Corporate Success Award program . . . . However, the percentage of bargaining unit employees . . . will be no less than 33 1/3 percent.

. . . .

Initial Award at 7-8.

Memorandum of Understanding Between FDIC and NTEU (March 13, 2003)

> 1. CSAs will be distributed to employees in a fair and equitable manner and in accordance with the terms of this MOU and FDIC Circular 2420.1.
>
> 2. The EMPLOYER agrees to provide data to NTEU in an electronic spreadsheet on bargaining unit Corporate Success Award (CSA) recipients in 2004 and 2005 (based on contributions made in 2003 and 2004, respectively) that will include the following fields: division/office, ...
>
> 3. If the data for one or more groups included in the fields identified in #2, above, indicates a rate of distribution that is less than 80% of the distribution rate for the group with the highest rate in that field, the FDIC and NTEU will conduct a joint review of the approved awards to determine if these results can be justified by a legitimate business reason or explained by the size(s) of the group(s) being compared. However, this joint review process does not waive the right of the Union or any employee to seek remedial relief in any appropriate legal forum.
>
> . . . .

Initial Award at 6-7.

FDIC AND NTEU COLLECTIVE BARGAINING AGREEMENT

Article 18, Section 1.B.

> The EMPLOYER will grant incentive awards in a fair and objective manner in accordance with this Agreement and applicable rules and regulations.

Initial Award at 4.

Article 48, Section 4.B.

> The arbitrator shall have no power to add to, subtract from, or modify the terms of this Agreement. The award will be limited to the issues presented at arbitration. The arbitrator's decision will be final and binding and the arbitrator will have the authority to make an aggrieved employee whole to the extent such remedy is not limited by law.

Initial Award at 5.