

73 FLRA No. 32

UNITED STATES
DEPARTMENT OF THE NAVY
NAVAL MEDICAL CENTER CAMP LEJEUNE
JACKSONVILLE, NORTH CAROLINA
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 2065
(Union)

0-AR-5657

DECISION

August 8, 2022

Before the Authority: Ernest DuBester, Chairman, and
Colleen Duffy Kiko and Susan Tsui Grundmann,
Members

I Statement of the Case

The Union filed a grievance alleging that the Agency failed to bargain in good faith over ground rules for a new term agreement. Arbitrator Charles J. Murphy issued an award finding the grievance procedurally arbitrable and concluding that the Agency violated § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute).¹ For a remedy, the Arbitrator directed the parties to return to the status quo ante.

In its exceptions, the Agency argues that the award fails to draw its essence from the parties' agreement and is contrary to Authority precedent. The Agency also contends that the Arbitrator lacked the authority to award a status-quo-ante remedy. Because the Agency fails to demonstrate that the award is deficient on these grounds, and raises arguments to the Authority that it did not make to the Arbitrator, we deny the exceptions in part, and dismiss them, in part.

II Background and Arbitrator's Award

During ground-rules negotiations for a new term agreement, the Union filed a grievance challenging the Agency's refusal to recognize the Union's designated bargaining representative. On November 30, 2018, while the grievance was pending, the Agency notified the Union that the parties were at impasse over ground rules.² The same day, the Agency stated that it would be implementing its last best offer on the ground rules on December 15. In response, the Union requested that the Agency delay implementation of its proposed ground rules, recognize the Union's bargaining representative, and continue bargaining. The Agency refused, and, on December 21, it presented the Union with proposals in order to begin term-agreement negotiations.

The Union filed a second grievance on January 4, 2019, alleging that the Agency violated the duty to bargain in good faith when it unilaterally implemented ground rules and initiated term negotiations without negotiated ground rules. The Agency denied the second grievance, and the Union invoked arbitration. On March 14, 2019, the Agency unilaterally implemented a new term agreement pursuant to the disputed ground rules.

At arbitration, the parties were unable to agree to a statement of the issues, so the Arbitrator framed the issues, in relevant part, as: (1) Did the Union timely file its grievance on January 4, 2019? (2) Was the Union required to invoke the services of the Federal Service Impasses Panel (the Panel) after the Agency declared an impasse? (3) Is the Union's claim that the Agency violated the Preamble, Article 1, and Article 3 of the parties' agreement arbitrable given the Agency's allegation that the grievance did not raise these issues? (4) Is the Union's unfair-labor-practice (ULP) claim arbitrable in light of the Agency's contention that the Union did not allege a ULP in its grievance? (5) Did the Agency commit ULPs by refusing to recognize the Union's designated representative, unilaterally implementing its proposed ground rules, initiating term negotiations without a negotiated ground-rules agreement, and unilaterally implementing a new term agreement? (6) Is the grievance deficient because the Union allegedly failed to request a status-quo-ante remedy in its grievance? (7) What is the appropriate remedy, if any?³

Addressing the timeliness of the grievance, the Arbitrator noted that Article 13, Section 9 of the parties' agreement required the Union to file its grievance "within [fifteen] days after the event giving rise to the grievance or within [fifteen] days after the [Union] reasonably should

¹ 5 U.S.C. § 7116(a)(1), (5).

² Unless otherwise indicated, all dates hereafter occurred in 2018.

³ Award at 4.

have known of the event giving rise to the grievance.”⁴ The Arbitrator found that, under that article, the “grievance time frame begins to run not based upon the date the Agency gives notice of its intent but instead on the date . . . the Union knows the Agency has acted.”⁵ Accordingly, the Arbitrator determined that the grievable event did not occur on November 30 when the Agency provided notice of its intent to implement ground rules. Rather, the Arbitrator found that the grievable event occurred on December 21, as that was “the date on which the Union first knew that the Agency had implemented its unbargained ground rules.”⁶ Because the Union filed its grievance within fifteen days of December 21, the Arbitrator concluded that the grievance was timely.

Considering the Agency’s contention that the Union was required to invoke the services of the Panel, the Arbitrator found that there was “no evidence in the record to suggest that the parties were actually at impasse.”⁷ On this point, the Arbitrator noted that the record contained “no evidence that a [f]ederal [m]ediator declared the parties at impasse [or] that the Federal Mediation [and Conciliation] Service referred the matter to the Panel.”⁸ The Arbitrator also determined that the parties could not have been at impasse because “no bargaining had, in fact, occurred.”⁹ Thus, the Arbitrator concluded that the Union did not waive its right to bargain ground rules by failing to invoke the Panel’s services.

Next, the Arbitrator granted the Agency’s request to dismiss several contractual claims that the Union raised, for the first time, at arbitration. Article 13, Section 7 of the parties’ agreement provides, in pertinent part: “Issues that were not raised at the time the grievance was first filed in writing may not be raised . . . at arbitration.”¹⁰ And Article 13, Section 12 requires a grievance to “cite the relevant provisions of the agreement . . . which have allegedly been violated.”¹¹ Because the grievance did not allege that the Agency violated the Preamble, Article 1, or Article 3 of the parties’ agreement, the Arbitrator dismissed these claims. However, the Arbitrator noted that Article 13, Section 12 did not, by its plain terms, apply to alleged *statutory* violations.¹² Thus, the Arbitrator found

that the grievance raised a statutory ULP claim by alleging that the Agency “breached its duty to bargain in good faith” notwithstanding the Union’s failure to specifically cite § 7116 of the Statute in the grievance.¹³

On the merits, the Arbitrator found that the Agency violated § 7116(a)(1) and (5) of the Statute when it refused to recognize the Union’s designated representative and imposed ground rules that limited the Union’s ability to select its own bargaining representatives. In addition, the Arbitrator ruled that the Agency violated these same sections of the Statute by unilaterally implementing ground rules without bargaining, attempting to bargain a new term agreement while continuing to not recognize the Union’s representative, and unilaterally implementing a new term agreement.

With respect to remedies, the Agency argued that the Arbitrator could not award a status-quo-ante remedy, because the Union failed to request that remedy in the grievance. But the Arbitrator disagreed, finding that the grievance’s “plain meaning” established that the Union had requested a return to the status quo ante.¹⁴ Further, the Arbitrator held that the Agency failed to identify any contractual provision requiring the Union to “use . . . specific terminology, or . . . legal ‘terms of art’ in drafting its grievance[.]”¹⁵ Therefore, the Arbitrator concluded that the Union timely requested a status-quo-ante remedy.

Based on these findings, the Arbitrator sustained the grievance and directed a status-quo-ante remedy.

The Agency filed exceptions to the award on July 22, 2020, and the Union filed an opposition on August 19, 2020.

III. Preliminary Matter: Sections 2425.4(c) and 2429.5 of the Authority’s Regulations bar two of the Agency’s arguments.

In an essence exception, the Agency argues that the award is deficient because the Arbitrator ignored Article 13, Section 12’s requirement that a grievance state

⁴ Opp’n, Attach. 9, Collective-Bargaining Agreement (CBA) at 37.

⁵ Award at 18 (emphasis omitted).

⁶ *Id.*

⁷ *Id.* at 21.

⁸ *Id.* at 22.

⁹ *Id.* at 21; *see also id.* at 22 (noting that “[t]he Agency took no action to actually bargain”).

¹⁰ CBA at 35.

¹¹ *Id.* at 37.

¹² *See* Award at 24 (explaining that while Article 13 “specifically requires the enumeration of contractual provisions the Agency is alleged to have violated[,] it does not . . . require[] that grievances

provide the same information regarding assertions of [s]tatutory violations”).

¹³ *See id.* at 20-21; *see also* 5 U.S.C. § 7116(a)(5) (stating that it is a ULP for an agency “to refuse to consult or negotiate in good faith with a labor organization” as required by the Statute).

¹⁴ Award at 16 (reasoning that the grievance’s requested remedy – that management (1) recognize the Union’s chosen negotiations team, (2) cease and desist from unilaterally implementing their own ground rules, and (3) meet the Union at the table to negotiate ground rules – meant that the Union requested a status-quo-ante remedy).

¹⁵ *Id.*

“whether or not a meeting is desired to attempt resolution of the grievance.”¹⁶ The Agency also contends that the award is contrary to § 2423.11 of the Authority’s Regulations.¹⁷ However, the Union asserts that the Agency did not raise these arguments at arbitration.¹⁸

Under §§ 2425.4(c) and 2429.5 of the Authority’s Regulations, the Authority will not consider arguments that a party could have, but did not, raise before the arbitrator.¹⁹ The Agency asserts that it raised both arguments before the Arbitrator.²⁰ Contrary to the Agency’s assertion, a review of the record demonstrates that the Agency failed to raise either argument at arbitration.²¹ As the Agency could have raised these arguments before the Arbitrator, but did not do so, we dismiss them.²²

IV. Analysis and Conclusions

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

The Agency argues that the award fails to draw its essence from Article 13, Section 12 of the parties’ agreement on two grounds.²³

First, the Agency asserts that Article 13, Section 12 required the Union to file its grievance within fifteen days of November 30 – the date the Agency notified the Union of its intent to implement the proposed ground rules.²⁴ According to the Agency, the Arbitrator erroneously concluded that the Union timely filed its grievance on January 4, 2019 – more than fifteen days from November 30.²⁵

As noted above, Article 13, Section 12 states that a grievance must be “filed within [fifteen] days after the event giving rise to the grievance or within [fifteen] days of the date the [Union] reasonably should have known of the event giving rise to the grievance.”²⁶ Applying that provision, the Arbitrator found that the grievable event occurred on December 21 – when the Agency submitted term proposals – because that was “the date on which the Union first knew that the Agency had implemented its unbargained ground rules.”²⁷ In reaching this conclusion, the Arbitrator explained that the grievable event did not occur on November 30, because – at that time – the Agency had expressed only an “intent” to take action.²⁸

The Agency fails to identify any contractual wording that either defines the term “grievable event” or conflicts with the Arbitrator’s interpretation or application of that term.²⁹ Consequently, the Agency’s argument does

¹⁶ Exceptions Br. at 13 (quoting Art. 13, § 12).

¹⁷ *Id.* at 19-20 (citing 5 C.F.R. § 2423.11).

¹⁸ Opp’n Br. at 27-28 (“[T]he Agency never raised the argument that the grievance was deficient because, allegedly, the Union didn’t state whether a meeting was desired.”), 35-36 (arguing that although the Union requested a status-quo-ante remedy at arbitration, “the Agency never argued that the status[-]quo ante remedy was precluded by 5 C.F.R. § 2423.11”).

¹⁹ 5 C.F.R. §§ 2425.4(c), 2429.5.

²⁰ Exceptions Br. at 13 (asserting that it raised the issue of the Union’s failure to include in the grievance whether or not a meeting was desired regarding the grievance during direct and cross examination of witnesses), *id.* at 17 (asserting that it argued at arbitration that the grievance was contrary to 5 C.F.R. § 2423.11(c)).

²¹ While the Agency did question the Union president about a meeting with the Agency regarding the grievance, nowhere in the record before the Arbitrator did the Agency argue that the lack of said meeting made the grievance procedurally deficient. *See* Exceptions, Enclosure 4, Hr’g Tr. at 124-26; *see also id.* at 224-26 (Agency attorney asking Agency witness about grievance meeting but not arguing that Union’s failure to state

whether or not it wanted a meeting made the grievance procedurally deficient.).

²² *See AFGE, Loc. 3627*, 70 FLRA 627, 627 (2018).

²³ Exceptions Br. at 7-13. The Authority will find that an arbitration award is deficient as failing to draw its essence from a collective-bargaining agreement when the excepting party establishes that the award: (1) cannot in any rational way be derived from the agreement; (2) is so unfounded in reason and fact and so unconnected with the wording and purposes of the agreement as to manifest an infidelity to the obligation of the arbitrator; (3) does not represent a plausible interpretation of the agreement; or (4) evidences a manifest disregard of the agreement. *AFGE, Loc. 1822*, 72 FLRA 595, 597 n.25 (2021) (Chairman DuBester concurring) (citing *U.S. DOL (OSHA)*, 34 FLRA 573, 575 (1990)).

²⁴ Exceptions Br. at 9-10.

²⁵ *Id.* at 11-12.

²⁶ CBA at 37.

²⁷ Award at 18.

²⁸ *Id.*

²⁹ CBA at 37.

not demonstrate that the award fails to draw its essence from the parties' agreement.³⁰

Second, the Agency contends that the Arbitrator's consideration of the grievance fails to draw its essence from Article 13, Section 12 because "the Union failed to cite specific and relevant provisions of the agreement which were allegedly violated."³¹ But, the Arbitrator dismissed all of the Union's contractual claims specifically because they were not raised in the grievance.³² And, as the Arbitrator found, the plain wording of Article 13, Section 12 did not apply to bar the grievance's statutory allegations – a finding the Agency does not challenge. Therefore, this exception provides no basis for finding the award deficient.³³

Accordingly, we deny the Agency's essence exceptions.

B. The award is not contrary to law.

The Agency asserts that Authority precedent required the Arbitrator to conclude that the Union waived its statutory bargaining rights when it failed to invoke the services of the Panel.³⁴ The Authority reviews questions of law de novo.³⁵ In applying a standard of de novo review, the Authority assesses whether the arbitrator's legal conclusions are consistent with the applicable standard of law.³⁶ In making that assessment, the Authority defers to the arbitrator's underlying factual

findings unless the excepting party establishes they are based on nonfacts.³⁷

Under the Statute, an agency must meet its obligation to negotiate prior to making changes in established conditions of employment.³⁸ The Authority has recognized that a union may waive its right to bargain over a proposed change in conditions of employment, either explicitly through agreement or implicitly through inaction.³⁹ An agency may implement changes in conditions of employment if, as relevant here, there is no timely invocation of the statutory impasse procedures after impasse following good-faith bargaining.⁴⁰

³⁰ See *Indep. Union of Pension Emps. for Democracy & Just.*, 71 FLRA 822, 824 (2020) (award did not fail to draw its essence from parties' agreement where excepting party failed to cite contractual wording that defined the relevant term or conflicted with arbitrator's interpretation); *AFGE, Council of Prisons Locs, Council 33*, 70 FLRA 191, 194 (2017) (denying essence exception because excepting party did not provide a contractual basis for finding arbitrator's interpretation or application of parties' agreement deficient). To the extent that the Agency raises a nonfact exception premised on the same argument rejected above – that the Arbitrator erroneously determined that the grievable event occurred on December 21 – we deny the exception for failing to explain how the Arbitrator's finding is a nonfact. Exceptions Br. at 12; see *U.S. Dep't of Educ., Fed. Student Aid*, 71 FLRA 1166, 1168 n.18 (2020) (then-Member DuBester concurring) (denying nonfact exception because it was based on same premise as denied essence exception and failed to explain how award was deficient).

³¹ Exceptions Br. at 13 (emphasis added).

³² Award at 23; see also CBA at 35 ("Issues that were not raised at the time the grievance was first filed in writing may not be raised . . . at arbitration.")

³³ *U.S. Dep't of VA, Member Servs. Health Res. Ctr.*, 71 FLRA 311, 312 (2019) (then-Member DuBester concurring) (denying essence exception where arbitrator's decision was plausible and consistent with the plain wording of the parties' agreement); *IFPTE, Ass'n Admin. L. Judges*, 70 FLRA 316, 317 (2017)

(finding union failed to establish that arbitrator's plain-language interpretation of the parties' agreement was implausible).

³⁴ Exceptions Br. at 14 (citing *Dep't of the Treasury, Bureau of Alcohol, Tobacco & Firearms*, 18 FLRA 466 (1985) (*ATF*); *U.S. INS, Wash., D.C.*, 55 FLRA 69 (1999) (*INS*); *U.S. Dep't of the Air Force, Air Force Materiel Command*, 55 FLRA 10 (1998)).

³⁵ *NFFE, Loc. 1953*, 72 FLRA 306, 306 (2021) (*Loc. 1953*) (citing *NTEU, Chapter 24*, 50 FLRA 330, 332 (1995)).

³⁶ *U.S. DOL, Off. of Workers' Comp.*, 72 FLRA 489, 490 (2021) (*DOL*) (Member Abbott concurring) (citing *Loc. 1953*, 72 FLRA at 306-07).

³⁷ *Id.* (citing *AFGE, Loc. 2002*, 70 FLRA 812, 814 (2018) (then-Member DuBester dissenting)).

³⁸ *AFGE, Nat'l Council 118*, 69 FLRA 183, 190 (2016) (Member Pizzella dissenting in part) (citing *Dep't of HHS, SSA*, 24 FLRA 403, 405 (1986)); *U.S. Dep't of the Army, Letterkenny Army Depot, Chambersburg, Pa.*, 60 FLRA 456, 457 (2004) (citing *ATF*, 18 FLRA at 467).

³⁹ *AFGE, Loc. 3974*, 67 FLRA 306, 309 (2014) (citing *U.S. DHS, U.S. CBP*, 62 FLRA 263, 265 (2007) (*CBP*)); *INS*, 55 FLRA at 73.

⁴⁰ *U.S. Dep't of the Air Force, 832D Combat Support Grp., Luke Air Force Base, Ariz.*, 36 FLRA 289, 298 (1990); see *Dep't of the Air Force, Scott Air Force Base, Ill.*, 33 FLRA 532, 547-48 (1988) (finding that agency could implement its desired change because union failed to timely invoke the services of the Panel after reaching impasse).

Here, the Arbitrator found that: the Agency did not allow the Union's designated representative to participate in ground-rules negotiations; the Agency refused to bargain before notifying the Union of its intent to implement the proposed ground rules;⁴¹ and there was "no evidence that a . . . [m]ediator declared the parties at impasse."⁴² The Agency does not challenge these factual findings as nonfacts and, therefore, we defer to them.⁴³ Moreover, these factual findings support the Arbitrator's determination that the Union did not waive its statutory bargaining rights.

Accordingly, we deny this exception.⁴⁴

C. The Arbitrator had the authority to direct a status-quo-ante remedy.

In its exceeded-authority exception, the Agency argues that the Arbitrator lacked the authority to award a status-quo-ante remedy because the Union failed to request such relief in its grievance,⁴⁵ as required by Article 13, Section 7.⁴⁶ Where the parties fail to stipulate the issue for resolution, arbitrators may formulate the issue on the basis of the subject matter before them, and the Authority accords substantial deference to this formulation.⁴⁷ The Authority has held that arbitrators do not exceed their authority where the award is directly responsive to the formulated issues.⁴⁸ In assessing

whether arbitrators have exceeded their authority, the Authority grants arbitrators broad discretion to fashion remedies that they consider appropriate.⁴⁹

Here, because the parties did not stipulate the issues, the Arbitrator framed the relevant issues as: Did the Agency commit ULPs by initiating term negotiations without a negotiated ground-rules agreement and unilaterally implementing its proposed ground rules? What is the appropriate remedy, if any?⁵⁰ In resolving these issues, the Arbitrator found that the Agency committed bad-faith-bargaining ULPs, and the Arbitrator awarded a status-quo-ante remedy.⁵¹ The Agency does not argue that the formulated issues restricted the arbitrator's remedial authority. Further, the remedy is directly responsive to the framed issue of an appropriate remedy for the Agency's ULPs. Thus, the Agency's argument provides no basis for finding that the Arbitrator lacked the

⁴¹ Award at 21-22 (finding that no bargaining occurred "because the Agency refused to recognize or bargain with" the Union's designated representative).

⁴² *Id.* at 22.

⁴³ *DOL*, 72 FLRA at 490. Although the Agency asserts that a mediator declared an impasse, Exceptions Br. at 14-15, the Agency does not except to the Arbitrator's contrary finding as a nonfact. Even if we were to construe the Agency's allegations as raising a nonfact exception, the Agency merely disputes the Arbitrator's evaluation of the evidence in finding that there was "no evidence that a . . . [m]ediator declared the parties at impasse." Award at 22. Moreover, the Agency fails to demonstrate that this finding was clearly erroneous. Accordingly, the Agency provides no basis for concluding that the award is based on a nonfact. See *AFGE, Loc. 3369*, 72 FLRA 158, 159 (2021) (denying nonfact exception where excepting party merely challenged arbitrator's evaluation of the evidence and did not establish that arbitrator's factual findings were "clearly erroneous").

⁴⁴ See *CBP*, 62 FLRA at 265 (upholding determination that union did not waive its right to bargain because arbitrator's undisputed factual findings were consistent with law); see also *POPA v. FLRA*, 872 F.2d 451, 456 (D.C. Cir. 1989) (holding that the union did not waive its right to bargain where it "protested the agency's proposed change[.] . . . sought a delay in the change pending resolution of disputed legal issues, and then filed a [ULP] charge seeking to block the agency's unilateral change"); *Marine Corps Logistics Base, Barstow, Cal.*, 46 FLRA 782, 799 (1992) (finding no waiver of bargaining rights where the record reflected "no bargaining history or expressed agreement which would constitute a waiver").

⁴⁵ Exceptions Br. at 19-20. 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. *U.S. DHS, U.S. CBP, L.A., Cal.*, 72 FLRA 411, 412 (2021) (citing *AFGE, Nat'l VA Council No. 53*, 67 FLRA 415, 415-16 (2014)).

⁴⁶ CBA at 35 (barring a party from raising an issue at arbitration that was "not raised at the time the grievance was first filed in writing").

⁴⁷ *NLRB Pro. Ass'n*, 71 FLRA 737, 740 (2020).

⁴⁸ *U.S. Dep't of VA, Nashville Reg'l Off., VA Benefits Admin.*, 72 FLRA 371, 374 (2021) (Member Abbott concurring) (citing *U.S. Dep't of VA, Med. Ctr., Richmond, Va.*, 70 FLRA 900, 901 (2018) (then-Member DuBester concurring); *U.S. Dep't of the Treasury, IRS, Off. of Chief Couns.*, 70 FLRA 783, 784 n.15 (2018) (then-Member DuBester dissenting)); *AFGE, Loc. 1815*, 65 FLRA 430, 431-32 (2011).

⁴⁹ *U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Coleman, Fla.*, 67 FLRA 552, 554 (2014) (Member Pizzella dissenting on other grounds) (citing *U.S. DOJ, Fed. BOP, Fed. Det. Ctr., Honolulu, Haw.*, 66 FLRA 858, 861 (2012); *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Sheridan, Or.*, 66 FLRA 388, 391 (2011) (*FCI Sheridan*)); *U.S. Dep't of Transp., FAA*, 65 FLRA 320, 322 (2010) (citing *U.S. DHS, U.S. CBP*, 65 FLRA 160, 164 (2010)).

⁵⁰ Award at 4.

⁵¹ *Id.* at 29.

authority to direct a return to the status quo ante.⁵² For the foregoing reasons, we deny the Agency's exceeded-authority exception.

IV. Decision

We dismiss the Agency's exceptions, in part, and deny them, in part.

⁵² See *Navajo Area Indian Health Serv., Winslow Serv. Unit, Winslow, Ariz.*, 55 FLRA 186, 189 (1999) (finding a status-quo-ante remedy appropriate where agency committed a ULP by changing conditions of employment without fulfilling obligation to bargain); see also *FCI Sheridan*, 66 FLRA at 391 (arbitrator did not exceed authority in awarding particular remedy where remedy was responsive to the framed issue and arbitral findings). To the extent that this exception alleges that the award fails to draw its essence from Article 13, Section 7, the Arbitrator found that the parties' agreement did not require the grievance to state the desired remedy using "specific terminology, or . . . legal terms of art." Award at 16 (internal quotation marks omitted). The Arbitrator also found that the "plain meaning" of the grievance's remedy request – that management (1) recognize the Union's chosen negotiations team, (2) cease and desist from unilaterally implementing their own ground rules, and (3) meet the Union at the table to negotiate ground rules – was that the Union requested a status-quo-ante remedy. *Id.* at 16-17. In light of these findings, the Agency does not demonstrate that the Arbitrator's interpretation or application of Article 13 failed to draw its essence from the parties' agreement. See *Nat'l Nurses United*, 70 FLRA 166, 168 (2017) (denying essence exception where excepting party failed to show that the award conflicted with any article in the parties' agreement); see also *U.S. Dep't of VA, Malcolm Randall VA Med. Ctr., Gainesville, Fla.*, 71 FLRA 103, 104-05 (2019) (denying essence exception because excepting party failed to establish that arbitrator's interpretation of parties' agreement was implausible).