

**73 FLRA No. 13**

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 2052  
COUNCIL OF PRISON LOCALS 33  
(Union)

and

UNITED STATES  
DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF PRISONS  
FEDERAL CORRECTIONAL COMPLEX  
PETERSBURG, VIRGINIA  
(Agency)

0-AR-5745

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DECISION

June 14, 2022  
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Before the Authority: Ernest DuBester, Chairman, and  
Colleen Duffy Kiko and Susan Tsui Grundmann,  
Members  
(Chairman DuBester concurring)

**I. Statement of the Case**

The Union filed a grievance alleging that the Agency failed to bargain over a change to a quarterly staffing roster. Arbitrator Garvin Lee Oliver granted the Agency's motion for summary judgment, finding that there was no obligation to bargain because the change was covered by the parties' collective-bargaining agreement.

In its exceptions to the award, the Union argues that the award did not draw its essence from the parties' agreement and was based on nonfact, and that the Arbitrator lacked the authority to consider the summary judgment motion and was biased. Because the Union fails to establish that the award is deficient on these grounds, we deny the exceptions.

**II. Background and Arbitrator's Award**

In October 2019, the Agency notified employees that the day shift on the upcoming quarterly roster would

no longer include a thirty-minute unpaid lunch break. The Union filed a grievance alleging that the Agency committed an unfair labor practice – and violated the parties' agreement and a memorandum of understanding – by failing to bargain over this change. The Agency denied the grievance, which proceeded to arbitration. In December 2020, the parties replaced the originally selected arbitrator with Arbitrator Oliver (the Arbitrator).

On January 6, 2021,<sup>1</sup> the Agency submitted a motion to the Arbitrator that it had previously filed with the original arbitrator. The Agency argued that, because the facts were “not in dispute” and all disagreements were based on contractual interpretation, the proceedings should consist of written briefs and documentary evidence rather than a hearing with live witness testimony (the hearing motion).<sup>2</sup> On January 7, the Arbitrator requested that the Union respond to the hearing motion by the following day.

On January 8, the Union submitted its opposition to the hearing motion, contending that the parties' agreement allowed exclusively for in-person hearings. A few hours later, the Arbitrator emailed the parties, stating that the Agency's motion and the Union's opposition were “in the nature of . . . cross motions for summary judgment.”<sup>3</sup> Instead of ruling on the hearing motion, the Arbitrator directed the Agency, “and the Union if desired,” to file a motion for summary judgment within forty-five days.<sup>4</sup> The Arbitrator stated that any opposition was due within forty-five days of service.

On March 1, the Union emailed the Arbitrator requesting a hearing date because the Agency had not filed a summary judgment motion within the specified forty-five-day timeframe. The Arbitrator subsequently requested an update from both parties. The Union emailed a reply a few days later, stating that it would not file a motion for summary judgment but “plan[ned] to oppose any motion made.”<sup>5</sup> The Arbitrator did not respond to the Union's email. Two weeks later, on March 16, the Agency emailed the Arbitrator, requesting possible hearing dates.

There was no response from the Arbitrator until April 1, when the Arbitrator emailed the parties and directed the Agency to file a motion for summary judgment by May 15. The Union asserted that the Arbitrator was “being bias[ed] by allowing the [A]gency a

<sup>1</sup> Unless otherwise specified, all dates are in 2021.

<sup>2</sup> Exceptions, Ex. 8 at 1.

<sup>3</sup> Exceptions, Ex. 11 (Jan. 8 Email) at 1.

<sup>4</sup> *Id.* (stating that the “Agency . . . shall, within 45 days, . . . file a motion for summary judgment”).

<sup>5</sup> Exceptions, Ex. 12 at 1.

second bit[e] at the apple.”<sup>6</sup> The Union also stated it would “only participate in a hearing in accord[ance] with [the parties’ agreement],” and not “by affidavit and written brief.”<sup>7</sup> The Arbitrator did not respond.

Again, the Agency did not file a motion for summary judgment by the Arbitrator’s imposed deadline. On May 17, the Arbitrator emailed only the Agency to inquire about the status of the motion. The Agency apologized for its failure to submit a motion and requested possible hearing dates. The Arbitrator then directed the Agency to file a motion for summary judgment by June 11. As before, the Arbitrator stated that any opposition would be due within forty-five days of service. The Agency forwarded this email communication to the Union.

On June 10, the Agency filed a motion for summary judgment, arguing that the Agency was not obligated to bargain over the change to the quarterly roster because it was covered by the parties’ agreement. One week later, on June 18, the Arbitrator issued an award granting the motion. The Arbitrator concluded that “the subject of . . . rosters is clearly covered by and within the scope of . . . Article 18” of the parties’ agreement.<sup>8</sup> In addition, the Arbitrator suggested that the Union had filed a “reply” that “objected to the procedure.”<sup>9</sup> According to the Arbitrator, the Union’s reply stated: “[M]ake your decision. This case is being done without the Union’ and [t]he Union will not participate.”<sup>10</sup> However, the Arbitrator concluded that the Agency was “entitled to judgment as a matter of law” and dismissed the grievance.<sup>11</sup>

The Union filed exceptions to the award on July 15, 2021, and the Agency filed an opposition on August 19, 2021.

<sup>6</sup> Exceptions, Ex. 15 at 1.

<sup>7</sup> *Id.*

<sup>8</sup> Award at 4.

<sup>9</sup> *Id.* at 2 n.1. It is unclear from the record what document the Arbitrator was referencing.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 4. On June 21, the Arbitrator served a “corrected” award on the parties. *Id.* at 6 (June 21 email). In that “corrected” award, the Arbitrator switched some references from “the Agency” to “the Union,” and vice versa, at times in error. For example, in the June 21 award, the Arbitrator incorrectly stated that the Union, as opposed to the Agency, had filed a motion for summary judgment. The June 21 award also faulted the Union for failing to provide the Agency a document that the Agency had in its possession and submitted as evidence. As a result of these errors, we refer to the June 18 award.

<sup>12</sup> The Authority will find that an arbitration award is deficient as failing 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 collective-bargaining agreement

### III. Analysis and Conclusions

#### A. The award does not fail to draw its essence from the parties’ agreement.

The Union argues that the award fails to draw its essence<sup>12</sup> from the negotiated grievance procedure set forth in the parties’ agreement.<sup>13</sup> Specifically, the Union contends that, because the parties’ agreement does not include a “procedure . . . that allows an arbitrator to request and grant a motion for summary judgment,” the Arbitrator inappropriately added terms to the agreement.<sup>14</sup> The Agency counters that the parties’ agreement is silent on many common procedural issues, leaving them to an arbitrator’s discretion.<sup>15</sup>

The Authority has held that it is the function and responsibility of the arbitrator to determine procedural matters upon which the parties have not reached agreement.<sup>16</sup> In the absence of “contractual provisions to the contrary, it is presumed that arbitrators enjoy substantial latitude to manage . . . procedural issues as arbitrators deem appropriate to the circumstances of the matter before them.”<sup>17</sup> Here, the Union does not identify anything in the parties’ agreement that explicitly addresses the authority of an arbitrator to consider a motion for summary judgment.<sup>18</sup> In the absence of a specific contractual limitation, we find that the Arbitrator’s decision to resolve the grievance based on the Agency’s motion for summary judgment does not conflict with the

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. *NAGE*, 71 FLRA 775, 776 (2020).

<sup>13</sup> Exceptions Br. at 18-23 (quoting Exceptions, Ex. 4, Collective-Bargaining Agreement (CBA) Art. 3, § a-b (governing regulations); Art. 6, § b.6 (employee rights); Art. 18, § a (hours of work); Art. 27, § b.1-2 (health and safety); Art. 31, §§ a, g.1-2 (grievance procedure); Art. 32, §§ a-b, d-e, g-i (arbitration)).

<sup>14</sup> *Id.* at 22.

<sup>15</sup> Opp’n Br. at 10-11.

<sup>16</sup> *SSA Headquarters, Woodlawn, Md.*, 63 FLRA 302, 303 (2009).

<sup>17</sup> *NAGE, Fed. Union of Scientists & Eng’rs, Loc. R12-198*, 63 FLRA 7, 7 n.\* (2008).

<sup>18</sup> See Exceptions Br. at 22 (arguing only that there is no procedure in the parties’ agreement “that allows an arbitrator to request and grant a motion for summary judgment”); see also CBA, Art. 32, §§ a-i (sections concerning invocation; arbitrator selection; arbitration expenses; hearing location; witnesses and observers; award issuance; and appeal).

parties' agreement.<sup>19</sup> Therefore, we deny the Union's essence exception.<sup>20</sup>

B. The Union fails to establish that the award exceeded the Arbitrator's authority.

In its exceeded-authority exception, the Union argues that the Arbitrator erred by (1) resolving the motion for summary judgment and (2) failing to resolve the Agency's hearing motion and the merits of the grievance.<sup>21</sup> As relevant here, arbitrators exceed their authority when they fail to resolve an issue submitted to arbitration, resolve an issue not submitted to arbitration, or disregard specific limitations on their authority.<sup>22</sup>

At the outset, the Union errs in saying that the Arbitrator failed to resolve the merits of the grievance.<sup>23</sup> In the award, the Arbitrator found that the Agency had no duty to bargain over the roster changes, and resolved the grievance by dismissing it.<sup>24</sup> Because the premise of this argument is incorrect, it provides no basis for finding the award deficient.<sup>25</sup>

As for the Agency's request to cancel the hearing, the Arbitrator concluded that it was "in the nature of" a summary judgment motion, and directed the Agency to file one.<sup>26</sup> The Union challenges the Arbitrator's authority to take this action,<sup>27</sup> but the Union has not established that there were any relevant limitations in the parties' agreement or that the Arbitrator lacked the discretion to

take this procedural step. For this reason, we find that the Arbitrator did not disregard a limitation of authority.<sup>28</sup> Moreover, in directing the filing of, and then ruling on, the motion for summary judgment, the Arbitrator effectively resolved<sup>29</sup> the issue raised by the hearing motion – what form the arbitration proceeding should take.<sup>30</sup>

Accordingly, we deny the Union's exceeded-authority exception.<sup>31</sup>

C. The Union fails to establish that the Arbitrator was biased.

The Union argues that the Arbitrator was biased.<sup>32</sup> To establish bias, the excepting party must demonstrate that (1) the award was procured by improper means, (2) there was partiality or corruption on the part of the arbitrator, or (3) that the arbitrator engaged in misconduct that prejudiced the rights of the party.<sup>33</sup> A party's assertion that an arbitrator's findings were adverse to that party, without more, does not demonstrate that an arbitrator was biased.<sup>34</sup>

The Union maintains that the award was "procured . . . by improper means" and that the Arbitrator showed "partiality to the Agency."<sup>35</sup> In support of these claims, the Union points to several of the Arbitrator's procedural decisions relating to motions. These decisions include giving the Union one day to respond to the Agency's hearing motion; failing to rule on the hearing motion; directing the Agency to file a motion for summary

<sup>19</sup> See *U.S. DHS, U.S. CBP, U.S. Border Patrol, El Paso Sector, El Paso, Tex.*, 72 FLRA 253, 257 (2021) (*El Paso CBP*) (Member Abbott dissenting on other grounds) (denying essence exception where the excepting party failed to demonstrate that the award conflicted with the plain wording of the parties' agreement).

<sup>20</sup> The Union also argues that, because the Arbitrator failed to follow the grievance process established by the parties' agreement, the award is contrary to the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7121(a)-(b), and Federal Mediation and Conciliation Service regulations, 29 C.F.R. § 1404.13. Exceptions Br. at 15-17. Because this contrary-to-law exception is based on the same arguments as the essence exception, we deny it. See *U.S. Dep't of VA, Denver Reg'l Off.*, 70 FLRA 870, 871 n.16 (2018) (then-Member DuBester concurring) (denying party's contrary-to-law exception that "repeat[ed] its essence argument").

<sup>21</sup> Exceptions Br. at 24.

<sup>22</sup> *U.S. DHS, U.S. CBP, L.A., Cal.*, 72 FLRA 411, 412 (2021).

<sup>23</sup> See Exceptions Br. at 24 (arguing that the Arbitrator failed to address the issue of the lunch breaks).

<sup>24</sup> Award at 4.

<sup>25</sup> See *NFFE, Loc. 1804*, 66 FLRA 700, 702 (2012) (denying exceeded-authority exception based on false premise that arbitrator failed to address party's argument).

<sup>26</sup> Jan. 8 Email at 1.

<sup>27</sup> Exceptions Br. at 24.

<sup>28</sup> See *AFGE, Loc. 1633*, 64 FLRA 732, 733 (2010) (denying exceeded-authority claim that arbitrator disregarded contractual limitations when considering issues "encompassed by the issue" for resolution).

<sup>29</sup> See *NFFE, Loc. 1804*, 66 FLRA 700, 702 (2012) (finding that arbitrator did not fail to resolve an issue where recusal motion was "implicitly resolved" by arbitrator's continuing with the arbitration).

<sup>30</sup> *AFGE, Loc. 1741*, 72 FLRA 501, 503 (2021) (Member Abbott dissenting on other grounds) (stating that "where parties have not stipulated to threshold issues, arbitrators do not exceed their authority by identifying and resolving such issues").

<sup>31</sup> *Compare SSA, Off. of Disability Adjudication & Rev.*, 64 FLRA 469, 471 (2010) (Chairman Pope dissenting) (finding arbitrator exceeded authority by resolving motion unrelated to threshold or merit issues), with *U.S. Dep't of VA, Med. Ctr., N. Chi., Ill.*, 52 FLRA 387, 396 (1996) (arbitrator did not exceed authority by resolving pre-hearing motions related to grievance).

<sup>32</sup> Exceptions Br. at 7.

<sup>33</sup> *El Paso CBP*, 72 FLRA at 258 (citing *AFGE, Loc. 3438*, 65 FLRA 2, 3 (2010)).

<sup>34</sup> *U.S. Dep't of the Treasury, IRS, Wage & Inv. Div., Austin, Tex.*, 70 FLRA 924, 929-30 (2018) (*IRS Austin*) (then-Member DuBester concurring, in part, and dissenting, in part on other grounds).

<sup>35</sup> Exceptions Br. at 8.

judgment; extending the filing deadline when the Agency twice failed to file the motion; and erroneously finding that the Union declined to participate in the summary judgment proceedings.<sup>36</sup> As additional evidence of arbitral bias, the Union cites the Arbitrator's failure to respond to the Union's emails and ex parte emails between the Arbitrator and the Agency.<sup>37</sup>

The Authority has held that, to establish that an award was improperly procured, a party must show that the award was the result of "corruption, fraud, or [other] undue means."<sup>38</sup> Here, the Union challenges procedural matters over which the Arbitrator exercised discretion, such as ruling on motions, establishing deadlines, and communicating with the parties.<sup>39</sup> Although the Union strongly disagrees with the Arbitrator's decisions on these matters, it has not presented any arguments or evidence that they were the result of corruption, fraud, or impropriety by the Arbitrator.<sup>40</sup> Therefore, we find that the Union has not established that the award was procured by improper means.

Partiality is evident when (1) a reasonable person would conclude that the arbitrator was partial, (2) the circumstances are powerfully suggestive of bias, or (3) the evidence of partiality is direct, definite, and capable of demonstration.<sup>41</sup> Although the Arbitrator made several procedural determinations with which the Union disagreed, the Authority has held that adverse findings and rulings alone do not demonstrate that an arbitrator was biased.<sup>42</sup> This is the case even where, as here, the

Arbitrator mistakenly found that the Union did not want to participate in the summary judgment process.<sup>43</sup> This error, although adverse, is not evidence of partiality or bias.<sup>44</sup>

Turning to the Union's allegation that the Arbitrator's failure to promptly respond to Union emails exhibited bias, we note that the record establishes that the Arbitrator was sometimes slow to communicate with both parties, not only the Union.<sup>45</sup> And regarding the Union's accusation of inappropriate ex parte communication, our review shows that the ex parte emails between the Arbitrator and the Agency concerned a filing deadline – not the substance of the case.<sup>46</sup> In the absence of evidence as to how this communication concerning an administrative matter prejudiced the Union, it is not evidence of bias.<sup>47</sup> Therefore, the Union has failed to establish that the Arbitrator showed partiality to the Agency.

Although the Arbitrator's management of the arbitral process was sometimes perplexing,<sup>48</sup> the Union

<sup>36</sup> *Id.* at 8, 13-14.

<sup>37</sup> *Id.* at 14.

<sup>38</sup> *U.S. DOD, Def. Mapping Agency, Hydrographic/Topographic Ctr., Wash., D.C.*, 47 FLRA 1187, 1204 (1993) (*Def. Mapping*); *Dep't of the Army, Headquarters, 101st Airborne Div. (Air Assault) & Fort Campbell, Fort Campbell, Ky.*, 7 FLRA 18, 19 (1981).

<sup>39</sup> *See U.S. Dep't of VA, Cent. Ark. Veterans Healthcare Sys. Cent.*, 71 FLRA 593, 594 (2020) (then-Member DuBester concurring) (holding that arbitrators have considerable latitude in managing arbitration proceedings).

<sup>40</sup> *See AFGE, Loc. 1061*, 63 FLRA 317, 320 (2009) (denying bias exception based on arbitrator's timing in issuing award).

<sup>41</sup> *U.S. Dep't of the Air Force, Pope Air Force Base, N.C.*, 71 FLRA 338, 341 (2019) (then-Member DuBester concurring).

<sup>42</sup> *IRS Austin*, 70 FLRA at 929-30 (finding that the "identification of several arbitral determinations that did not favor [a party] does not, by itself, show bias").

<sup>43</sup> *See Award at 2 n.1* (Arbitrator claiming that Union stated: "This case is being done without the Union' and '[t]he Union will not participate.'"). The Agency does not dispute the Union's claim that the Arbitrator erred in finding that that the Union declined to participate in the summary-judgment process. *See Exceptions Br. at 14* (Union's claim); *see also Opp'n Br. at 4-6* (not countering Union's claim).

<sup>44</sup> *See, e.g., IRS Austin*, 70 FLRA at 926, 929-30 & n.57 (where arbitrator awarded incorrect remedy, the adverse ruling – an "erroneous award of treble damages" – was not evidence of bias).

<sup>45</sup> *See, e.g., Exceptions, Ex. 14 at 1* (Union requesting, on March 29, that Arbitrator respond to Agency email sent on March 16).

<sup>46</sup> *See Exceptions, Ex. 16 at 1-2* (discussing deadlines for Agency's motion).

<sup>47</sup> *See AFGE, Loc. 788*, 67 FLRA 291, 292 (2014) (finding that ex parte communication concerning administrative matters "provide[d] no basis" for establishing bias); *see also AFGE, Loc. 2328*, 70 FLRA 797, 798 (2018) (denying bias exception where party failed to explain how the content of cited emails demonstrated that inappropriate ex parte communications had occurred); *U.S. Dep't of VA, Med. Ctr., Ann Arbor, Mich.*, 56 FLRA 216, 220 (2000) (denying bias exception where there was no evidence that conversations between arbitrator and party "concerned the merits of this case and were, therefore, improper").

<sup>48</sup> Member Kiko expresses her disappointment with the Arbitrator's management of this case. The Arbitrator was not justified in denying the Union the full forty-five days allotted to oppose summary judgment. Although this behavior is not evidence of partiality or bias, the result seems unfair. However, because the Union did not raise an unfair-hearing exception, the Authority may not consider it. *U.S. Dep't of VA, Gulf Coast Veterans Health Care Sys.*, 69 FLRA 608, 610 (2016) (stating that Authority does "not construe parties' exceptions as raising grounds that the exceptions do not raise").

does not establish that the Arbitrator was biased.<sup>49</sup> Therefore, we deny this exception.<sup>50</sup>

D. The Union fails to establish that the award is based on nonfacts.

The Union makes several arguments that the Arbitrator based the award on nonfacts.<sup>51</sup> To establish that an award is based on a nonfact, the excepting party must show that a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different result.<sup>52</sup>

The Union asserts that the award is based on nonfact because the Arbitrator accepted documentary evidence unsupported by sworn statements.<sup>53</sup> However, this assertion concerns the Arbitrator's evaluation of evidence that was submitted with the Agency's summary judgment motion.<sup>54</sup> And the Authority has held that a nonfact exception that "merely disagrees with the [a]rbitrator's evaluation of the evidence" fails to demonstrate that a central fact in the award is clearly erroneous.<sup>55</sup>

Next, the Union argues that the Arbitrator made erroneous statements, including that (1) the Union failed to provide the Agency with certain documents; and (2) the Union, rather than the Agency, filed the motion for summary judgment.<sup>56</sup> While these statements may be incorrect, the Union fails to explain how they affect the Arbitrator's conclusion that the Agency had no obligation to bargain over the roster change.<sup>57</sup> We find that these alleged nonfacts are not central to the award.<sup>58</sup>

Finally, the Union states that the "egregious false claim that the Union responded to [the Arbitrator's] decision . . . is . . . a nonfact."<sup>59</sup> However, it is unclear from the record what statement in the award the Union is challenging. Thus, we find that the Union has failed to establish that the award is based on this alleged nonfact.<sup>60</sup>

For these reasons, we deny the Union's nonfact exception.

**IV. Decision**

We deny the Union's exceptions.

<sup>49</sup> See *Def. Mapping*, 47 FLRA at 1204-05 (arbitrator's unfavorable comments about excepting party did not demonstrate bias).

<sup>50</sup> Member Grundmann expresses her serious concerns with the Arbitrator's handling of this case. She appreciates and joins in the concerns expressed by Member Kiko in her attributed footnote and Chairman DuBester's concurrence. Member Grundmann agrees that the Union raised a plausible argument that it was denied a fair hearing. However, because the Union did not allege an unfair-hearing exception, the Authority may not consider this exception and she is constrained to deny the Union's exceptions.

<sup>51</sup> Exceptions Br. at 11-12, 14.

<sup>52</sup> *AFGE, Loc. 2516*, 72 FLRA 567, 568 (2021) (*Loc. 2516*).

<sup>53</sup> Exceptions Br. at 11-12.

<sup>54</sup> See *Loc. 2516*, 72 FLRA at 568 (finding that nonfact exception alleging that the arbitrator disregarded witness testimony concerned arbitrator's "evaluation of the evidence").

<sup>55</sup> See *id.* (denying nonfact exception based on arbitrator's evaluation of the evidence).

<sup>56</sup> Exceptions Br. at 12 (challenging Arbitrator's statements about copies of a memorandum of understanding and the quarterly roster and, in the June 21 "corrected" decision, about who filed the motion for summary judgment).

<sup>57</sup> See *id.*

<sup>58</sup> See *AFGE, 3917*, 72 FLRA 651, 653 (2022) (Chairman DuBester concurring) (finding that the fact of whether grievant performed certain duties was not central to arbitrator's determination that the remedies sought by grievant were unlawful).

<sup>59</sup> Exceptions Br. at 14.

<sup>60</sup> See *AFGE, Loc. 2076*, 71 FLRA 1023, 1025 (2020) (then-Member DuBester concurring) (denying nonfact exception "in the absence of evidence demonstrating that the [a]rbitrator's conclusions [we]re clearly erroneous").

**Chairman DuBester, concurring:**

I agree with the decision to deny the Union's exceptions. I write separately, however, to reiterate the concerns expressed by my colleagues regarding the Arbitrator's handling of this case.<sup>1</sup>

I agree with my colleagues that the Arbitrator was not justified in denying the Union the full forty-five days allotted to oppose the Agency's motion for summary judgment. I am also troubled by the Arbitrator's apparent reliance on his "mistaken[]" finding that "the Union did not want to participate in the summary judgment process" to decide the Agency's motion without providing the Union the opportunity to respond.<sup>2</sup>

Under these circumstances, I believe that the Union raised a plausible argument that it was denied a fair hearing.<sup>3</sup> But as my colleagues note, the Union did not allege an unfair-hearing exception,<sup>4</sup> even though the Authority's regulations set forth arbitrator bias and the denial of a fair hearing as distinct grounds upon which to challenge an arbitration award.<sup>5</sup> As I have stated previously, the Authority should not vacate awards on grounds not raised by a party in its exceptions because "[p]arties should be provided the opportunity to address and, if possible, rebut arguments presented for our review in exceptions from arbitration awards."<sup>6</sup> And because I agree with my colleagues that the Union has failed to establish that the Arbitrator's actions demonstrated bias under the Authority's governing precedent, I concur with the decision to deny this exception.

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<sup>1</sup> Majority at 7 nn.48 & 50.

<sup>2</sup> *Id.* at 6.

<sup>3</sup> See, e.g., *GSA, Region 9, L.A., Cal.*, 56 FLRA 978, 979 (2000) (granting fair hearing exception where arbitrator provided the agency no opportunity to address an issue raised in the union's post-hearing brief); *U.S. Dep't of the Air Force, Hill Air Force Base, Utah*, 39 FLRA 103, 107 (1991) (granting fair hearing exception where arbitrator refused, with "no justification," to consider union's evidence and arguments concerning an issue); cf. *U.S. Dep't of HUD*, 42 FLRA 813, 819 (1991) (denying fair hearing exception where arbitrator issued award before union had a chance to file a reply brief, but only because "no date was established for submission of a [u]nion response" and there was

"no assertion that the [a]rbitrator agreed to withhold issuance of an award until receipt of a [u]nion response").

<sup>4</sup> Majority at 7 nn.48 & 50.

<sup>5</sup> 5 C.F.R. § 2425.6(b)(1)(ii) (bias), (iii) (unfair hearing).

<sup>6</sup> *U.S. Dep't of the Air Force, 673rd Air Base Wing, Joint Base, Elmendorf-Richardson, Alaska*, 71 FLRA 781, 784 (2020) (Dissenting Opinion of then-Member DuBester) (further noting that our regulations "incorporate this principle by requiring parties filing exceptions to explain and support their arguments, and by guaranteeing the opposing party the right to file a brief addressing the grounds asserted in the exceptions" (citing 5 C.F.R. §§ 2425.3; 2425.4(a)(1)-(2); 2425.6(b)(2)(i); 2425.6(e))).